



LAW SOCIETY
OF SOUTH AFRICA

www.lssa.org.za

2011/2012 ANNUAL REPORT



LAW SOCIETY
OF SOUTH AFRICA

DE **REBUS**
REBUS

PROFESSIONAL
AFFAIRS

L.E.A.D.[®]
LEGAL EDUCATION & DEVELOPMENT

THE SA ATTORNEYS' JOURNAL
www.derebus.org.za

Tel: (+27) 12 366 8800
Fax: (+27) 12 362 0969
PO Box 36626, Menlo Park 0102
Docex 82, Pretoria
304 Brooks Street
Menlo Park, Pretoria 0081

LEGAL EDUCATION AND DEVELOPMENT
www.lssalead.org.za

Tel: (+27) 12 441 4600
Fax: (+27) 12 341 1339
PO Box 27167, Sunnyside 0132
Docex 227, Pretoria
Old Main Building, Unisa Sunnyside Campus
145 Mears Street, Sunnyside Pretoria

Committed To **Building** A Better
Legal Profession for All





LAW SOCIETY
OF SOUTH AFRICA

ANNUAL REPORT
April 2011 to March 2012



PROFESSIONAL
AFFAIRS

DE REBUS

© LAW SOCIETY OF SOUTH AFRICA 2012

304 Brooks Street, Menlo Park, Pretoria 0081

PO Box 3662, Menlo Park 0102 | Docex 82, Pretoria

Tel: (+27) 12 366 8800 | Fax: (+27) 12 362 0969

WWW.LSSA.ORG.ZA

CONTENTS

1. LSSA - Profile - Mission - Aims and Objectives	4
LSSA constituent members	5
2. Report by the Co-Chairpersons	6
3. The Council	14
4. Report by the CEO	15
Communication	16
<i>De Rebus</i>	17
Finance	18
Human Resources	21
Legal Education and Development	25
Professional Affairs	27
Legal Provident Fund	28
5. Standing committees	29
Alternative Dispute Resolution	29
Company Matters	30
Competition Law	30
Constitutional Affairs and Human Rights	31
Costs	31
Criminal Law	32
Deceased Estates, Trusts and Planning	33
E-Commerce	34
Environmental Affairs	35
Exchange Control and Tax Matters	36
FICA	36
GATS	37
Gender Equality	39
High Court Matters	39
Immigration and Refugee Law	40
Intellectual Property Law	41
Joint Attorneys and Accountants	43
Legal Aid	44
Liquor Matters	44
Magistrate's Court	45
Property Law	46
RAF	47
Small Claims Courts	51



THE LAW SOCIETY OF SOUTH AFRICA

We, the constituent members of the Law Society of South Africa - the Black Lawyers Association, the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces and the National Association of Democratic Lawyers – commit ourselves to building an organised legal profession which is non-racial, non-sexist, democratic, representative, transparent and accountable to its members and the public whom it serves.

(From the constitution of the LSSA)

MISSION

The Law Society of South Africa

- promotes the substantive transformation of the legal profession through its leadership role;
- represents and promotes the common interests of the profession, having regard at all times to the broader interests of the public, whom the profession serves;
- empowers the profession by providing training to candidate attorneys and continuing professional development to attorneys to ensure quality legal service to the community in an ethical, professional, competent and caring manner.

AIMS AND OBJECTIVES

The Law Society of South Africa (LSSA) has the following fundamental, enduring and long-term aims and objectives, namely to

- promote on a national basis the common interests of members of the profession and the welfare of the profession, having regard at all times to the broader interests of the public whom the profession serves, and to endeavour to reconcile, where they may conflict, the interests of the profession and the public;

- safeguard and maintain the independence, objectivity and integrity of the profession;
- maintain and enhance the professional standards, prestige and standing of the profession and of its members both nationally and internationally;
- uphold and encourage the practice of law, and to promote and facilitate access to the profession;
- provide, where it deems it appropriate so to do, voluntary services in the interest of the public;
- promote legal aid and the accessibility of all to the law and the courts;
- promote legal education and continuing legal education, practical legal training, research in the science of law and in legal practice and in any related science or practice, research in technology as it relates to legal practice, procedure and the administration of justice, and the practical application of technology in those fields;
- encourage the study and development of customary legal systems and their application in practice, and to seek harmonisation, and where appropriate integration, of those systems with the common and statutory law of the Republic of South Africa;
- uphold, safeguard and advance the rule of law, the administration of justice, the Constitution and the laws of the Republic of South Africa;
- initiate, consider, promote, support, oppose or endeavour to modify legislation, whether existing or proposed;
- initiate, consider, promote, support, oppose or endeavour

to modify proposed reforms or changes in law, practice, procedure and the administration of justice;

- secure throughout the Republic of South Africa, in so far as it is practicable, uniformity, simplicity and efficiency in the practice of law, in legal procedure and in the administration of justice;
- strive towards the achievement of a system of law that is fair, just, equitable, certain and free from unfair discrimination;
- represent generally the views of the profession on a national basis;
- nominate, elect, appoint or delegate persons to represent the profession or any part or division thereof at any conference or meeting or on any commission, advisory body, committee, commission of inquiry or similar body or proceeding established, convened or instituted by any government or other authority, institution or organisation, whether of a public or private character, for the purpose of considering any matter relating to law, practice, procedure or the administration of justice or any other matter, of whatever nature falling within the aims and objectives of the LSSA;
- cooperate or liaise with any fund or other body established for the purpose of guaranteeing the fidelity of practitioners of the profession;
- deal with any matter referred to it by the council or governing body of any constituent member; and
- take up membership of or otherwise to cooperate with any other organisation or body whether within or outside the Republic of South Africa, including organisations or bodies of an international character and, without derogating from the generality of the foregoing, to combine, affiliate or merge with any other organisation or body of similar nature to its own and having objects similar to and reconcilable with its own, whether or not its field of operations extends beyond the borders of the Republic of South Africa as they may from time to time be established.

(From the constitution of the LSSA)



CONSTITUENT MEMBERS OF THE LAW SOCIETY OF SOUTH AFRICA

Black Lawyers Association

Forum 1, Level 5, Braampark, 33 Hoofd Street, Braamfontein, Johannesburg
 P O Box 5217, Johannesburg 2000
 Tel: +27 (11) 403 0802; Fax: +27 (11) 403 0814;
 E-mail: info@bla.org.za
 www.bla.org.za

Cape Law Society

29th and 30th Floors, ABSA Centre, 2 Riebeeck Street, Cape Town
 P O Box 4528, Cape Town 8000; Docex 124, Cape Town
 Tel: +27 (21) 443 6700; Fax: +27 (21) 443 6751/2;
 E-mail: cls@capelawsoc.law.za
 www.capelawsoc.law.za

KwaZulu-Natal Law Society

200 Hoosen Haffeejee Street, Pietermaritzburg
 P O Box 1454, Pietermaritzburg 3200; Docex 25, Pietermaritzburg
 Tel: +27 (33) 345 1304; Fax: +27 (33) 394 9544;
 E-mail: info@lawsoc.co.za
 www.lawsoc.co.za

Law Society of the Free State

139 Zastron Street, Bloemfontein
 P O Box 319, Bloemfontein 9300
 Tel: +27 (51) 447 3237; Fax: +27 (51) 430 7369;
 E-mail: prokorde@fs-law.co.za
 www.fs-law.co.za

Law Society of the Northern Provinces

Proforum, 123 Paul Kruger Street, Pretoria
 P O Box 1493, Pretoria 0001; Docex 50, Pretoria
 Tel: +27 (12) 338 5800; Fax: +27 (12) 323 2606;
 E-mail: communication@lsvp.org.za
 www.northernlaw.co.za

National Association of Democratic Lawyers

3rd Floor, Commerce House, 55 Shortmarket Street, Cape Town
 Tel: 078 514 3706;
 E-mail: fazoe@nadel.co.za

We took office as Co-Chairpersons at the end of March 2011. This coincided with a dynamic juncture in the history of our continent which has become known as the 'Arab Spring'. Starting in Tunisia and spreading to Egypt and Libya, as well as to Syria along the Mediterranean coast of Africa and the Persian Gulf, we watched in admiration as ordinary people stood up against undemocratic regimes, poverty and corruption. Similarly, in other major cities throughout the world protesters stood up against dysfunctional and corrupt economic and political systems.

We hear similar rumblings in our own country. As attorneys, we need to ask whether the time is at hand to consider how we, as a profession, engage constructively in this regard. We must be mindful of circumstances which may give rise to wide discontent in our own society.

Narrowing the focus to our profession, we took the helm of the LSSA at a conference and annual general meeting which featured extensive discussions on the Legal Practice Bill. We were pleased to have the Minister of Justice and Constitutional Development, Jeff Radebe, as the opening speaker to set the scene, and representatives of the Department of Justice and Constitutional Development (DoJ&CD) to participate in the panel discussions. They were also available to listen to the recommendations and concerns raised during the session. As one of the most far-reaching pieces of legislation that has ever faced the profession, the Bill has remained one of our main focus areas throughout our term in office.

There have been various drafts of the Bill, but during our term we dealt with the latest draft Bill provided by the Department in March 2011. An expert Task Team – comprising LSSA Co-Chairperson Nano Matlala, Management Committee (Manco) members Max Boqwana and Jan Stemmett, as well as CEO, Nic Swart – was put together by the LSSA to consider the Bill and the resolutions which arose from the AGM session; and advise the LSSA Council and the profession on what our position should be. Comprehensive submissions were made to the DoJ&CD which addressed all the profession's concerns. The Task Team simultaneously undertook a

study tour to gain insight into other African jurisdictions and systems similar to ours – Namibia, Kenya and Uganda.

In Namibia, the Task Team met with the Chief Justice, an Appeal Court judge, an acting judge, the Legal Education Council, Law Society of Namibia councillors and practising legal practitioners. In Kenya, meetings were held with the President and the CEO of the Uganda Law Society, who were visiting the offices of the Law Society of Kenya at the time, as well as with the Kenyan Minister of Justice, representatives of the Law Society of Kenya, the Kenya School of Law and judges.

The visit was extremely successful and a report on the findings was submitted to the LSSA Council and to the DoJ&CD. The team identified critical issues that added value to the process in South Africa. Among these, the team found that

- except in Namibia, where the dispensation is relatively new, the role and structures of law societies appear to be well established;
- the profession's direct involvement in and responsibility for discipline and fee guidelines is recognised;
- reserved work is recognised, but care must be taken to ensure that practitioners undertaking legal work are adequately regulated;
- the profession is involved in practical training, albeit it through a separate council for higher education;

- the concept of multidisciplinary practices does not appear relevant in the countries visited;
- the principle of structured training plus workplace experience before admission is established; and
- it appears that, in Namibia, the operation of a de facto 'Bar' might defeat the objective of a unified profession.

The study tour yielded important and serious lessons. Among these is the need for a very strict approach with regard to the right of voluntary bodies to ensure that these do not threaten the unity of the profession. Law societies and Bar councils can be influential – and indeed can be consulted by Government – without compromising their independence. Further close contact with African jurisdictions must be encouraged as there is scope for collaboration and exchange, for example, between the countries' practical training institutions. Most importantly, we learnt that a split Bar – as we still have in South Africa – is an outdated anachronism in other African jurisdictions. The future of the profession in our country will depend on a high level of value-based leadership at all levels.

The Task Team went on to present information sessions at 15 venues throughout the country to inform attorneys about the implications of the Bill on the profession. The road shows were very successful and the LSSA gained valuable insight into the concerns and views of practitioners.

Attorneys raised the following issues – among others – at most of the sessions:

- the future of reserved work;
- the role of foreign lawyers and cross-border practice;
- the necessity for regional structures close to practitioners;
- concern around multidisciplinary practices;
- the role of the legal services ombud and whether this would impact on the independence of the profession, particularly as regards disciplinary procedures;
- ministerial appointments to the South African Legal Practice Council and the effect on the independence of the profession;
- the roles of attorneys and advocates and why each should be involved in the regulation of the other;
- attorneys should have greater representation on the national council as they by far outnumber advocates in practice; and
- right of appearance in the High Court and senior counsel status.

These concerns will be taken into account and communicated when the LSSA consults with other stakeholders and when it addresses the Parliamentary Portfolio Committee during public hearings.

In mid-August the DoJ&CD advised the LSSA during a briefing session that the Bill was delayed. The delay was mainly from the side of the State Law Adviser, whose office had asked for an extension of time to certify the constitutionality of the Bill. Also, the Justice Department was considering a number of broad policy matters that impact on the Bill.

In addition, the Department was in discussions with the Competition Commission on various issues that impacted on the Bill, such as reserved work and fee arrangements. The Justice Department indicated to the LSSA that it would convene a joint meeting between itself, the Competition Commission and the legal profession to discuss these issues.

The Department noted that it is investigating the implications of opening the market for legal services across the SADC region and beyond. It would be considering foreign policy and international commitments in terms of the General Agreement on Trade in Services (GATS).

Some of the policy issues that were being investigated by the Department included

- admission requirements with specific regard to vocational training; whether articles of clerkship and pupillage as they currently operate are facilitating transformation of the profession, and how these systems can be integrated;
- the framework and criteria for the status of senior counsel;
- the policy framework around community service and *pro bono* work, and how these coincide with vocational training;



Praveen Sham and Nano Matlala

- the role of paralegals; and
- reserved work.

Although the Bill provides the principles for unifying the governance of the profession, no guidance is given on how the operational aspects are to be streamlined and integrated.

The Justice Department has undertaken to consult the profession on all the policy aspects being considered.

The LSSA website (www.LSSA.org.za) has a full record of the Legal Practice Bill process from the original drafts of the Bill to the most current developments.

Responses to Chief Justice and JSC

In June 2011, the LSSA was invited by the former Chief Justice to submit written argument in the Constitutional Court matter *Freedom Under Law and 15 Others*, which deals with the Hlophe matter. The LSSA raised the doctrine of necessity for the Chief Justice's consideration. However, in the light of a further notice by three of the Constitutional Court judges of their unavailability to hear the matter, the LSSA informed the Chief Justice that, should that be the case, the Supreme Court of Appeal decision should stand.

In August 2011, the LSSA was invited by the Judicial Service Commission (JSC) to make input on the suitability of Justice Mogoeng as the President's preferred candidate for the position of Chief Justice. After discussion, the LSSA informed the JSC that it had failed to reach consensus on the President's candidate and was consequently unable to make a submission.

The LSSA is represented on the JSC by attorneys CP Fourie and Krish Govender.

Revival of the Legal Services Sector Charter and equitable distribution of legal work

One of our aims during our term was to give proper attention to the Legal Services Sector Charter and Scorecards. The scorecard system is being rolled-out electronically throughout the country after a pilot phase in the Northern Provinces. The scorecards are also being simplified for paper compilation. Firms should avail themselves of this opportunity to formalise their transformational initiatives.

One of the particular issues in the Charter relates to the distribution of legal work. As Co-Chairpersons we have undertaken to engage with big business on the distribution of work to historically disadvantaged practitioners and have held several fruitful meetings in this regard.

Pro bono and social responsibility

We were delighted that eventually the rules of all the provincial law societies have been amended to allow for 24 hours of mandatory *pro bono* service by attorneys. We spoke on this matter at the Chief Justice's 'Access to Justice Conference' and at all the Heads of Courts meetings.

Now that the provincial law societies' systems are all in place, we are in a position to promote the *pro bono* initiative by the profession vigorously to the public. This will no doubt gain a lot of goodwill for the profession and also ensure access to justice.

In the latter part of 2011, the LSSA brought together various stakeholders to begin discussion on the concept of community service and *pro bono* in the Legal Practice Bill in anticipation of the Transitional Council in the new dispensation having to discuss this issue.

Social responsibility is generally reflected in the profession's commitment to *pro bono*. However, at the LSSA's nine residential centres of the School for Legal Practice, young practitioners are engaged and encouraged to participate, on a voluntary basis, in one or more social responsibility activity. The initiatives are diverse, but are all focused on the utilisation of the knowledge and skills gained by the candidates at the School centres in order to contribute to the upliftment and enhancement of a particular segment of the community in the centre's area. These have ranged from support of and assistance to a centre for destitute street children, addressing the acute problem of 'sexting' in youth circles – sexting being the act of sending sexually explicit messages or photographs, primarily between mobile phones – and outreach projects to care homes for children and others. The response to these projects has been positive and it is clear that the School's efforts and its engagement beyond just training, are highly appreciated and acknowledged.

SARS E-transfer issues

Practitioners will be acutely aware of the SARS e-transfer debacle. We are pleased to report that the problems were largely resolved through close cooperation between the LSSA and SARS. Since e-transfers became compulsory in January 2011,

the LSSA's Property Law Committee had several meetings with SARS to address the practical problems experienced by practitioners. This engagement led to the temporary suspension of the implementation of compulsory e-filing until April 2011. When the e-transfer system became compulsory, the LSSA was inundated with complaints from practitioners on a wide range of issues, particularly the frustration being experienced by attorneys and their clients with the extraordinary cases that became stuck in the system and the inability of SARS staff to resolve and deal with these complaints effectively. The LSSA held a series of urgent meetings with SARS and a number of initiatives were put in place to alleviate the problems. These included nationwide e-transfer training seminars presented jointly by SARS and the LSSA's legal education division LEAD, as well as dedicated transfer duty counters and staff to deal with enquiries at SARS's offices.

The LSSA continued to channel numerous reported problem cases to SARS which allowed it to adjust its system to accommodate them. In July 2011 SARS announced that all transactions would be processed via an automated SARS risk engine and only cases selected by the risk engine would be sent for manual review. In order to reduce errors made on the forms which had caused problems, additional validations were introduced into the form. Supporting documents would no longer be mandatory on the submission of a transfer duty declaration. In order to reduce the number of manual refund requests, payment would only be required once the declaration has been approved or accepted by SARS.

Competition Commission

We were disappointed with the Competition Commission's decision to reject the LSSA's application, made in 2004, for the exemption of the professional rules of the statutory law societies. However, we are encouraged by the Commission's willingness to continue its process of engagement and consultation with the profession to facilitate the continued regulation of the attorneys' profession. We continue to be of the view that our engagement with the Commission – particularly on the issues of reserved work and organisational forms and multidisciplinary practices – is founded on the premise that the public interest is best served by ensuring that well-trained, professional legal practitioners are governed by acceptable professional standards.

The LSSA's exemption application recognised the need for attorneys' professional rules and practices to be in line with all legislation in South Africa. Most of the rules that were the subject of the exemption application will soon be replaced or amended by the uniform rules of practice which are antic-

ipated to come into effect by operation of the Legal Practice Bill when it is enacted by Parliament.

The LSSA conducted extensive research on the issues raised by the Commission – with particular focus on conveyancing and the role of conveyancers in a credible and functional land registration system – and submitted a comprehensive research document to the Commission. No stone has been left unturned to protect the interests of the profession and the public.

Court tariffs

The LSSA has applied for a 40% increase in the magistrates' and higher courts' tariffs. This application was before the Rules Board at the time of writing this report. The LSSA was of the view that there was no need for separate tariffs in respect of all the higher courts. It indicated that, although the Supreme Court of Appeal and the Constitutional Court are courts of second and even third instance, consideration should be given to simplifying the tariffs. To do so, the LSSA indicated that one set of tariffs in respect of the High Court, the Supreme Court of Appeal and the Constitutional Court would be appropriate. The LSSA also recommended that all courts' tariffs be reviewed every two years. As regards the regional courts, we recommended the introduction of a Scale D for claims in excess of R100 000 and divorce actions. This new scale would be equivalent to 30% greater than Scale C in respect of civil claims and 35% in respect of divorce matters.

Civil justice reform project

This project by the Justice Department is well underway. One of the major issues for discussion and consultation has been court-annexed mediation. The Rules Board is spearheading this project. The LSSA made substantive submissions and also attended various stakeholder meetings towards the end of 2011 and early 2012. The LSSA invited all attorneys to comment on the draft rules through the December edition of its electronic newsletter.

Legislation

The LSSA continues to make submissions on various pieces of legislation and policy documents through its specialist committees to the relevant departments and parliamentary portfolio committees. The comments by the LSSA can be accessed on our website at www.lssa.org.za under 'Legal Practitioners: LSSA Comments'. These are also highlighted in the specialist committee reports later in this Annual Report.

Uniform rules

After some three years, the process of unifying the disparate sets of professional conduct and accounting rules of the four provincial law societies into one uniform set of rules is nearing finalisation. The draft uniform rules should be available for consideration at provincial level during 2012.

The Attorneys Development Fund (ADF)

The ADF has had a slow start since registration due to the Board of Directors getting a number of policies in place. The members have contributed R30 million with the final grant received in July 2011.

A strategic plan has been developed, the loan criteria have been finalised and the ADF Manager appointed. Applications are to be received and supported by provincial societies and sent to the ADF grant committee for evaluation and processing.

SADC Lawyers Association (SADCLA)

The law societies/Bar associations in the following countries are members of the SADCLA: Angola, Botswana, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Democratic Republic of Congo, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. As mentioned above, the regulatory bodies in all member countries, except in South Africa, represent a unified profession; unlike the anachronistic split Bar still prevalent in South Africa. Experience in SADC countries – particularly those that have had threats to the rule of law and democracy in recent times, such as Zimbabwe, Malawi and Swaziland – has shown that a strong, united legal profession is vital in supporting the independence of the judiciary and of the profession, as well as the rule of law.

The LSSA has hosted the SADCLA Directorate at its offices since the beginning of this year in order to provide administrative support to the association. It is very important for the LSSA to render support to the profession in neighbouring countries when requested to do so. The LSSA has established a close relationship with the SADCLA as well as Bars and law societies in the region.

The Law Society of Namibia has had observer status on the LSSA council since the latter's inception (even in the days of the LSSA's predecessor, the Association of Law Societies). At its November 2011 meeting, the Council of the LSSA

resolved that the law societies of Swaziland and Lesotho should also be invited to attend LSSA Council meetings as observers, particularly because many South African practitioners practice in their courts, and vice versa.

SADCLA conference and AGM

We, as Co-Chairpersons, attended the SADCLA conference and annual general meeting in Maputo in August 2011. We were gratified to note that a substantial number of South African attorneys attended and participated actively. The SADCLA conference took a number of resolutions. These included that

- all future elections in SADC must be held in a free and fair environment that gives citizens an opportunity to freely choose their leaders, with adequate election supervision and monitoring by SADC and the international community;
- pre and post-election violence, the monopolisation of the state media for election campaigning purposes by the ruling parties, muzzling of the independent media, illegal use of state resources by ruling parties for campaigning purposes, the use of violence and hate-filled language and the use of security forces against civilians will not be tolerated;
- power-sharing governments that are not a result of democratic processes will not be accepted;
- the SADCLA is deeply concerned by the serious breakdown of the administration of justice in Swaziland and in particular the role reportedly played by the Chief Justice of that country in undermining the independence of the judiciary;
- the SADCLA called on the Judicial Services Commission of Swaziland to ensure that the Chief Justice did not become the judge and the jury in his own cause in relation to the charges brought against Judge Thomas Masuku, and the latter's hearing must be held in public;
- the SADCLA supported the call made by the Law Society of Swaziland for the Chief Justice to answer to the complaints that had been made against him;
- the decision made by the SADC Heads of State and Government at their Extraordinary Summit in Windhoek on 20 May 2011 to extend the suspension of the SADC Tribunal was illegal and that the Tribunal should be reinstated and allowed to function;
- the developments in Malawi strongly mirror those in Zimbabwe which were a precursor to years of the breakdown of the rule of law, interference with the judiciary, violations of fundamental human rights and a meltdown of the economy;

- the SADCLA strongly condemned the use of violence by Malawian state security forces against peaceful and unarmed demonstrators; and
- the Government of Malawi must restore basic freedoms and fundamental human rights to the people of Malawi.

The LSSA supported the calls by the SADCLA regarding the charges against Judge Masuku and expressed its disappointment that his JSC hearing was not held in public. In a press statement the LSSA joined other regional legal bodies in expressing grave concern about the turbulence and uncertainty in the judiciary in Swaziland, and what appears to be a breakdown in the rule of law and good governance. This is against the background of serious economic instability in the country. We highlighted the serious breach of good governance by the Chief Justice of Swaziland and stressed that being a complainant, prosecutor and judge in the same matter went against all norms of due process. In November 2011, a representative of the Law Society of Swaziland briefed the LSSA on the situation in the country and the LSSA Council resolved to support its colleagues in Swaziland through various initiatives, including approaching President Zuma.

We are proud that South Africa's Thoba Poyo-Dlwati is currently the SADCLA President and we will continue to support her and the association.

Cooperation with stakeholders

The LSSA is increasingly invited by external stakeholders to cooperate and give advice on various issues. These stakeholders include the South African Institute of Chartered Accountants, the Departments of Justice; International Relations and Cooperation; Home Affairs; and Trade and Industry; the Companies and Intellectual Property Commission; SARS and the Rules Board. The LSSA nominates members to numerous statutory and non-statutory boards and committees. This provides an opportunity for the profession to make an input at various forums.

The LSSA's Manco met with Chief Justice Mogoeng Mogoeng at his office at the Constitutional Court after his appointment as Chief Justice to discuss matters of mutual concern and common challenges. The Chief Justice stressed his vision of an efficient court system and the importance of his Office working with the profession to achieve that.

Training for aspirant judges

At a meeting of the Council of the South African Judicial Education Institute (SAJEI) – where the LSSA is represented – it was agreed that the training of aspirant judges would be a prominent part of the agenda. A subsequent meeting was

held between the LSSA and those responsible for the implementation of programmes at the SAJEI with a view to sharing information, material and experiences on the training of aspirant judges.

International cooperation

Besides our close ties with the SADCLA referred to above, the LSSA continues to cooperate with international stakeholders on various projects. In May 2011 the International Criminal Court presented an information session in Durban on its 'Calling African Female Lawyers Campaign' in cooperation with the LSSA and the KwaZulu-Natal Law Society. This was well attended by practitioners.

Also in May, the LSSA assisted the Pan African Lawyers Union (PALU) to coordinate the Southern African regional seminar on capacity-building in international commercial law in Africa. This seminar, which represents the first outreach campaign by PALU in South Africa and brought together 60 specialists from the SADC region, was aimed at assessing and building capacity for complex international commercial negotiations and international dispute resolution in Africa; the defence of vulture fund litigation in Africa; as well as building a database of knowledgeable, skilled and experienced international commercial lawyers in Africa.

In September 2011 the LSSA cooperated with the International Bar Association Human Rights Institute to launch its report in Johannesburg on its fact-finding mission into the rule of law in Zimbabwe.

In December 2011 the LSSA again provided the opportunity for a small delegation of local attorneys to participate in the Pan-African Trade Mission to London to network with British law firms. The mission was led by Co-Chairperson Praveen Sham.

Communication

The LSSA continues to speak publicly on many issues through press releases. These are usually accompanied by requests for further comments and interviews.

Towards the end of November 2011, the LSSA's Council unanimously publicly added its voice to the distress and disappointment expressed at the passing of the Protection of State Information Bill in the National Assembly. Although recognising the legitimate need for every government to take steps to protect information that is crucial for national security, the LSSA was of the view that the fact that the Bill did not provide public interest indemnity remained a matter of grave concern. The Bill also failed to take into account the

important role played in a democracy by the media, and indeed by every citizen who seeks to expose corruption, nepotism, hypocrisy and maladministration. The criminalisation of the possession of classified information by unauthorised persons remained a problem in the Bill. It was unrealistic, according to the LSSA, to believe that ordinary citizens could resort to the courts to access classified information or to defend themselves against the possession of classified information as the courts, to a large extent, remain the preserve of the wealthy. If the Bill was passed into law as is, most ordinary citizens who become aware of corruption and maladministration would be silenced for life.

In February 2012, the LSSA made formal submissions on the Bill to the National Council of Provinces.

In 2011 the LSSA introduced an electronic newsletter which is sent to all attorneys on a regular basis. The objectives of the newsletter are to keep attorneys informed on developments in the profession, initiatives by the LSSA, legal education training activities and highlights in the latest issue of *De Rebus*. One of the main purposes of the newsletter is to distribute useful guidelines and resource documents to practitioners. All these resource documents can be accessed on the LSSA website (www.LSSA.org.za) under 'Legal Practitioners: Resource Documents'.

Attorneys are encouraged to provide feedback through the newsletter and various quick surveys are included to gauge the views and requirements of attorneys. They are also invited to participate in national initiatives such as the National Wills Week, which in 2011 took place from 17 to 21 October 2011 and which recorded participation by well over a thousand attorneys' firms.

The new LEAD website was launched in 2011 and attorneys will soon be able to register for all LEAD training initiatives online and also purchase resource material, publications including practice manuals, both print and CD, seminar notes and past examination papers direct from the online store on the website at www.LSSALEAD.org.za.

Legal education

We are pleased to note that more than 14 000 persons had enrolled for training with LEAD in 2011. More than 600 practitioners -- most of them attorneys -- provided training to their colleagues. We express our gratitude to these instructors and mentors.

The LSSA has benefited substantially from the Safety and Security Seta (Sassetta), which has subsidised seminars, training, mediation and other initiatives.

A new learning programme has been developed in business rescue. Active steps are also taken to strengthen the practice management training delivery. As mentioned above, SARS offered free training in e-transfer through LEAD to conveyancers, and also training in income tax.

LEAD launched its e-learning activity during 2011 and online training is now available in topics such as bookkeeping, adjudication skills, legal writing and customary law.

Although mandatory continuing professional development (CPD) has been approved in principle for attorneys by the LSSA, changes to the legislation to implement CPD are impractical at this stage, and we envisage that it will be legislated in the Legal Practice Bill. In the meantime, the LSSA has resolved to provide CPD on a voluntary basis through LEAD, to improve practitioners' skills and to test the system before mandatory implementation.

Looking back

Looking back over the fourteen years since the LSSA came into being, there have been successes and achievements, but also shortcomings. Although the attorneys' profession has been able to move forward in unison on many issues -- one example being the Legal Services Sector Charter -- the occasional divisions in the profession brought about by sectarian views have threatened to derail the greater good and the public interest. We must strive for closer, uniform cooperation between the constituent members of the LSSA, and between the LSSA and the advocates' profession.

In fact, looking back to the LSSA constitution crafted through several years of negotiation leading up to the 1998 birth of the LSSA, one of its main objectives was to bring a new Act for the profession into existence within two years. We are more than a decade behind in that initial target.

The inordinate length of time that it has taken to draft a uniform set of rules that will apply equally to all attorney in the country -- no matter in which province they practise -- has also been a disappointment. We trust that this will be finalised in 2012.

Perspectives on the future

Besides the high-level policy changes which the Legal Practice Bill will bring, there are also practical challenges that our profession must tackle head-on to ensure that what could be perceived as 'threats' are harnessed as opportunities for the profession to serve the public better.

The increased use of IT by Government: The implementation of electronic deeds registration, estates management, e-litigation, e-filing, etc. Attorneys are used to lodging hard copies and need to be trained to use IT to their advantage. This will require a mind set change. If practitioners are not equipped properly to deal with these challenges, we are at risk of losing the work.

The change in the civil justice system: The same applies as to electronic challenges. We must get used to change -- for example, the concept court-annexed mediation -- otherwise the profession and the public will be the weaker and poorer. This, however, also brings an opportunity for attorneys to broaden their skills and become mediators.

The LSSA has, generally, proven that it can engage with relevant authorities and stakeholders constructively. However, strong leadership is necessary to influence public processes and developments.

We believe the future of the profession in South Africa is both challenging and bright. The profession is led by a strong and independent judiciary. As a profession, we will continue to support the judiciary in promoting the separation of powers and access to justice. We do this through close cooperation with the Office of the Chief Justice and the Heads of Courts.

Our relationship with the advocates' profession is one of the challenges we are working on. Meetings are scheduled early in 2012 and we are confident that we will forge close ties so as to move forward into the new dispensation on the Legal Practice Bill with a uniform and unified approach. This will be in the greatest interest of the public.

In the immediate future, the LSSA must be in a position to support and assist practitioners to maintain and grow sustainable practices. Besides the obligation to explore new areas of work for attorneys, to equip attorneys with the necessary skills to run sound practices, there is also an obligation to ensure that the public has better and more reasonable access to legal services, as well as access to high-quality legal services. It is imperative that research is conducted on the quality of candidates entering the profession, the capacity of the profession to absorb new practitioners, the rate of that absorption and sustainability through the initial vulnerable years in practice. This will require close cooperation with the law deans and law faculties, a creative approach to the business of law as well as access to the necessary resources to conduct research in order for us to plan properly for the future.

On this note, we look forward to the coming into operation of the Attorneys Development Fund (ADF) early in 2012 after some years of planning. It will be vital to monitor the effectiveness and impact of the ADF in supporting new, disadvantaged firms to remain sustainable through their first challenging years.

Looking forward, we need to build stronger links with our colleagues on the African continent. The liberalisation of legal services is a reality which the profession in South Africa must grasp with enthusiasm. Cross-border practice has been on the cards for years and now most of the large firms, as well as some smaller firms, have established offices, associations and a presence throughout Anglophone Africa.

A word of thanks

With the resignation of Raj Daya as CEO in April 2011, the LSSA appointed Director of Legal Education and Development, Nic Swart, as CEO. Mr Swart has agreed to remain in that position as long as necessary. He has handled the dual role of heading the LSSA as well as his demanding legal education commitments with fortitude, energy and professionalism. We thank the Management and staff of the LSSA for their support and commitment during our term.

As Co-Chairpersons we would like to take this opportunity to thank all attorneys who give of their time generously to participate in the affairs of the profession. We single out those who continue to act as commissioners in the small claims courts and those who are participating actively in various *pro bono* activities. We also pay tribute to those practitioners who serve tirelessly on the specialist committees of the LSSA, as well as on the Management Committee and Council. In addition, we thank the six constituent members of the LSSA -- the Black Lawyers Association, the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern provinces and the National Association of Democratic Lawyers -- who bring together all the disparate views of the profession within the various vibrant forums of the LSSA.

We congratulate the incoming Co-Chairpersons and offer our assistance, advice and support, should they require these.

Nano Matlala and Praveen Sham

Co-Chairpersons



THE COUNCIL

'The control of the Law Society shall vest in a Council which shall determine the policy of the Law Society in accordance with its aims and objectives as set out [in the constitution], and which shall as far as legally possible carry out the functions of and exercise the powers of the Law Society as set out [in the constitution].'

(LSSA Constitution)

Councillor	Constituency	Meeting attended
Nano Matlala	Co-Chairperson	05, 07, 09, 11, 02
Praveen Sham	Co-Chairperson	05, 07, 09, 11, 02
Koos Alberts	CLS	05, 07, 09, 11, 02
Eric Barry	KZNLS	09
Ettienne Barnard ¹	CLS	02
David Bekker	LSFS	05, 07, 11, 02
Dave Bennett	LSNP	05, 07, 09, 11, 02
William Booth	CLS	05, 11
Max Boqwana	Nadel	05, 07, 11, 02
Mammule Peter Chidi	BLA	07, 09, 11, 02
CP Fourie	LSNP	05, 07, 09, 11, 02
Mohamed Husain	Nadel	05
Krish Govender	Nadel	05, 07, 09, 11, 02
Peter Horn	CLS	07, 09, 11, 02
Jan Janse van Rensburg	LSNP	05, 07, 09, 11, 02
Maake Kganyago	Nadel	05, 07, 09, 11
Lulama Lobi	BLA	05, 07, 11, 02
Percival Maseti	BLA	05, 07, 09, 11, 02
David Macdonald ²	CLS	09
Yvonne Mbatha ³	BLA	
Mimie Memka ⁴	BLA	07, 09, 11, 02
Segopotje Sheila Mphahlele	Nadel	07, 09, 11
Lesane Sesele	BLA	05, 07, 11
Jan Stemmett	LSNP	05, 07, 09, 11, 02
Henri Van Rooyen ⁵	LSFS	09

Key:

- 05 – May 2011
- 07 – July 2011
- 09 – September 2011
- 11 – November 2011
- 02 – February 2012
- BLA – Black Lawyers Association
- CLS – Cape Law Society
- KZNLS – KwaZulu-Natal Law Society
- LSFS – Law Society of the Free State
- LSNP – Law Society of the Northern Provinces
- Nadel – National Association of Democratic Lawyers

1 Mr Barnard replaced Mr Booth on the Council at the beginning of 2012.

2 Mr Macdonald attended in the place of Mr Booth.

3 Ms Mbatha was appointed to the Bench during 2011.

4 Ms Memka replaced Ms Mbatha on the Council.

5 Mr Van Rooyen attended in the place of Mr Bekker.

REPORT BY THE CEO

What a privilege it has been to work in a dynamic, professional environment! At the LSSA we experience a fast-changing environment which challenges us constantly and creatively to redesign our strategies.

From a management perspective, 2011 had various highlights. The LSSA was and continues to be involved in events and projects of great significance to the profession. Those initiatives and activities have been set out in this Annual Report.

Submissions were made to various entities including the Department of Justice and Constitutional Development, the South African Revenue Service, the Competition Commission and the Department of Trade and Industry. This has given us an opportunity to engage more directly with stakeholders who impact on the practice of law. A relationship of cooperation with these and other bodies will benefit our profession and the public we serve.

Communication with the profession has moved to new levels, both personally and electronically. The LSSA's electronic newsletter was launched during mid-2011 and will, together with *De Rebus* and other communication channels, serve to inform attorneys on a continuing basis.

I enjoyed the privilege of engaging with foreign jurisdictions. Firstly, I investigated the introduction of Continuing Professional Development (CPD) in the United Kingdom. We want to be able to implement a system in South Africa which is accessible and relevant.



Nic Swart

I attended a meeting of chief executives from international law associations and noted that all jurisdictions are facing similar challenges to a greater or lesser extent. It was emphasised that the organised profession has a crucial role in terms of promoting the public interest, as a core value.



The LSSA and its Legal Education and Development division (LEAD) hosted a number of international visitors and delegations throughout the year. We are always keen to learn from other jurisdictions, share experiences and provide assistance and cooperate where we can. We hosted delegations from Kenya, Uganda, two from the United States and China, as well as representatives of the International Union of Notaries (UINL) and the German-South African Lawyers Association. We assisted the Pan African Lawyers Union (PALU) in cohosting the Southern African leg of its five-region capacity-building seminar on International Commercial Law in Africa. This seminar – held in Cape Town – represented the first outreach campaign by PALU in South Africa. An information session on the 'Calling African Women Lawyers' campaign by the International Criminal Court was facilitated in Durban. In addition, the LSSA assisted the International Bar Association's Human Rights Institute to launch its fact-finding mission Report on the Rule of Law in Zimbabwe, in Johannesburg in September 2011.

We are working closely with the Commonwealth Lawyers Association in preparing for the 2013 Commonwealth Law Conference to be held in Cape Town in April 2013. This will be a daunting, yet exciting challenge for the LSSA and promises to be the highlights on our legal calendar for next year.

The LSSA was pleased to offer its support for the International Conference on Climate Law and Governance in the Global South, which coincided with the COP17 climate change conference, in December in Durban, and was arranged by the LSSA Environmental Law Committee.

We continue to support the SADC Lawyers Association in every way we can and, particularly since the SADCLA office moved to the LSSA premises during 2011. The LSSA cooperated in several initiatives with the SADCLA, including the attendance of the human rights training and trial observation workshop as well as the main SADCLA conference and annual general meeting held in Maputo in August 2011.

As regards national stakeholders, we work closely with others in the legal field and beyond on matters in the public interest. Towards the end of 2011, the LSSA brought together various stakeholders to workshop the concept of community service and *pro bono* in the Legal Practice Bill.

There has once again been a pleasing growth in legal education with more than 14 000 persons receiving training by some 600 instructors, mainly attorneys. Training in mediation, business rescue and the development of e-learning were key activities.

The LSSA issued numerous press releases during the year inter alia on the threat to the rule of law in Swaziland and also expressing its sadness at the passing of the Protection of State Information Bill in the National Assembly in South Africa.

The management of the LSSA has adopted its new Quality Management Statement in terms of which it commits itself to be guided by a core value system. Actions must be marked by values of integrity, excellence and respect.

We hope to continue making our modest input towards promoting a relevant and independent legal profession. 2012 will bring new challenges. We believe that we enjoy the leadership capacity to move with confidence and set and achieve decisive objectives.

The management and staff of the LSSA are exceptional. I salute them!

Nic Swart

Chief Executive Officer



The LSSA Management team from left: Nkhensane Nthane, Ogilvie Ramoshaba, Barbara Whittle, Anthony Pillay, Kim Hawkey, Leonard Nyoni, Nic Swart and Lizette Burger (front).

COMMUNICATION

Members: David Bekker (Chairperson), Hester Bezuidenhout, Max Boqwana, Nalini Gangen, Gavin John, Kim Hawkey, Arnold Mohobo, Nic Swart and Barbara Whittle

The communication initiatives of the LSSA gained increased impetus during 2011 particularly through the publication of a monthly e-newsletter to all attorneys and candidate attorneys on a national basis. On the one hand, this allows the LSSA to distribute information on and developments in the organised legal profession as well as useful resource documents to all attorneys directly. On the other hand, attorneys are provided an opportunity to provide comment, input and feedback on draft legislation, policy documents and surveys on learning, training and other professional requirements.

Feedback forms and surveys are linked to the LSSA website and allow attorneys to complete the simple forms and submit these back to the LSSA online. Several important interventions were communicated and handled through the online medium, including problems experienced by practitioners with the e-transfer process, the FICA registration and troubleshooting process, as well as the Legal Practice Bill road shows and feedback sessions. The electronic communication medium has also allowed attorneys to register their interest in upcoming training initiatives such as the business rescue and judicial skills. It has also been possible to inform attorneys electronically of all LEAD training and seminars.

A new innovation in 2011 was the production of a three-part video interview on the Legal Practice Bill with LSSA Co-Chairpersons, Nano Matlala and Praveen Sham. The video clips are available to view on the LSSA website (www.LSSA.org.za).

During 2011 the LSSA continued to comment publicly on several burning and critical issues through press releases which received wide media coverage in the print and broadcast media.

The Communication Committee met for one meeting and two telecons mainly to arrange the National Wills Week, which took place in October 2011. The National Wills Week is gaining ground among the public, media and the profession. In 2011 more than 1 300 attorneys' firms participated in the national initiative and extensive media coverage generated goodwill for the profession. Several stakeholders, such as parastatals, municipalities and charities are increasingly requesting to cooperate in the National Wills Week initiative.

The Committee also considered several new information brochures for the public and for attorneys' firms to use as

marketing material. New brochures being drafted include the Children's Act and the Consumer Protection Act. A brochure on 'Marriage: The Legal Aspects' was revised, updated and translated into isiZulu, seSotho, Afrikaans and isiXhosa. Once the other brochures are finalised, they too will be translated and made available to the public and firms.

A new development early in 2012 has been the weekly distribution of *LSSA Legalbrief Weekly*, a weekly consolidation of the daily *Legalbrief* electronic news, legislation and case bulletin, in cooperation with Juta Law. This is e-mailed weekly to all attorneys and candidate attorneys on the LSSA database, free of charge.

David Bekker

Chairperson, Communication Committee

Barbara Whittle

Communication Manager

DE REBUS

The SA Attorneys' Journal

Editorial Committee: Sithembele Mgxaji, Krish Govender, Peter Horn and Danie Olivier

As the profession's official journal, *De Rebus* strives to be the primary source of news on professional updates, practice development, as well as general legal news for all practising attorneys. At the same time, it aims to provide practitioners with a platform for discussion and thought exchange on matters relating to their profession.

In 2011 the journal continued to serve this role as an indispensable resource for legal practitioners by providing articles, case notes, practice notes, opinions and regular columns on the latest legal developments and topical legal stories. Although its primary readership comprises attorneys, *De Rebus* is also regularly read by judges, magistrates, prosecutors, academics, advocates, law students and private legal advisers, among others.

By December 2011, *De Rebus'* circulation was 24 691, which is made up of 18 272 attorneys, 4 149 candidate attorneys, 1 293 paying subscribers, 947 complimentary recipients, as well as some individual sales.

As a complement to the hard copy printed version of *De Rebus*, the journal is also available in both online and digital formats. The online version can be found at www.derebus.org.za, which also serves as a useful search engine and ar-

chive service for editions of *De Rebus* that date back to 1998. The digital version, which is an exact replica of the print version, is available approximately two weeks prior to the hard copy. Readers can access digital copies of *De Rebus* through a number of sources, including by e-mail (for those on the *De Rebus Digital* mailing list); from a link on the *De Rebus*, LSSA and LEAD websites; and via Google.co.za or Google.com searches.

There has been an increase in the number of readers on the *De Rebus Digital* mailing list, which at the end of December consisted of 1 801 e-mail addresses (when *De Rebus Digital* was first sent out in January 2010, the list stood at 480). Readers from across the world are able to access *De Rebus* through this mechanism. In addition to readers from overseas countries such as the United Kingdom, the United States and Australia, readership from African countries, such as Mozambique, Swaziland, Namibia, Zimbabwe and Botswana, has increased.

As *De Rebus* is provided free of charge to all practising attorneys and candidate attorneys in South Africa, the *De Rebus* staff is mindful of the need to manage the costs incurred in producing the journal each month efficiently. 2011 was a good year for *De Rebus'* advertising sales, with a net income of R3 812 000 received for both the journal and the classified advertising supplement. Due to effective cost containment by the *De Rebus* staff, a saving of over R1 million on printing costs was also achieved (unaudited figures). This included a saving of R25 000 a month (R300 000 annually) by changing the colour of the paper the classifieds supplement is printed on from yellow to white. In addition, a reduction in printing costs for 2012 was secured towards the end of 2011. It is anticipated that this will result in a 25% saving in 2012 on the amount spent on printing in 2011.

Editorial matters

2011 saw an improved news section, with shorter, sharper news articles, and more self-generated content by the *De Rebus* staff, including comprehensive coverage of the LSSA and SADC Lawyers' Association annual general meetings, as well as those of the Black Lawyers Association and the various provincial law societies.

In addition, recent legislation such as the Consumer Protection Act 68 of 2008 and the Companies Act 71 of 2008 provided material for many *De Rebus* articles, case notes and 'Letters to the Editor'. Some of the ways that *De Rebus* informed attorneys about the details of these two pieces of legislation was by publishing a consumer law column, which ran over a period of four months, and producing a company law themed issue in September 2011.

Other articles reflected the changing legal landscape, for example the June cover article on oversubscription to the attorneys' profession in South Africa, the November cover article on legal process outsourcing, as well as editorials and news articles on the Legal Practice Bill and the Competition Commission's rejection of the LSSA's application for exemption of certain of the professional rules.

During 2011 *De Rebus* also published a number of interviews with legal luminaries, including former Constitutional Court judge and current judge in the office of the Chief Justice and chairperson of the South African Law Reform Commission, Justice Yvonne Mokgoro; National Consumer Commissioner Mamodupi Mohlala; and the LSSA Co-Chairpersons, Nano Matlala and Praveen Sham.

Three practitioners were also recognised in 2011 for their contributions to *De Rebus* during 2010. Bloemfontein attorney Willie Herbst won the 2010 LexisNexis Prize for Legal Practitioners for penning the best article published by a practising attorney in *De Rebus* in 2010. His article titled 'Kontrakteureksekteur', which appeared in 2010 (March) DR 17, was about the role executors play in redistribution agreements. Mr Herbst won a netbook with one year's free access to his choice of five online law publications.

In addition, Zaakir Mohamed and Samantha Balona jointly won the 2010 Juta Prize for Candidate Attorneys for the best article by a candidate attorney published in *De Rebus* in 2010. They won the prize for their article titled 'Fighting corruption: Section 34 of the Prevention and Combating of Corrupt Activities Act', which appeared in 2010 (Aug) DR 22. The pair won book vouchers from Juta to the value of R7 500.

The *De Rebus* team members are acknowledged for their consistent hard work during 2011 and for their commitment to producing a top quality journal, as are *De Rebus*'s regular contributors and columnists. The Editorial Committee members are also recognised for the time and work that they put into *De Rebus*, not only through their attendance at the monthly Editorial Committee meetings, but also for the behind the scenes work that goes into producing a professional journal such as *De Rebus*.

Sithembele Mgxaji

Chairperson, Editorial Committee

Kim Hawkey

Editor

FINANCE

The finance report for the Law Society of South Africa runs from January to December 2011. The audited financial statements were finalised after the LSSA Annual Report deadline, and for completeness it is recommended to refer to the audited financial statements which are available as a separate annexure.

LSSA Audit and Remuneration Committee (ARC)

Membership and meeting attendance

Member	Meetings attended	Number of meetings
Ashwin Trikamjee (Chairperson)	03, 05, 07, 09, 11	5
Etienne Horn (Vice Chairperson)	03, 05, 07, 09, 11	5
Koos Alberts	03, 05, 07, 09, 11	5
Vincent Faris	03, 07, 09, 11	4
CP Fourie	03, 07, 09, 11	4
Mohamed Husain	07, 09	2
Igna Klynsmith	03, 05, 07, 11	4
Matshego Ramagaga	03, 07	2
Paul Ranamane	03, 05, 07, 11	4
Praveen Sham (LSSA Co-Chairperson from 1 April 2011)	05, 07, 09	3

The table excludes the following:

- LSSA Remuneration Sub-committee meeting 2
- LSSA Budget Sub-committee meetings 4
- Rationalisation Sub-committee meetings 2
- Telephone conferences 1
- Internal Audit Sub-committee meetings 2

The ARC has an independent role with accountability to the LSSA Council and fulfils its statutory functions.

The ARC does not assume the functions of Management. These remain the responsibility of the directors, officers and other senior members of management.

The ARC is, inter alia, responsible for assisting the Council to discharge its duties in respect of the safeguarding of assets, accounting systems and practices, internal control processes and the preparation of accurate financial statements.

On all responsibilities delegated to it by the Council, outside of the statutory duties, the ARC makes recommendations for approval by Council.

The LSSA Council is responsible for the leadership, strategic direction and overall management of the LSSA. The Council assumes overall responsibility for risk management within the LSSA.

The ARC dealt with a number of issues – including standard governance matters – during the year under review. These included, among other matters, the following:

- The adoption of a revised committee charter and terms of reference (compliant with King III).
- The adoption of a code of conduct for all employees.
- Recommendation of a change in the bursary policy and the establishment of a national bursary committee.
- Approval of the recommendation of the Internal Audit Sub-committee (IA) to be focused strategically, with terms of reference limited to the assessment and effectiveness of internal controls and the risk profile of the LSSA.
- The LSSA Risk Register was reviewed and revised by the IA with the assistance of PwC.
- The finalisation of the restructure of the finance division and the appointment of a Management Accountant (re-structure of the vacant Accountant post).
- Focus on cost containment with increased focus due to budget cuts by the Attorneys Fidelity Fund (AFF) and financial constraints of the provincial law societies.

- The recommendation of the utilisation of technology to assist in cost reduction, environment issues and increased efficiency by making i-pads available to Council and Manco members.
- Increased monitoring of unallocated receipts (suspense accounts) in terms of high-risk rating.
- Approval of the revised LSSA delegation of authority document.

The ARC allocated a large amount of time during meetings (excluding two additional Budget Subcommittee meetings) to review and make recommendations on the LSSA budget application for 2012.

The Joint AFF and LSSA 46(b) Committee agreed to keep the allocation of 46(b) funding for 2011 and 2012 on the existing basis: *De Rebus* and LEAD net deficit fully funded by the AFF on the basis of budget, with LSSA national directorate funded on ratio of 2:1 (2 – AFF : 1 – LSSA).

Governance statement

The LSSA considered the governance best practice carefully and, taking into account the unique nature and activities of the LSSA, has agreed to exclude the following elements from the LSSA governance policy:

- Integrated report.
- Sustainability report.
- Combined assurance report.

The LSSA does not have a formal internal audit function and during the course of review of risks and internal controls both by the IA Committee (internal audit sub-committee), external auditors and Management, the LSSA will outsource specific internal audit interventions on an *ad hoc* basis.

Key honoraria and allowances for the year under review

Co-Chairpersons' honoraria	R248 325 per annum each
Co-Chairpersons' S&T allowance	R 7 900 per annum each
Manco and Council meeting honoraria	R 2 485 per meeting
Committee meetings honoraria	R 1 615 per meeting
Overseas <i>per diem</i>	\$150 per day
Reimbursive km	R5,21 per km (maximum cap) fluctuates with fuel price

Main funding streams

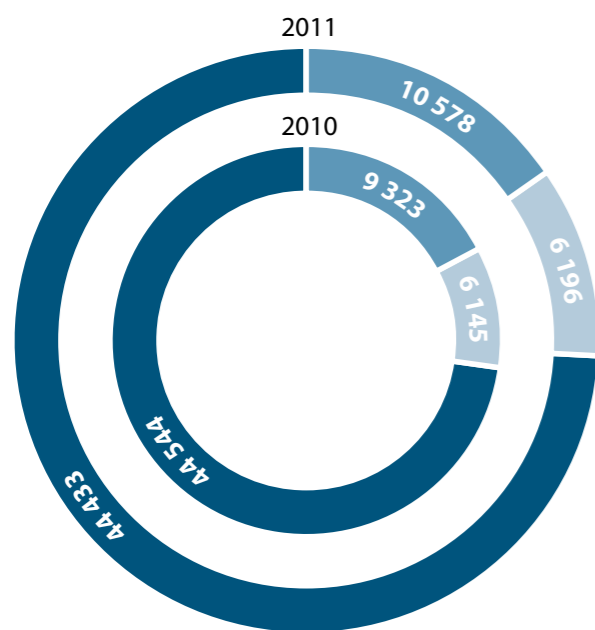
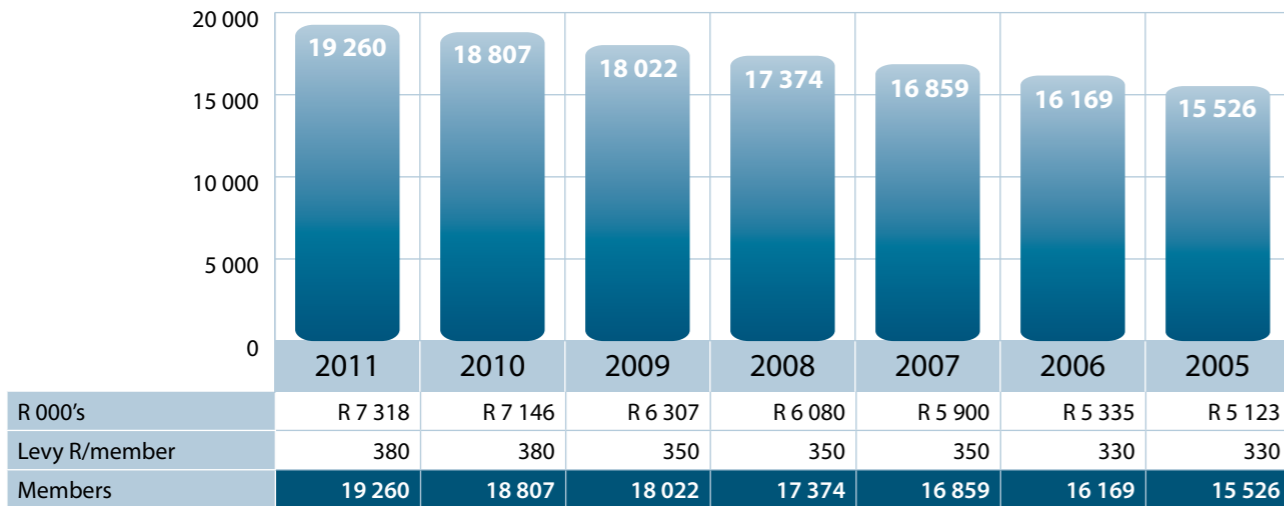
The majority of the LSSA's activities are funded by the Attorneys Fidelity Fund in terms of s 46(b) of the Attorneys Act, 1979. The funding in terms of the Act is to enhance the professional standards of the profession. The budget available to the LSSA was capped at 2010 levels.

The statutory provincial law societies pay a capitation levy to the LSSA based on the number of practising attorneys within their jurisdictions. Capitation levies are used to cover the

activities not falling within s 46(b). Due to reduced income from interest collections, the levy has been capped at R380 per practising attorney (2010 level).

During the year under review the Safety and Security Seta (SASSETA) awarded approximately R14 million for legal education training that covered 2010 and 2011. There was potential for new awards in the latter part of 2011.

Capitation Levies



AFF 46(b) Honoraria



R 000's	LSSA	De Rebus	LEAD
2011	10 578	6 196	44 544
2010	9 323	6 145	44 433

Anthony Pillay
Finance Director

HUMAN RESOURCES

Members: Jan Stemmett (Chairperson), Krish Govender, Nano Matlala, Praveen Sham, Nic Swart (ex officio), Anthony Pillay (ex officio) and Nkhensane Nthane (ex officio)

The human resources (HR) report for the Law Society of South Africa runs from January to December 2011.

With the resignation of the former Chief Executive Officer, Raj Daya in April 2011, the LSSA has seconded Nic Swart, Director of Legal Education and Development, to serve as Acting CEO for two years (2012 to 2013).

In preparation for the changes that may be brought about by the Legal Practice Bill (LPB), the LSSA has embarked on a change management process to assist staff members to deal with and manage possible changes that may be brought about by the LPB.

Fruitful engagements and interaction between Management and the Staff Forum are ongoing and foster a healthy relationship between Management and staff.

Employee wellness programmes have been ongoing, covering issues such as cancer awareness, blood-donor drives and HIV/Aids awareness.

A review of the human resources policy and procedures has been finalised.

The LSSA Human Resources Committee has been very active for the year with four meetings held.

HR Plan for 2012

The following is envisaged:

- Rigorous training on HR policy and procedures will take place.
- Formal training of managers and supervisors to perform staff and policy management functions inherent to their posts.
- Promoting communication between parties.
- Establishing a fully-fledged employee wellness programme.
- Establishing an induction programme.



Staff numbers

Consolidated staff numbers	Total as at 31/12/2010	Add transfers in	Less Transfers out	Less Terminations	Add Appointments	Total as at 31/12/2011
LSSA	25	1		4	5	27
De Rebus	6			1	1	6
LEAD	54		1	6	8	55
Total	85	1	1	11	14	88

Resignation were replaced with fixed-term contracts.

Staff movement

Appointments

Title	Name	Section	Post	Date	Equity
Mr	Mfanelo Zamisa	Professional Affairs	Parliamentary Liaison Officer	01/01/2011	B
Ms	Kim Hawkey	De Rebus	Editor	01/02/2011	W
Ms	Dodo Dubazane	Courses and Distance Learning	Training Coordinator	10/03/2011	B
Ms	Selekane Pula	Practice Management	Senior Training Coordinator	01/04/2011	B
Ms	Isabella Sechotlho	School for Legal Practice, Johannesburg	Cleaner	18/04/2011	B
Ms	Bettie Lubbe	LEAD Business Projects	Project coordinator	01/07/2011	W
Mr	Leonard Nyoni	Finance	Management Accountant	01/08/2011	B
Ms	Nomsa Sethosa	Courses and Distance Learning	Manager: Courses and Distance Learning	01/09/2011	B
Ms	Dorcas Hamido	School for Legal Practice, UNISA distance school	Training Coordinator	01/09/2011	B
Mr	Mthoba Gantsho	Finance	Senior Finance Officer	19/09/2011	B
Ms	Dorah Dumane	School for Legal Practice, Johannesburg	Cleaner	01/10/2011	B
Ms	Zandile Motloung	Finance	Finance Clerk	28/11/2011	B
Mr	Andrew Sebapu	Professional Affairs	Legal Official	01/12/2011	B
Ms	Nomfundo Mbinambina	Practice Management	Training Coordinator	12/12/2011	B

Terminations

Title	Name	Section	Post	Date	Equity
Mr	Philip van der Merwe	De Rebus	Editor	31/01/2011	Retirement (65)
Mr	Imtiaz Mahomed	Finance	Senior Finance Officer	10/02/2011	Incapacity
Ms	Portia Kadi	Practice Management	Training Coordinator	01/03/2011	Resigned
Ms	Louisa Madikoe	School for Legal Practice, Johannesburg	Cleaner		Retirement (65)
Mr	Raj Daya	LSSA	CEO	01/04/2011	Resigned
Mr	Tshepo Mothoa	Courses and Distance Learning	Manager: Courses and Distance Learning	01/04/2011	Resigned
Mr	Mfanelo Zamisa	Professional Affairs	Parliamentary Liaison Officer	01/06/2011	Better opportunity
Ms	Amanda Kibido	LEAD	Administrator: Courses	30/6/2011	Deceased
Ms	Denise Daniels	Finance	Assistant Accountant	01/08/2011	Resigned
Ms	Charmaine Grobler	Finance	Senior Finance Officer	15/08/2011	Resigned
Ms	Isabella Sechotlho	School for Legal Practice, Johannesburg	Cleaner	31/08/2011	Better opportunity
Ms	Selekane Pula	LEAD	Administrator: Courses	31/12/2011	Resigned

Promotions

Title	Name	Section	Post	Date	Equity
Ms	Mapula Sedutla	De Rebus	Production Editor	Deputy Editor	01/03/2011
Ms	Cynthia Thamaga	Finance	Finance Clerk/ Cashier	Finance Officer (Creditors)	01/11/2011

Vacant positions unfilled as at 31 December 2011

- Chief Executive Officer
- Finance Officer
- Finance Clerk

The restructure of the LSSA Finance Division has resulted in the former 'Accountant' post being restructured to a 'Management Accountant' post.

The LSSA restructured an existing contract post into a 'Legal Officer' post.

Training

The LSSA strives to ensure that individuals develop to their full potential, with the emphasis on those previously disadvantaged. The following is the representation of all training attended by staff members:

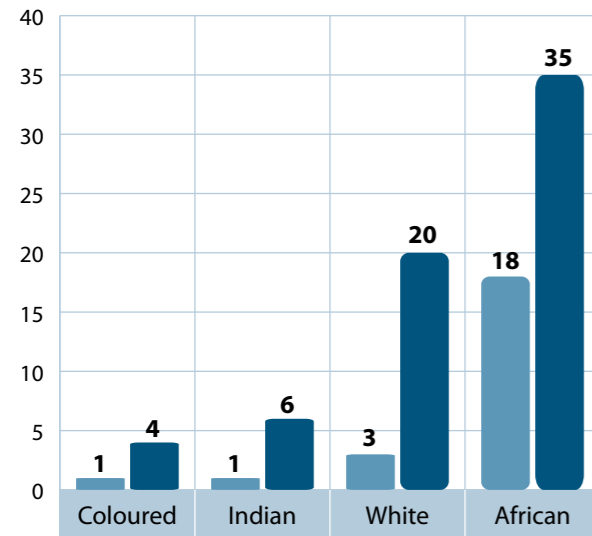
Training	Attendance by staff members
Advanced Driving	1
Time and Stress Management	10
MS Publisher 1 and 2	1
Occupational Health and Safety	6
Work Safety	8
PC Training	11
Moderator Training	1
Project Management	4
Managing Budgets	2
Report Writing	1
Management Development Training	14
Branding and Marketing	14
Public Speaking	3
Project Management	1
MCITP	1
English Speaking Skills	1
Facilitator Training	1
Quality Techniques	1
Assessor Training	1
Assertiveness Training	2
Adobe Photoshop	1
Digital Media	1
Onsite copy edit	1
Advance Photography	1
Copyright	1
PA and Secretary Development Programme	1
Social Media	15

Total cost of training (unaudited) for 2011 is R349 000 across all divisions



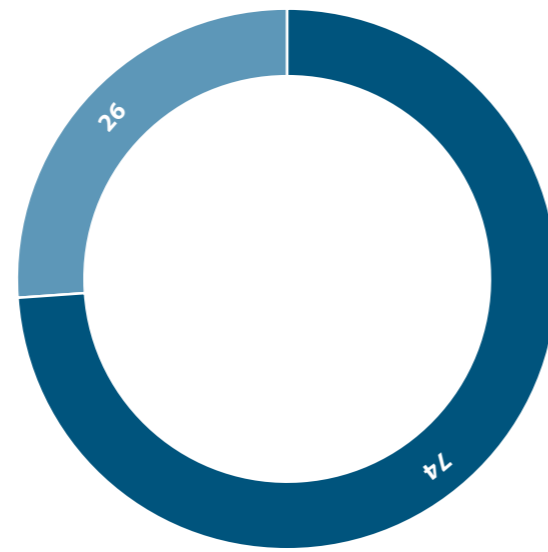
LSSA and LEAD staff in Pretoria, July 2011.

Equity by race



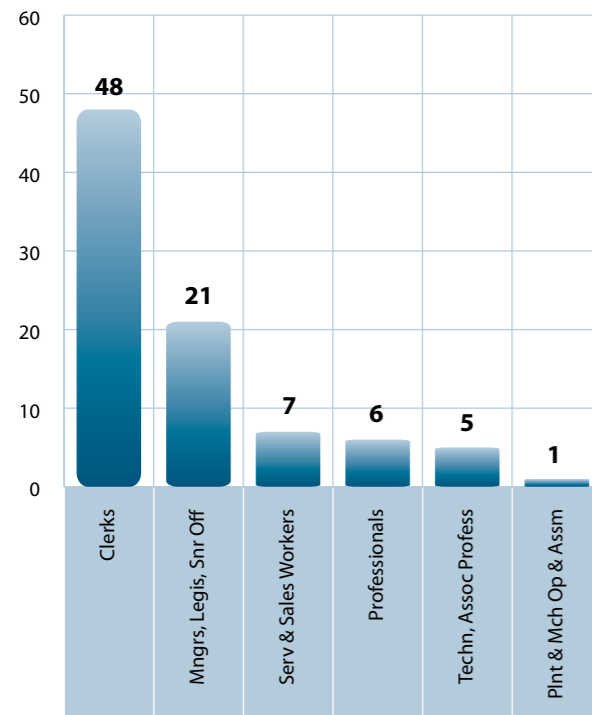
Female
Male

Equity by gender (percentage)

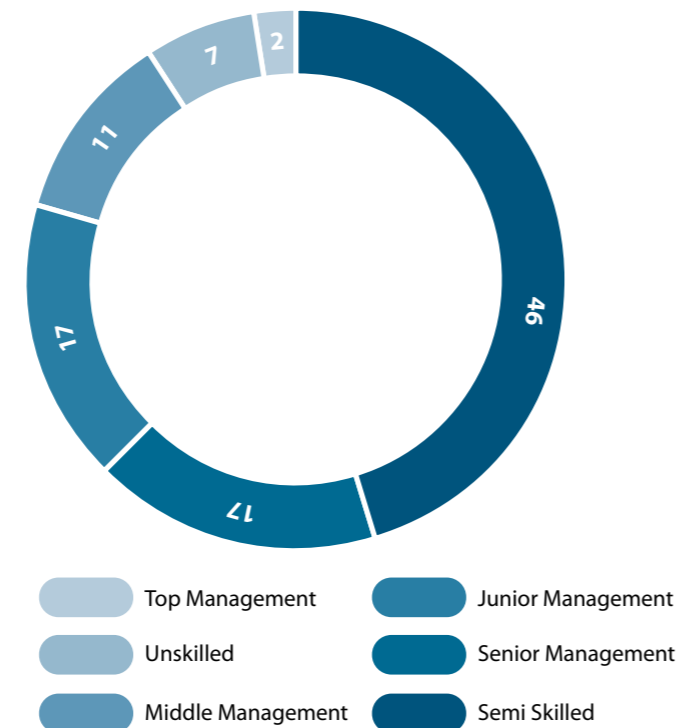


Female
Male

Equity report by occupational category



Equity report by occupational level (percentage)



Top Management
Unskilled
Middle Management
Junior Management
Senior Management
Semi Skilled

Nkhensane Nthane

Human Resources Manager

LEGAL EDUCATION AND DEVELOPMENT (L.E.A.D)

Standing Committee on Legal Education: Abe Mathebula (Chairperson), Raj Badal, Emil Boshoff, TT Hlapolosa, Peter Horn, Buyiswa Majiki, Jan Maree, Ashwin Trikamjee, Ogilvie Ramoshaba and Nic Swart

Examinations Committee: Ashwin Trikamjee (Chairperson), Emil Boshoff, Ilan Lax, Jan Maree, Abe Mathebula, Kabelo Seabi, Bruce Stephens, Kuki Seegobin-Desai and Anton Theron

SASSETA Committee: Emil Boshoff (Chairperson), Patrick Jaji, Raymond Mashazi, Abe Mathebula, Charmaine Pillay and Jack Segal

The LEAD division continued with its training and development activities for the profession at both pre and post-admission levels.

Special achievements

- More than 14 000 persons enrolled for LEAD programmes in 2011.
- A new Learning Centre was established in Johannesburg. The School centres in East London and Cape Town moved to new premises.
- 8 929 persons attended LEAD seminars, showing a substantial growth.
- The LSSA Council adopted a proposal on 24 November 2010 that continuing professional development (CPD) should be introduced on a voluntary basis.
- Major progress has been made with regard to e-learning with the launch of complete online courses in adjudication skills, bookkeeping, legal office administration and legal writing.
- Two night-school programmes were offered at the School for Legal Practice in Polokwane.
- Staff and students have been involved in social responsibility projects at the School centres and at LEAD.
- The LEAD Director visited the United Kingdom to investigate the implementation of mandatory continuing professional development.
- Extensive training was offered in mediation, including an introductory course for young lawyers and a five-day divorce mediation course.

Location

LEAD is situated in Sunnyside, Pretoria from where it coordinates all activities, including training provided at ten centres of the School for Legal Practice. Training and development programmes are offered on both attendance and distance basis. Electronic, correspondence and tutorial methods are combined.

Finance

Budget: It appears that there has been a substantial saving on the 2011 budget without curtailing delivery of services. Savings are the result of a disciplined spending approach and discounts negotiated in respect of books purchased from publishers. Additional income came from Safety and Security Seta (SASSETA) grants as well as from offering courses to external entities. Schools also obtained sponsorships for prizes and books.

Staff

Employment equity and quality of service: LEAD has made a significant input to complying with the LSSA's employment equity plan. Staff are committed and equipped to render a high standard of service to the profession.

LEAD staff in Pretoria: Andries Modiba, Anthony Matimbe, Belinda Povey, Bettie Lubbe (from 1 July 2011), Beverly Chueu, Dodo Dubazane (from 1 March 2011), Dianne Angelopulo, Elmarie Bester (until 11 March 2011), Gail Mason, Grace Mukuru, Jackson Ndlovu, Jonathan Maseko, Jowie Dina Ramaripa, Joy Mosito, Lolita Pieterse, Maria Mokwape, Martha Baloyi, Martha Lubasi (until 31 January 2011), Modi Vinger, Nic Swart, Nkhutliseng Mlangeni (until 31 March 2011), Nomfundo Mbinambina (from 12 December 2011), Ntokozo Manzi, Nomsa Sethosa (from 1 September 2011), Ogilvie Ramoshaba, Portia Kadi (until 31 March 2011), Ria Mahlangu, Selekane Pula (from 1 April 2011 until 31 December 2011), Selina Ramano, Sharon Lee, Stephne Pieterse, Tasha Roestoff, Thandeka Msiza, Tshepo Mothoa (until 30 April 2011) and William Khunou.

Bloemfontein: Willem Spangenberg and Marietjie van der Westhuizen.

Cape Town*: Gail Kemp, Melanie Boltman (until 30 November 2011), Ian Yuill and Dawn Arendse.

Durban*: Vaneetha Dhanjee, Nadira Sewnarain and Ntokozo Ndlovu.

East London: Bongzi Nkohla, Sue Donovan, Neliswa Dibela and Thandi Ncukuna.

Johannesburg: Chandika Singh, Titus Mbatha, Connie Mal-

inga, Louisa Madikoe (until 31 March 2011), Isabella Sechotlho (from 1 May 2011 until 30 September 2011), Veronica Doust and Dorah Dumane (from 1 October 2011).

Polokwane*: Mokgadi Mabilo, Louisa Motana, William Mathe, Salome Maloka and Doreen Mamabolo.

Pretoria: Ursula Hartzenberg, Zukiswa Kala and Ali Haji.

Potchefstroom*: Michelle d'Oliveira and Kedibone Mello.

Port Elizabeth*: Lionel Lindoor and Anita Strydom.

LSSA-UNISA Distance Learning School: Simla Budhu, Parma Govender and Dorcas Hamido (from 01 September 2011).

*Coordinators at these centres are appointed by universities.

General developments in 2011

Commercial law training: Twenty-nine attorneys received training in commercial law at courses in Pretoria by Irish and South African practitioners. Irish Aid provides funding for the training (R2 million over three years).

Training in judicial skills (SASSETA funded): Thirteen attorneys attended a five-day course in Gauteng. Judges and regional magistrates provided the training, which was evaluated as extremely successful.

Mandatory practice management training: Due to the course becoming mandatory, 552 persons attended distance and attendance courses.

Foreign liaison: The Law Society of Ireland provides commercial law training.

The Chairperson of the Standing Committee on Legal Education and the Director attended the SADC Lawyers Association conference in Mozambique.

The Director visited the United Kingdom to investigate continuing professional development. He also attended the meeting in Australia of the International Institute of Law Association Chief Executives.

Papers delivered: The Director delivered papers at the annual general meeting of the Board of Sheriffs and at a conference at the University of Zululand.

SASSETA grants: The SASSETA made R3 350 000 available for training in 2011.

Support staff training: 1 003 persons received training in 13 areas of practice.

E-learning: Most staff at LEAD were trained to use this method.

Ongoing education and development activities

Conveyancing and notarial training: 375 persons participated in 2011.

Seminars: 8 929 persons attended seminars in 2011.

The following topics were offered:

- ADR: An international perspective (Irish commercial law)
- Company law update
- Compliance
- Constitutional law update
- Consumer law update
- Conveyancing: New developments
- Criminal litigation and forensic evidence
- Drafting of contracts
- Drafting of wills
- Environmental law update
- Legal writing for litigation
- Medical law update
- National Credit Act update
- New Magistrate's Court procedures
- Skills training for divorce mediators (mediation i)
- Strategic litigation
- The new lawyer: Mediation and ADR (mediation ii)

Course for candidate attorneys – 25 days: This course was offered at 10 centres throughout the country. Except for one, all programmes are offered on university campuses. The course is offered part time, full time and, at one centre, after hours. 1 850 candidate attorneys attended in 2011.

Instructors and presenters involved in LEAD activities: More than 700 practitioners and other experts were involved in the activities of LEAD in 2011.

School for Legal Practice (five-months full-time uninterrupted): The School centres are situated at Bloemfontein, Cape Town, Durban, East London, Johannesburg, Polokwane, Pretoria, Potchefstroom and Port Elizabeth. The administration of the LSSA-UNISA distance-based centre is situated in Pretoria. 1 190 persons attended the day, night and distance programmes in 2011.

Statistical information: LEAD collected information on attorneys, candidate attorneys, law graduates and training, with race and gender demographics. This information gives a clear indication of how many persons study for and graduate with LLB degrees, and what the trends are with regard to admission, practice and training.

Placement information: LEAD maintains a database of persons who are searching for articles

Selling of documentation: LEAD sold a number of its publications in hard copy and electronic format in 2011. These publications included PLT manuals, the Practitioners Guide to Conveyancing and Notarial Practice and E-PLT (CD-Rom).

Distance education programmes: LEAD offered diploma and certificate programmes in conjunction with the University of Pretoria, UNISA, and University of Potchefstroom in labour law, corporate law, administration of estates and insolvency.

Summary of attendance of all LEAD programmes in 2011

	2011	2010
School for Legal Practice	1 190	1 221
Conveyancing and notarial training	375	50
25-day courses for candidate attorneys	1 850	1 770
Diplomas and certificates (distance)	113	204
Practice management training	552	496
Seminars	8 929	5 400
Other training:		
Irish commercial law		
External courses: Support staff	1 362	3 238
Judicial training		
E-learning		
Total	14 371	12 679

Abe Mathebula

Chairperson, Standing Committee on Legal Education

Nic Swart

Director, Legal Education and Development



PROFESSIONAL AFFAIRS

During the period under review the Professional Affairs division of the LSSA was particularly active. Not only did Professional Affairs attend to the normal committee meetings and activities, but the many changes in legislation necessitated engagement with various stakeholders and numerous submissions were made to Parliament and other bodies. Committee members were often required to attend non-scheduled meetings at very short notice. The activities of the committees are reported on under the 'Specialist Committee reports' in this Annual Report.

During the year we had 46 normal committee meetings, where a range of issues were discussed and attended to. Professional Affairs also engaged inter alia with the South African Revenue Service, the Rules Board for Courts of Law, the Companies and Intellectual Property Commission, the Competition Commission, the Department of International Relations and Co-operation, Legal Aid South Africa, various foreign delegations, the various Deeds Offices, the Master's Office, and the National Association of Managing Agents. Committee members also attended parliamentary portfolio committee hearings and, where appropriate, made oral presentations.

We had a challenge in that for most of the year the LSSA did not have a Parliamentary Liaison Officer, but we are positive that the new incumbent, Nonhlanhla Chanza, who commenced her duties in February 2012, will make a difference. In 2011 we welcomed Edward Kafesu (Committee Secretary) and Andrew Sebapu (Legal Official) to the Professional Affairs division. Thanks goes to Kris Devan for her ongoing loyalty and dedication.

Last, but not least, we would like to convey our sincere gratitude to our committee members for their continuing support and guidance. The committees have spent a great deal of time and energy to draft and submit comments, usually within very short deadlines. We know that the LSSA's priority for the day is not necessarily your priority for the day, but you always stepped up to the plate. Thank you for your dedication in serving the profession.

Lizette Burger

Professional Affairs Manager

LEGAL PROVIDENT FUND

Trustees: Andrew Stansfield (Chairperson), David Bekker, Vincent Faris, Thinus Grobler, Gavin John, Jacques Malan, Walter Velile Ngxekisa, Edwin Letty, Anthony Pillay, Michael Pinnock and Tony Thobane

I am pleased to report on the activities of the Legal Provident Fund (LPF) for the 2011 year. The LPF has existed since 1967 and maintains a strong brand as a Law Society of South Africa (LSSA) initiative. Its function is to provide retirement and risk benefits to employees, partners and directors of law firms. In industry terms the LPF is a medium-sized retirement fund.

2011 was a busy year with the trustees meeting on three occasions for formal Board meetings and on one occasion for training. The Executive Committee met four times. Eleven trustees govern the LPF including a new trustee, Tony Pillay from the LSSA, who replaced Raj Daya.

Despite the fact that a large number of members left the fund in 2011 due to persistently difficult economic conditions, the LPF managed to achieve net growth in membership as a result of an even greater number of new entrants. This growth may, inter alia, be attributed to marketing activity and the LPF's low level of administration fees as compared with its competitors.

The LPF applies a life-stage investment process. It is designed to switch a member's assets into more conservative portfolios progressively as the member gets older. Switches in portfolios are, therefore, conducted as part of an overall strategy, recognising the long-term nature of the members' investments. The life-stage model is designed for members who do not have investment expertise. Members who choose to deviate from the life-stage model are at liberty to do so.

Investment performance in 2011 has been good across the whole range of portfolios in which members' funds are invested. In all cases actual performance exceeded benchmarks, and beat inflation comfortably despite the extreme volatility in the investment markets experienced during the course of the year. Looking at the longer term, it is gratifying to note that good performance in the past three years has more than made up for the downturn experienced in 2008.

In conclusion, I would like to convey my gratitude to my fellow trustees and all the participating employers and members for their continued support of the LPF. I am confident



that with the support of all stakeholders the 2012 financial year will be a highly successful one.

Andrew Stansfield

Chairperson of the Board of Trustees, Legal Provident Fund

SPECIALIST COMMITTEE REPORTS

5

ALTERNATIVE DISPUTE RESOLUTION COMMITTEE

Members: Daryl Burman (Chairperson), Charles Cohen, Richard Haslop, Lutuba Mampuru, Jerome Mthembu, John O'Leary, Krish Naidoo and Ebrahim Patelia

During the period under review, the Alternative Dispute Resolution (ADR) Committee was involved in the following activities and/or imperatives:

Important specific developments

Pursuant to the prediction in our last report, namely,

'2010 has seen a major leap forward in mediation, which is destined, sooner or later, to enter the mainstream of legal practice in South Africa as it has in the rest of the world'

we were pleased that this has now come to pass with the submission by the Rules Board of the draft Mediation Rules for Courts of Law.

In addition to the draft mediation rules, there are now more than 40 statutes containing dispute-resolution provisions that create potential for mediation, not to mention enormous opportunities and possibilities under the Consumer Protection Act, where again Government specifically cites dispute-resolution processes as the way forward.

Under the auspices of LEAD, two programmes were run during 2011. One was a five-day training course for divorce mediators and the other a two-day introductory seminar titled 'The New Lawyer', aimed at introducing ADR to candidate attorneys. This programme was financed by the SASSETA and participants were not levied a fee.

In respect of both courses, the trainers were all practising attorneys involved in mediation. This had a very positive impact on the quality of the presentations. The trainers gave freely of their time at remuneration far below what any of them would have earned in their practices. The courses were

run in Pietermaritzburg, Durban, Midrand, Paarl, Mossel Bay, Bloemfontein, Cape Town and Port Alfred.

By the very nature of the training, not more than 24 participants could be accommodated on each course. Judging from the feedback from the participants, the courses were very well received.

Initiated by the University of Stellenbosch's business school, two bodies were established for the purpose of setting national standards for ADR training courses and the accreditation of mediators: the National Accreditation Board for Family Mediators (NABFAM) in respect of family mediation and the Dispute Settlement Accreditation Council (DiSAC) in respect of commercial mediation. The LSSA attended all meetings dealing with the establishment of these bodies and voluntarily chose observer status, but nevertheless gave positive input into the proceedings. Our Committee members, Charles Cohen and John O'Leary, represent the LSSA on these bodies. The standards have yet to be approved formally by the LSSA.

With the proposed introduction of court-annexed mediation for all civil matters to be run on a three-year project basis, the need for debating the role of attorneys in the new dispensation is obvious. In anticipation, LEAD launched a 'Train the Trainers' programme to equip eight attorneys to roll out the implications of the new rules in two-day seminars during 2012.

Ongoing developments

The Committee focuses on the following on an ongoing basis:

- Once legislation is in place, attempt to ensure and oversee training through LEAD for attorneys to become accredited by the LSSA and/or provincial law societies as mediators, arbitrators and, generally, ADR practitioners capable of appearing in or before all legal forums.
- Arrange that lists of attorneys trained and accredited by the LSSA and/or provincial law societies appear on the websites of the LSSA, the provincial law societies and elsewhere, as well as in any publications or media as may be appropriate, so that the public and commerce have access to the lists of attorneys.

- Particularly with regard to the draft Mediation Rules for Courts of Law, convincing the authorities that the profession is best placed to train and accredit attorneys, thus ensuring that standards, ethics and codes of professional practice are maintained.
- Investigating how and where an infrastructure can be created (possibly through the law societies) where training, accreditation and access to information can be controlled.
- Continuing to engage with the court structures, the Department of Justice and Constitutional Development, other applicable committees of the LSSA, any other such structures, NGOs and organisations as may be appropriate, as well as the public at large, in order to demonstrate where the current adversarial systems may not necessarily be in the best interests of all concerned. In addition, to make litigation attorneys more aware of the benefits of mediation and arbitration and promote the application of the Mediation Rules for Courts of Law, once they have been finalised.

Generally, and perhaps most importantly, doing all such things and taking all such steps as may be appropriate and feasible to promote and inculcate the culture of ADR as a means of providing speedy and affordable access to justice for all citizens involved in conflict and/or disputes.

Daryl Burman

Chairperson, Alternative Dispute Resolution Committee

COMPANY MATTERS COMMITTEE

Members: Miranda Feinstein (Chairperson), Priyesh Daya, Johan Fouché, Paul Hay, Umesh Jivan, Nano Matlala and Peter-John Veldhuizen

The Company Law Committee operates on an ad hoc basis as and when considered necessary. The Committee met three times during the period covered by this report,

- on one occasion in a combined meeting with the Law Society of the Northern Provinces' Company Law Committee, to prepare comments regarding the draft regulations to the Companies Act, 2008 published during November 2010. The Committee examined the draft regulations in detail. Submissions were made to the Department of Trade and Industry. Sadly, little notice seems to have been taken of the comments;
- on another, to meet with a Ugandan delegation visiting South Africa to discuss proposed changes to the Ugandan companies legislation; and

- at the third meeting, various issues were examined and in particular the failure to appoint the Tribunal in terms of the Companies Act, despite the lapse of many months since the Companies Act came into force on 1 May 2011, and the necessity for amendments to be made to the Companies Act.

The Committee interacted with the directorate of the LSSA regarding the accreditation of attorneys as business rescue practitioners and made various suggestions in that regard, after enquiries were received from attorneys as to the possibility of their acting as business rescue practitioners.

Some of the members of the Committee indicated their willingness to be nominated as members and alternate members on the Directorate of Market Abuse. At the date of writing this report, the outcome of that was not known.

Miranda Feinstein

Chairperson, Company Law Committee

COMPETITION LAW COMMITTEE

Members: Paul Coetser (Chairperson), David Bekker, Petra Krusche, Martha Mbhele and Howard Stephenson

On 4 March 2011, the Competition Commission of South Africa (the Commission) gazetted a notice rejecting the application of the Law Society of South Africa (the LSSA) for exemption from the provisions of Chapter 2 of the Competition Act, 1998 (the Act). The LSSA sought an exemption from the Act in 2004 in respect of the disciplinary rules of the four provincial statutory law societies relating to professional fees, reserved work, organisational forms and multidisciplinary practises, and advertising, marketing and touting. During the course of 2011, the Competition Law Committee assisted the Council of the LSSA to deal with the consequences of this rejection.

The LSSA and the Commission agreed to enter into a process of engagement and consultation to resolve the Commission's concerns and to facilitate the continued regulation of the attorney's profession in the interim.

Members of the Committee met with the Commission staff to discuss the reasons behind the rejection of the exemption application and debated ways in which the provincial law societies could adapt their rules and practices so as to comply with the Act. The Commission is very well aware of the Legal Practice Bill and the fact that, pursuant to its provisions, new rules will have to be adopted by the then relevant regulatory authority for lawyers. The Commission was also referred to

various amendments which are already contemplated in the draft uniform rules presently under discussion by the various law societies. A further process of engagement will follow in 2012.

In October 2011, we furnished comprehensive written submissions to the Commission, arguing that the exemption application should, in the main, have been granted. In the submissions, the LSSA argued that internationally applied norms applicable to practising lawyers in a substantial number of other countries of the world should be taken into account in considering the application. However, this benchmarking exercise should be made only in respect of those countries comparable to South Africa in terms of levels of socio-economic development. The Commission should then consider whether our professional rules are reasonably required to maintain the professional standards in the legal profession and the ordinary function of the legal profession. The public interest role of the attorneys' profession was specifically emphasised and documented in the submissions. For instance, in respect of the professional rules relating to conveyancing, it was pointed out that South Africa's land registration system was very robust, due partly to the role of well-qualified and disciplined property lawyers. Should the land registration system in South Africa fail, due to ill-disciplined property lawyers, this could have disastrous consequences for the economy as this could contribute to increased poverty.

The submissions were supported by extensive research commissioned and sourced by the LSSA, including a report into the applicability of professional rules to conveyancing practice in South Africa, a report into the operating costs of a typical conveyancing practice, and a research report in respect of the professional rules for lawyers practising in India, Mozambique, Zambia, Tanzania, Ghana, Singapore, Malaysia, Hong Kong, Israel and Nigeria, Namibia and Kenya. Reference was also made to statistics compiled by the LSSA on the admission of attorneys from 1998 to 2009 and a national survey of the attorneys' profession.

The Committee trusts that the written submissions will be favourably received by the Commission and will form the basis of further engagements with the Commission with a view to reaching an amicable solution on the continued application of such rules of the profession, as are required and are essential for the proper functioning of the attorneys' profession in South Africa.

Paul Coetser

Chairperson, Competition Law Committee

CONSTITUTIONAL AFFAIRS AND HUMAN RIGHTS COMMITTEE

Members: Daryl Burman (Chairperson), Saber Jazbhay, Pritzman Mabunda, Macdonald Moroka, Krish Naidoo, Xolile Ntshulana and Danie Olivier

The Committee met twice during the year under review; on 12 July 2011 and 19 October 2011. Various pieces of legislation were considered from a constitutional point of view, inter alia

- the South African Languages Bill;
- the Superior Courts Bill;
- the Constitution Seventeenth Amendment Bill;
- the Green Paper on Land Reform; and
- the Protection of State Information Bill.

In some instances, comments were submitted to the relevant authority. The Committee is concerned that it is often difficult to submit comments on some very important pieces of legislation due to the short deadlines given by the relevant departments.

The LSSA, in conjunction with the Foundation for Human Rights, ran a project on human rights issues in general on Human Rights Day. This was coordinated by the LSSA National Project Coordinator. Activities are planned for the next Human Rights Day.

Daryl Burman

Chairperson, Constitutional Affairs and Human Rights Committee

COSTS COMMITTEE

Members: Assif Essa (Chairperson), Graham Bellairs, Strike Madiba, Danie Olivier, Jan van Rensburg and Morné Scheepers

The Costs Committee met on 13 April 2011 and 2 August 2011, as well as holding a joint meeting with the High Court, Magistrate's Court and Alternative Dispute Resolution Committees on 19 October 2011.

The objectives of the Committee are to ensure that the statutory tariffs are increased regularly to ensure that the disparity between party-and-party costs and attorney-and-own-client costs do not dissuade litigation, resulting in an inhibition

of access to justice. In this regard, a written submission was made to the Rules Board for Courts of Law in 2011 motivating an increase, supported by the views expressed by an economist. In addition, oral submissions were made to the Rules Board on 3 December 2011. The response of the Rules Board was being awaited at the time of writing this report.

Apart from the above, during 2012 the Committee intends to focus on the simplification of the statutory tariffs. In this regard, it is intended that a workshop be convened with a view to discussing the current tariffs and achieving an expeditious and cost-effective taxation process.

Asif Essa

Chairperson, Costs Committee

CRIMINAL LAW COMMITTEE

Members: William Booth (Chairperson), Ronnie Bokwa, Llewelyn Curlewis, Johan Kramer and Eric Zaca

The Criminal Law Committee met only once during 2011 at a joint meeting with the LSSA Legal Aid Committee. It is unfortunate that the Committee has not been able to meet more regularly and we look forward to trying to arrange at least two committee meetings during 2012.

Having said that, it is to be noted that the members of the Committee are always available to deal with any issues that need to be addressed in the media or willing to attend meetings with stakeholders on behalf of the Law Society of South Africa.

Many practitioners in the various provinces attend Case Flow Management meetings that are held with various stakeholders at both Magistrates' and High Courts level. At these meetings, members deal with complaints regarding the proper functioning of the criminal justice system. There have been many problems with regard to how our courts are dealing with very heavy case loads. It is anticipated that the Committee will meet with representatives of the Department of Justice and Constitutional Development (DoJ&CD) to review the criminal justice system.

The Committee made representations to the South African Law Reform Commission with regard to changes to the law in respect of electronic evidence in criminal and civil proceedings.

The Committee submitted comment on the intended changes to the controversial s 49 of the Criminal Procedure Act. It was felt that, in its present format, the section should remain

unaltered as it had complied with constitutional scrutiny as laid down in *In Re S v Walters and Another* 2002 (4) SA 613 (CC). An in-depth article on this matter was published in *De Rebus* (2011 (Nov) DR 52) by the Vice-Chairperson of the Committee, Llewelyn Curlewis.

The Committee also discussed the delay by certain High Court judges with regard to reserved judgments. This aspect has been taken up with the various Judges President. It was also felt that the DoJ&CD should look at the reintroduction of courts functioning after hours as a means of attempting to reduce the burden on the court rolls. This system was in place during the 2010 World Cup and the Committee believes that it should be implemented again.

It was felt that, with regard to the appointment of attorneys as acting judges, the various Judges President should look at attorneys' fields of specialisation when considering appointments. For instance, if an attorney is a specialist in criminal law, he should be appointed on the Criminal Law Bench and not have to deal with other areas of the law which he may not have dealt with for some time. The profession should also be engaged to put forward its best candidates, not only with regard to permanent appointments, but also for acting appointments.

The facilities at prisons, police stations and courts were considered. This is an aspect that is taken up with the relevant authorities on an ongoing basis and does not relate only to the impact that overcrowding and poor facilities at prisons and police stations have on prisoners and awaiting trial detainees, but also on how the lack of consulting facilities impact on attorneys who are trying to ensure that their clients receive a fair trial. Sometimes attorneys are expected to consult with their clients in the most appalling conditions.

The Committee has, in the past, interacted with the Department of Correctional Services with regard to prison conditions and the improvement of the parole hearing system, and has also approached the South African Police Service with regard to conditions at police stations and other areas of concern. It was decided that the Committee should, on an urgent basis, set up meetings at national level with the Department of Correctional Services and the South African Police Service to discuss these aspects again, as well as the fact that police officers often arrest people too quickly without considering the matter in an objective manner, and often without probable cause.

Many attorneys attend at prisons to talk to prisoners and detainees about their rights and the plea bargaining system. Many detainees are completely unaware of their constitutional rights.

I wish to thank my fellow Committee members and the staff of the LSSA who have diligently attended meetings and have been readily on call when needed.

William Booth

Chairperson, Criminal Law Committee

DECEASED ESTATES, TRUSTS AND PLANNING COMMITTEE

Members: Hussan Goga (Chairperson), David Bekker, Ceris Field, Paul Hay, Mervyn Messias, Don Thinane, Willie van der Westhuizen and Zenobia Wadee

The Deceased Estates, Trust and Planning Committee had two face-to-face meetings during the year under review. The first meeting was held on 7 April 2011 and the second on 2 November 2011.

Lothian Basson was appointed as Chief Master of the High Court of South Africa with effect from 1 July 2011.

The Integrated Case Management System/Masters (ICMS/Masters), which forms part of a larger system, connects to more than 400 magistrates' offices (deceased estate service points) and all of the Master's offices. New matters are registered live on the system and the information is available to officials of the Master's office and to other service points.

Records of executor's accounts lodged with the Master of the High Court, Pretoria, Johannesburg, Durban and Pietermaritzburg are available under 'What's New' at http://www.justice.gov.za/master/m_main.htm. Data captured on the ICMS/Masters is now also available on the internet for members of the public at <https://icmsweb.justice.gov.za/masters-information>.

The fact of the matter, however, is that the ICMS/Masters is a relatively primitive process and must be replaced by a full e-filing and management system as soon as possible in order to improve output and productivity.

The Minister of Justice and Constitutional Development (DoJ&CD) approved the revision of the remuneration and allowances for appraisers in terms of s 103 of the Administration of Estates Act 66 of 1965. Government Notice R954 was published in the *Government Gazette* on 18 November 2011. These regulations came into operation on the date of publication and apply only to appraisements made on or after the date of the commencement of the regulations.

Although the approved revision of the remuneration and allowances for appraisers is not in accordance with the LSSA submission that was made to the DoJ&CD, it was accepted by the Committee as an interim measure, as the DoJ&CD is currently conducting an in-depth investigation into fees and tariffs, including appraisers fees, payable under all Acts administered by it.

The LSSA previously made submissions to the DoJ&CD for the amendment of ss 80(2)(a) and 80(2)(b) of the Administration of Estates Act 66 of 1965 as well as s 1(1)(a) of the Intestate Succession Act 81 of 1987. No formal response has been received from the DoJ&CD.

A discussion paper dealing with measures to improve the administration process and to reduce the work of the supervising authority and executors was approved for publication by the South African Law Reform Commission in September 2005. Draft legislation, recommended in an interim report dealing with the administration of small estates and to streamline procedures for other estates, was submitted to the Minister as far back as 19 August 2008. The undue delay in promoting the legislation is disappointing, especially in the context of the huge risks associated with the administration of small estates in terms of s 18(3) of the Administration of Estates Act. The Intestate Succession Act requires revision and a request will be made to the South African Law Reform Commission to consider placing this on its work programme for 2012/2013.

The South African Revenue Service (SARS) has implemented new procedures and processes in the manner in which banking details changes will be implemented, in order to protect taxpayers from fraudulent transactions on their SARS accounts. Currently, the banking details can be changed in person at any SARS branch or via the SARS e-filing channel when submitting an individual income tax return. This has caused much consternation, as it is simply not feasible for attorneys to spend an inordinate amount of professional time at SARS offices in order to change banking details in a deceased estate. The LSSA has made representations to SARS for attorneys, executors and trust practitioners to see consultants at SARS offices on an appointment basis and it is envisaged that a meeting to address this issue will be held with SARS in 2012.

The Committee will be suggesting to the Attorneys Development Fund that a basic computerised deceased estates programme for the winding up of estates be acquired or developed. This will significantly assist in improving the quality of service for sole proprietorships and historically disadvantaged attorneys.

The fast-track procedure that was implemented in the Pietermaritzburg Master's office has led to a considerable improvement in service delivery. In 2012, consideration will be given to introducing the fast-track procedure at other Master's offices. There are still chronic problems with regard to mislaid files and file-management issues. These problems

impact negatively on service delivery. The DoJ&CD is in the process of addressing the filing issue and its new estates administration system is in the development stage. It is anticipated that the Department will be in a position to test and pilot the new estates administration system in 2012.

The following Chief Master's Directives were issued during the year under review:

	Subject matter	Effective date
1 of 2011	General queries by Master's officials and/or referral of public to Justice College for information and assistance	24 May 2011
2 of 2011	Implementation of the application tracker on the GFS System and determining the 40 day period	3 June 2011
3 of 2011	Signatories at service point: Masters to authorise designated officials to sign letters of appointment	11 June 2011
4 of 2011	Executor's failure to credit the total interest earned on s 28(1)(c) investments plus any administrative fee paid as a result of the investments amounts to a breach of the executor's fiduciary duty	11 June 2011

Hussan Goga

Chairperson, Deceased Estates, Trusts and Planning Committee

E-COMMERCE COMMITTEE

Members: Gavin McLachlan (Chairperson), Klem Druker, Ilan Lax, Ian McLaren, Wilfred Phalatsi and Phinda Shembe

As before, this Committee has remained in contact with the Department of Justice and Constitutional Development and the Department of Rural Development and Land Reform as they move towards much greater electronic interaction with the profession and others. It will be involved, together with the Property Law Committee of the LSSA, in the Department of Rural Development and Land Reform's recently unveiled *Project Vulindlela*, involving its e-cadastre and, ultimately, electronic deeds registration. Committee members have attended two national meetings to date and there will be a general working group with one subcommittee composed of conveyancers and land surveyors.

The Chief Surveyor General stressed at a recent national meeting that the four principal actors in the process are the legal profession (especially conveyancers), land surveyors, the Surveyor General's Office and the Deeds Office. The profession is expected to and will contribute meaningfully.

Representatives from the Property Law Committee and the E-Commerce Committee will be required to drive the parallel process of amending, repealing or adjusting statutes to allow for e-conveyancing.

General e-competence is becoming increasingly important for practitioners and Committee members accordingly assisted in redrafting the IT module for LEAD's practical training courses and others. The module is now much more 'web aware' and covers some important topics in greater detail than before. However, the module will need to be refreshed on an ongoing basis to remain relevant and the Committee will work with LEAD to do this.

The Committee is negotiating with a legal information provider about setting up pay-per-view access to online resources at an affordable rate. This should provide all practitioners, especially less advantaged ones, the opportunity to access necessary legal information at much lower cost than before.

The Committee has been working with LEAD to arrange workshops on digital forensics and evidence for practitioners, as this is an increasingly important area of knowledge that all practitioners should have.

Together with the Property Law Committee, the E-Commerce Committee interacted with SARS on an urgent basis to revise and improve its electronic transfer duty payment process. The process was implemented without sufficient consultation and was initially unworkable. It has been improved somewhat as a result of the profession's actions, but still requires constant attention from the Property Law Committee, in particular.

Online authentication of users is becoming increasingly important and the Committee will be working on a proper

digital certificate for the profession in conjunction with local technology groups. It is now clear that the State will have to look to the profession to provide a suitable way to interact safely with it and others.

Local e-law conferences are increasingly important and attract a wide variety of local and international participants. Members of the Committee have been attending and participating in them, so it is hoped that LEAD in particular can draw on the skills and knowledge of local e-practitioners to a somewhat greater extent in the future. The Committee, through its Chairperson, has developed some good local links.

The Committee will provide input as needed to the Attorneys Development Fund about improving practitioners' e-skills and the use of technology, and can assist in bringing vendors into that process.

The Committee will continue to work with LEAD to try and increase the profession's visibility in the local e-law environment as well as providing meaningful input to the e-justice and e-filing processes which are finally beginning to gain momentum.

Gavin McLachlan

Chairperson, E-Commerce Committee

ENVIRONMENTAL AFFAIRS COMMITTEE

Members: Catherine Warburton (Chairperson), Norman Brauteseth, Ilan Lax, Nano Matlala, Jerome Mthembu and Terry Winstanley

The objectives of this Committee are to make written and oral representations on proposed environmental legislation; to effect skills transfer within the Committee where appropriate and to educate attorneys regarding environmental law.

During the reporting period, the Committee and the Law Society's Management Committee (Manco) agreed to provide support to the International Climate Change Law Conference in the Global South, held in Durban during COP17 on 3 and 4 December 2011.

The Committee met on 28 September 2011 and discussed significant legislative and case law developments. Suggestions were offered regarding the upcoming Climate Change Law Conference to be co-hosted by the Centre for International Sustainable Development Law (CISDL), the Interna-

tional Development Law Organisation (IDLO), the Law Society of South Africa (LSSA) and Warburton Attorneys. One of the notable resolutions of the meeting was that the LSSA would approach the provincial law societies with a view to establishing provincial environmental affairs committees.

The two-day International Climate Change Law Conference in the Global South was held to coincide with the COP17 proceedings and was hailed as an unprecedented success by sponsors and supporters who have much experience in organising events such as COP internationally. It was also the first such conference in the developing world held simultaneously with a COP on the theme of Climate Law and Governance in the Global South. The objective of the conference was to catalyze legal thought on climate change and its implications for the development of laws and institutions for developing countries, to promote south-south dialogue and the sharing of legal best practices.

The conference exceeded expectations in terms of the quality of the keynotes, panels and workshops, the numerous and engaged audience as well as the fruitful exchanges, dialogue and debate that will be pursued beyond this event. Over 150 participants attended the event, including delegates to the COP17 as well as members of the South African legal community. Registration for the conference was open to all and free of charge. Keynote speakers included Amina Mohamed, Deputy Executive Director of the United Nations Environment Programme (UNEP); Yannick Glemarec, Director of Climate Finance at the United Nations Development Programme (UNDP); Ricardo Melendez-Ortiz, Executive Director of the International Centre for Trade and Sustainable Development (ICTSD); and Prof Charles E di Leva, Chief Counsel, Environmental and International Law Unit at the World Bank.

Dr Mary Robinson and Kumi Naidoo gave rousing addresses at the launch of the book *Climate Change Liability*. The remarks of Dr Subho Banerjee of the Australian Ministry of Climate Change and Energy were also very well received. The event was primarily sponsored by the Australian Ministry for Climate Change and Energy with support from other firms of attorneys and sponsors.

Proceedings of the conference, including a conference report, pictures and the presentations are available on the conference website at <http://cisdl.org/ICCLGGS/>.

Catherine Warburton

Chairperson, Environmental Affairs Committee

EXCHANGE CONTROL AND TAX MATTERS COMMITTEE

Members: Henry Vorster (Chairperson), Anver Bhayat, Daniël Erasmus, Johan Fouché, Robert Gad, Iqbal Ganie, Rafiq Kahn and Thihe Mothuloe

During the year under review the Committee continued monitoring important revenue legislation relevant to the profession and engaging the authorities. The most important of the revenue statutes remained the Tax Administration Bill in terms of which the South African Revenue Service (SARS) continued to seek expansion of its already considerable powers under the taxing statutes.

A matter of some concern is the indiscriminate manner in which financially incentivised SARS officials exercise their statutory powers to achieve collection targets. This is a matter which the LSSA monitors on a national basis and the Committee is considering collaboration with other professional organisations in order to collate available data.

As this is my last year of office as chairperson of this Committee I wish to thank those members, past and present, who have assisted me in the numerous submissions made to authorities over the years. My best wishes are extended to those who remain on or are newly appointed to the Committee.

Henry Vorster

Chairperson, Exchange Control and Tax Matters Committee

FINANCIAL INTELLIGENCE CENTRE ACT (FICA) COMMITTEE

Members: David Bekker (Chairperson), Greg Duncan, Neville Dwarika, Nalini Gangen, Angela Itzikowitz, Saber Jazbhay, Puleng Keetse, Anthony Pillay and Johan van Staden

The cash threshold limit of R25 000 for the profession was implemented with effect from 4 October 2010 and attorneys now have to report when payments are made in cash exceeding such an amount.

'Cash' is defined in s 1 of the Financial Intelligence Centre Act (FICA) as:

- (a) coin and paper money of the Republic or of another country that is designated as legal tender and that circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue;
- (b) travelers' cheques.

Cash does not include negotiable instruments as defined in FICA. It also does not include a transfer of funds by means of bank cheque, bank draft, electronic funds transfer, wire transfer or other written order that does not involve the physical transfer of cash. These methods of transferring funds will not be covered by the cash threshold reporting obligation under s 28 of FICA.

Physical cash payments presented to and received by an attorney are covered. Where an attorney makes a payout to a client consisting of physical cash, this will also be covered by the cash threshold reporting obligation.

Practitioners were required to register with the Financial Intelligence Centre (FIC) as accountable institutions. This had to be done electronically or by completing the prescribed forms and faxing them to the FIC. Upon registration, practitioners receive a registration number to be used when reporting incidents. Practitioners should keep in mind that they are obliged to report not only payments in excess of R25 000 in cash, but also any suspicious transactions. Many practitioners have not yet registered with the FIC and several problems were experienced with registration. The LSSA has urged attorneys to register and comply with the Act.

In addition, practitioners are obliged to implement internal rules in their offices. This includes the regular training of employees and professional staff, and keeping records of such training. A draft set of internal rules have been circulated electronically by the LSSA and are available on the LSSA website (www.LSSA.org.za). As terrorism and money laundering is still rampant worldwide, practitioners can expect that the FIC will enforce compliance with FICA.

The Committee remains in contact with the FIC to ensure that practitioners comply. The FIC has the responsibility to report on compliance by all relevant role players where money laundering could take place, to the international supervisory body to which various governments have subscribed.

Each statutory provincial law society is a supervisory body in terms of FICA. Several meetings were held with the FIC and representatives of the law societies to ensure that supervisory duties are complied with and to deal with issues of concern.

Joint training sessions have also been offered by the FIC.

The law societies, especially in the larger provinces, have capacity constraints and are in the process of addressing these concerns in order to give effect to their supervisory functions. In addition, they envisage finalising a Memorandum of Understanding with the FIC.

The law societies have been engaging the Attorneys Fidelity Fund (AFF) in an effort to provide early notification to the AFF on receipt of suspicious transaction reports (STRs) and other reports from the FIC.

David Bekker

Chairperson: FICA Committee

JOINT LSSA/AFF COMMITTEE ON THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

Members: Esmé du Plessis (Chairperson), Max Boqwana, Iqbal Ganie, Krish Govender, Thinus Grobler, Caron Jeaven, Motlatsi Molefe, Mvuseni Edward Ngubane, Silas Nkanunu, Wilfred Phalatsi and Thoba Poyo-Dlwati

The GATS Committee was initially created by the LSSA in 2002 to make a study of the GATS Agreement (the General Agreement on Trade in Services) of the World Trade Organisation (WTO), and to advise the LSSA Council and Government (through the Department of Trade and Industry) for purposes of the WTO Ministerial Meeting scheduled at the time to take place in Hong Kong in 2005.

Since then the Committee has become a joint LSSA/Attorneys Fidelity Fund (AFF) Committee; its primary focus remains on issues pertaining to the provision of legal services across country borders. With the increasing demand for the opening up of national borders to cross-border rendering of services, also professional services, the focal area of the Committee has become more complex.

In view of the extended mandate given to the Committee, namely to investigate the viability and ramifications of introducing cross-border practice rights within the SADC region, the following members were designated by the LSSA Council to serve *ex officio*: Ms Poyo-Dlwati (President of the SADC Lawyers Association (SADCLA)), Mr Boqwana (Councillor of the SADCLA) and Mr Ganie (Councillor of the International Bar Association (IBA)).

As indicated above, the Committee was reconstituted in 2009 as a joint LSSA/AFF Committee, and Mr Molefe represents the AFF. Since the meetings often involve issues related to foreign legal qualifications, the following members of the LSSA Ad Hoc Committee on Foreign Qualifications also serve on the GATS Committee: Mr Grobler and Ms Jeaven.

Finally, both the Department of Trade and Industry (DTI) and the Department of Justice and Constitutional Development (DoJ&CD) have, in the past, been represented at Committee meetings, inasmuch as WTO/GATS matters fall within the areas of government responsibility of both these departments. Representatives of these departments will again be invited to attend meetings, as and when required.

Broad mandate

The Committee, when it was initially created in 2002, was given the broad mandate to

- make a study of the GATS agreement (the General Agreement on Trade in Services) of the World Trade Organisation (the WTO);
- determine and monitor the progress by the DTI in preparing for, in formulating a position in regard to, and in presenting such position in the course of the negotiations regarding GATS (insofar as it applies to legal services) in the context of the WTO negotiations;
- meet with representatives of DTI and other government departments (such as the DoJ&CD) and other role players (such as the General Council of the Bar), and to participate in the formulation of an official position in regard to legal services;
- study the requests for commitments by South Africa received from other countries, and the offers of commitments made to South Africa by other countries in the area of legal services;
- with the Ad hoc Committee on Foreign Qualifications, to consider requests from foreign governments and/or persons or societies for the recognition of foreign qualifications for purposes of exemption under the Attorneys Act, 1979; and
- report to the LSSA on these matters.

Extended mandate

In the course of 2009 the LSSA Council considered the issue of cross-border practice rights in the SADC region, and specifically in the context of South Africa's rights and obligations in terms of GATS. As a consequence of a decision taken by the LSSA Council, the Committee's mandate was extended

to require it to investigate the feasibility of introducing cross-border practising rights in the SADC region, and to propose an outline of the steps to be taken, the legislative amendments to be effected and the legal structures to be created in order to achieve this.

Activities of the Committee

In view of the fact that little has happened in recent years on the WTO front which has impacted on legal services during 2011, the Committee focussed on the issue of the feasibility of cross-border practice rights within SADC. The task in regard to cross-border practice rights is in fact a daunting task, requiring not only an assessment of the principles of GATS and the applicable legal provisions and professional structures in South Africa, but requiring also an investigation of the applicable legal principles and structures in all 14 other member countries of SADC. In this regard, deliberations within the SADCLA are most important and have to be taken into account.

On the basis of initial deliberations, a draft Summary Report and Broad Workplan were prepared, which were submitted to Manco as the proposed framework proposal for a plan of action. The implementation of the work plan required the necessary fact-finding work to proceed.

In the course of 2011 the following meetings and other actions took place:

Preliminary report to Manco: April 2011

At its meeting in March 2011, Manco decided that the Committee be requested to submit a preliminary report on the different issues to be considered and addressed in regard to the introduction of cross-border practice rights within SADC for consideration at its next meeting. A report was duly prepared and submitted in April 2011.

The possibility was also raised, taking into account budgetary resources, for Manco to consider outsourcing some of the information-gathering functions to an appropriate external body, such as a university, with the necessary knowledge and understanding of the issues. The GATS Committee itself simply did not have the manpower and capacity to carry out all the necessary fact-finding work.

GATS Workshop with Manco and others: 14 July 2011

A GATS workshop was arranged by Manco to unpack the complexities of cross-border practice rights within SADC, with the GATS Committee, representatives of the DoJ&CD

and the DTI, representatives of the Office of the Chief State Law Adviser and members of the Foreign Qualifications Committee. This workshop took place on 14 July 2011.

Several presentations were made, identifying the multiplicity of issues to be addressed, including the necessary changes to national legislation in the different countries, the harmonisation of admission requirements, the importance of regulatory control, the position in regard to fidelity cover, the need for reciprocity, etc. All of these matters were extensively debated in the run-up to the AGM of the SADCLA. The possibility of a dedicated task team was raised.

GATS Committee meeting: 4 October 2011

At this meeting it was agreed to

- proceed with the work as set out in the broad workplan, focussing specifically on legal practice in SADC countries, but also to take cognisance of developments in other countries on the African continent;
- obtain feedback from Manco on the outcome of the workshop and on the appointment of a dedicated task team to work on the SADC project;
- obtain feedback on the outcome of the SADCLA AGM and the positions of SADC countries on cross-border practice rights;
- take into account relevant developments in the context of the Legal Practice Bill; and
- determine from DTI whether SADC regional trade negotiations were in progress, and if necessary to convene a joint meeting with representatives of DTI.

Response to enquiries

The Committee members consulted on a round-robin basis and responded to enquiries received from constituents.

Future work

The Committee was primarily established to monitor GATS-related developments in the international arena. Since the WTO negotiations have faltered in recent years, the GATS Committee will merely watch the developments closely. In the meanwhile the Committee takes note of discussion in regard to GATS within the IBA.

The matter which has now become the primary item on the agenda and which will require the full effort of the Committee in the year ahead, is the issue of cross-border practice rights for lawyers within the SADC region.

Finally, as progress is made with the Legal Practice Bill, the Committee will monitor developments to ensure that the issue of the recognition of foreign qualifications and the access to local practice of foreign practitioners, and other aspects impacting on domestic practice (such as Fidelity Fund cover), are dealt with adequately and appropriately.

Esmé du Plessis

Chairperson: Joint LSSA/AFF Committee on the General Agreement on Trade In Services (GATS)

GENDER EQUALITY COMMITTEE

Members: Martha Mbhele (Chairperson), Eric Barry, Amanda Catto, Llewelyn Curlewis, Giusi Harper, Deirdré Milton, Khanyisa Mogale, Thoba Poyo-Dlwati and Jowie Teffo

The Committee had one telecon during the period under review. Since the last reporting time the Committee conducted five maintenance workshops, reaching more than 150 attorneys in the country. This project was started in 2009 and was concluded in July 2011. The Committee is grateful to the SASSETA and LEAD for their support in ensuring the success of these workshops.

The Committee is planning to host a Women Lawyers' Conference in 2012. The Conference will focus on addressing issues that impede sustainable and economically viable practices for women lawyers.

The Committee would like to thank the staff of the LSSA and the National Project Coordinator for working tirelessly to support the vision of the Committee.

Martha Mbhele

Chairperson, Gender Equality Committee

HIGH COURT MATTERS COMMITTEE

Members: Adam Pitman, Anwar Bhayat, André Bloem, Asif Essa, Peter Horn, Neil Joubert, Danie Olivier, Cassim Sardiwalla and Eric Zaca

It was a very busy year for the High Court Committee which met on four occasions, as well as having two telephone conferences during the year.

A number of items consumed the attention of the Commit-

tee throughout the year, inter alia the following:

Increased liaison between the LSSA and the Rules Board for Courts of Law

Members of the Committee attended the Rules Board meeting in Pretoria, at which the first indication of a pilot project on Alternative Dispute Resolution (ADR) was raised, as well as discussions on fixing a reserve price on the sale of immovable property by the Sheriff of the High Court. It is clear that the relationship between the LSSA and the Rules Board had improved greatly and that both parties wished for this improvement to continue. There was a great deal of input with regard to the proposed rules for ADR, and the Committee is very grateful to Lizette Burger for all of her input.

Public hearing appearance at Parliament on the Constitution 17th Amendment Bill and Superior Courts Bill

In August 2011 I, as Chairperson, appeared before the Portfolio Committee on Justice and Constitutional Development where the main issue of discussion revolved around whether or not the Constitutional Court should be the apex court for all matters and not just constitutional matters, thereby making the Supreme Court of Appeal a lower court. The Committee was on the view that such a proposal was not to be encouraged and there was a lively debate with regard to this aspect.

Meeting with the new Chief Justice and organised legal profession

In October 2011, I as Chairperson, attended the above meeting, during which we were introduced to the new Chief Justice. Of importance to our Committee was the acknowledged need to have some uniformity to acting judges' appointments. It was confirmed that a select committee should be formed in each division that would deal with acting appointments and on which committee we as a profession will have representation.

Increase in attorneys' tariff

An increase in the attorneys' tariff received the Committee's attention at the outset, in order that we do not again see a number of years going by without any increase. The Committee made proposals in this regard to the Costs Committee of the LSSA.

Adam Pitman

Chairperson, High Court Matters Committee

IMMIGRATION AND REFUGEE LAW COMMITTEE

Members: Julian Pokroy (Chairperson), Zahida Ebrahim, William Kerfoot, Solly Lockhat, Jerome Mthembu and Chris Watters

The year under review has been a particularly trying and frustrating one for members of the legal profession insofar as its interaction with both the Ministry of Home Affairs and the Department of Home Affairs is concerned. It has been characterised by many efforts from the side of the profession to engage constructively with either the Minister, Director General or top management of the Department of Home Affairs.

Whereas limited engagements did take place with some management members of the Department, these were few and far between and did not yield much fruit. A meeting with the ministerial adviser to Minister of Home Affairs Dr Nkosazana Dlamini-Zuma, as a precursor to meeting the Minister, left us with the hope that we would eventually be able to interact proactively with the Minister on policy issues. But it was not to be, and to date no such meeting has taken place as the Minister has not responded, despite our numerous reminders.

Several consecutive prior Ministers and Deputy Ministers had met with our Committee and had useful interchanges over the years. The perceived reluctance to meet with the organised legal profession is indeed becoming a reality. This attitude has permeated through to the Director General's office and the year under review was the first in some 15 years that the Director General has not met on a regular basis with the organised legal profession. This has not been due to a lack of enthusiasm and effort on the part of the Secretariat of the LSSA and its Committee members.

In addition, the year has been categorised by the catastrophic failure of the Centralised Processing Hub of the Department of Home Affairs to which all applications lodged countrywide are dispatched for final adjudication. Practitioners find it virtually impossible to communicate with the Hub and the introduction of a call centre has done little to remedy this.

Applications are taking an inordinate and unreasonable length of time to finalise, placing clients and sometimes practitioners in an invidious situation. This is further exacerbated by officials who do not respond to enquiries and who cannot be reached telephonically, by fax or by e-mail.

In all fairness, there are pockets of excellence among these officials, with a number going the extra mile to assist practitioners. But these are so far the minor exception and not the rule.

To deal with the problems, the LSSA arranged a meeting with the Portfolio Committee on Home Affairs at Parliament and proceeded to meet with the Portfolio Committee, led by the then Co Chairperson of the LSSA, Peter Horn, myself as Committee chairperson, Suleman Lockhat and William Kerfoot. A useful exchange took place with the Portfolio Committee during which we highlighted the absence of policy frameworks within the Department and suggested that, since the last policy review took place in 2000, that it was an appropriate time, with shifting and changing global scenarios, to review the policy. The LSSA Committee extended an invitation to workshop some of the technical issues surrounding this and to give input to the Portfolio Committee. The LSSA delegates focussed on various technical inconsistencies, inconsistencies in policy application and problems being experienced at the Department's regional offices at counter level. Despite the LSSA having followed up on this meeting, an invitation has not been forthcoming, nor has any further meeting taken place. Despite our warm welcome, nothing has come from the Portfolio Committee, which was required to take the next step.

During the year under review, the comment submitted by the Committee on the Refugees Amendment Bill was noted and the Bill became law in 2011.

Our Committee again went to Cape Town for the public hearings on the Immigration Amendment Bill. A document pointing out inconsistencies and potential unconstitutionality as well as making constructive input on various practical issues, was presented and well received. However, again our input has been largely ignored in the final document which emerged as the Immigration Amendment Act 13 of 2011. The Immigration Amendment Act will come into operation on a date to be announced during 2012 once the amended regulations have been finalised and signed by the Minister.

Committee members appeared during the course of the year on television and radio, and have been regular contributors to the print media and numerous publications on issues surrounding immigration, nationality and refugee law.

The Committee met twice during the course of this year, with the second meeting taking place after the deadline for this report. In addition, where necessary, ad hoc telephone conferences have taken place.

The Committee will continue to soldier on and interface

wherever possible with the Department of Home Affairs in the year ahead. As Chairperson, I wish to thank the Committee members; their input during this year has been invaluable.

I also thank Lizette Burger and Kris Devan for their support in every respect, without which this Committee would not have been able to function effectively.

Julian Pokroy

Chairperson, Immigration and Refugee Law Committee

INTELLECTUAL PROPERTY LAW COMMITTEE

Members: Esmé du Plessis (Chairperson), Johnny Fian-deiro, Madoda Nxumalo, Waheeda Shreef, Tshepo Shabangu and André van der Merwe

The Intellectual Property Law Committee (the IP Committee) was constituted as an LSSA Committee in 1998 in the light of the increasing relevance of intellectual property law also to general practitioners. At that time, there was also a specific need for IP lawyers to have a channel of communication to government departments and other official bodies in the area of IP law and practice.

At the time, South Africa, like all other World Trade Organisation (WTO) member countries, was in the process of reviewing its IP laws to ensure compliance with the requirements of the Agreement on Trade-Related aspects of IP Rights (TRIPS Agreement).

At the time of its constitution, the IP Committee was given a broad mandate, namely to monitor developments (both locally and abroad) in the area of IP and to advise the LSSA on the impact thereof on the legal position in South Africa; and to liaise, on behalf of the LSSA, with official bodies and government officials responsible for IP matters and to report to the LSSA on relevant issues.

The Committee decided that, in order to avoid unnecessary expenditure, meetings would be arranged only as and when required by circumstances or developments in the area of IP law.

Ms Yvonne Mbatha, who has served on the Committee with distinction, received a judicial appointment and was accordingly no longer available. The Committee noted this with regret, but expressed its sincere congratulations on Ms Mbatha's achievement.

Broad mandate

A broad mandate was initially given to the Committee. Since the Committee was satisfied that its mandate adequately covered all contingencies in the area of intellectual property law, or relevant to intellectual property, the Committee conducted its affairs also during 2011 in accordance with this mandate, namely to

- monitor developments (legislative as well as other trends, locally as well as abroad) in the area of intellectual property, with a view to assessing the effect thereof on the legal position and the legal regime in South Africa, on attorneys in South Africa, and on the structures within the organised profession;
- participate, as far as this is necessary or appropriate, on behalf of the LSSA in initiatives and projects having a bearing on intellectual property; and
- meet, as and when required, to consider and assess issues within the area of or impacting on intellectual property law, to draft comments on legal developments as and when deemed necessary and to submit these to Council for further action, or to recommend other appropriate action.

Activities of the Committee

In assessing the activities of the Committee, it should be borne in mind that the Committee is responsible for a specialised but divergent area of law. Legislative changes could, therefore, apply to different specific areas of law, eg the different laws on patents, trade marks, copyright, industrial designs, ambush marketing, anti-counterfeiting measures, etc. Statutory changes could also impact on the structures and procedures for the registration and enforcement of different intellectual property rights. Moreover, intellectual property law is a highly globalised and internationalised area of law, so that international developments and agreements would likewise have a far-reaching impact on national legal regimes on IP.

Developments on international level

Discussions continue to take place within the two most relevant international bodies in the area of intellectual property, ie the World Trade Organisation (WTO) and the World Intellectual Property Organisation (WIPO), in order to define consensus positions on IP-related issues. The following relevant IP-related issues were included in the matters discussed at the WTO and WIPO meetings, as noted by the Committee:

- The legal bodies responsible for, and the ambit of provisions for, the seizure and detention of counterfeit and/or infringing goods, particularly generic drugs, at ports of importation. A proposal has been made by a group of countries for an Anti-Counterfeiting Trade Agreement (ACTA) to be concluded; this proposed instrument is being studied.
- The need for an international instrument to harmonise the protection of Traditional/Indigenous Knowledge in national laws. These discussions were of particular relevance in the context of the South African draft legislation which was before Parliament in 2011 (see below).
- WIPO indicated that it would present a Roundtable Seminar on the Patent Cooperation Treaty (PCT) in South Africa in November 2011; members were invited to attend and participate. The discussions at this event highlighted the efforts being made to integrate international patent filing, examination and grant procedures.

Developments on national level

The IP Laws Amendment Bill

This was the most significant development in recent years in the IP field on national level, a matter which occupied the attention of the Committee during 2010 and 2011. The draft IP Amendment Bill, with a supporting Policy Framework, was previously made available to the IP profession and was published for comment. (The Bill and Policy Framework were initially published by way of GN 552 of 2008 in *Government Gazette* 31026 of 5 May 2008, for public comment.) The Bill sought to amend four existing IP statutes to introduce provisions for the protection of certain manifestations of Traditional Knowledge (TK). The draft Bill was initially submitted to the Committee and considered during 2008.

However, the Bill did not proceed through Parliament during 2008 and was eventually re-published in *Government Gazette* 33055 of 29 March 2010 as Bill [B8-2010]. It was introduced in the National Assembly in March 2010 and put on the Parliamentary programme for 2010. In view of the contentious nature of the Bill, both as regards the principle of its approach and its many drafting defects, the Committee in 2010 decided to reconsider the Bill with a view to formulating comments for submission by the LSSA. In particular, the basic position of the LSSA was put forward, namely that the protection of manifestations of TK as species of intellectual property was the wrong approach and was fundamentally flawed, and that TK should be protected by way of sui generis legislation.

In 2011, the Portfolio Committee eventually, after prolonged

public hearings, concluded that it would continue to process the current Bill and would seek advice from a task team of experts on appropriate amendments to the Bill before submitting the Bill to the National Assembly. Ms Shabangu, a member of the Committee, was appointed as a member of the task team.

A revised version of the Bill was passed by both houses of Parliament at the end of 2011, and submitted to the President for assent.

The Companies Act 71 of 2008

This Act, which contained provisions to convert CIPRO (the Companies and Intellectual Property Registration Office) to an independent Commission – the Companies and Intellectual Property Commission (CIPC) – will have an effect on the delivery of services in regard to IP registration, and on the constitution of so-called expert committees and the institution of law review procedures, also in the area of IP. The Committee noted that the CIPC was duly established; its inauguration and the commencement of its operation took place in May 2011.

IP Indaba

The Department of Trade and Industry (DTI) is in the process of compiling a comprehensive instrument entitled Policy on Intellectual Property of South Africa, and has also indicated that it intends reviewing the IP legislation of South Africa. To this end an IP Indaba was organised on 4 August 2011 to serve as a broad consultative forum and an opportunity for all interest groups to make submissions. The members of the IP Committee were invited to attend and participate. The outcomes of this Indaba will be further considered by the Committee and recommendations on further action submitted to Council.

Meetings of the Committee

The Committee met on 11 October 2011 to consider

- progress with the IP Laws Amendment Bill to protect TK;
- the discussions at the IP Indaba, and specifically the need to identify shortcomings in the current IP Acts to be submitted to the DTI for consideration as part of the IP laws review process of the DTI;
- the need to consider the draft IP policy instrument and to recommend aspects and principles to be addressed and/or incorporated in the instrument; and
- the importance of continued monitoring of and, where appropriate, participating in or providing input to international and national initiatives.

Future work

The Committee will continue to monitor developments (legislative changes as well as other developments) in the area of intellectual property.

A number of draft Bills on IP are expected to move forward in the course of 2012; the Committee will keep track of these. The anticipated Bills include the

- Trade Marks Amendment Bill (to introduce the Madrid Protocol system) and
- Designs Amendment Bill (to introduce the Hague Agreement system).

At the Committee's final meeting for the year, Ms Shabangu was appointed Chairperson of the Committee for 2012. The Committee will continue to monitor, and where appropriate, recommend submissions regarding the IP laws review process, as well as the IP policy instrument. The work of the IP Committee will, therefore, continue to entail a monitoring and assessment function, and recommendations will be submitted to the LSSA Council as and when required.

Esmé du Plessis

Chairperson: Intellectual Property Law Committee

JOINT ATTORNEYS' AND ACCOUNTANTS' COMMITTEE

Members: Iqbal Ganie (Chairperson), Assif Essa, Frank Dorey, Glenn Flatwell, Etienne Horn, Gavin John, Nano Matlala, Brian Mashili, Zama Msomi, Anthony Pillay, Andrew Stansfield, Jan van Rensburg and Johan van Staden

The first meeting of the Committee was held on 23 March 2011 and the second on 21 September 2011.

As is the usual format, attorney members of the Committee met immediately prior to each joint meeting, where matters raised by the LSSA constituent members and the agenda of the Joint Attorneys and Accountants Committee were discussed.

The purpose and objectives of the Joint Committee were revisited as follows:

Purpose

The purpose of the Joint Committee is to facilitate interaction and cooperation between the South African Institute of Chartered Accountants (SAICA), the Independent Regulatory Board for Auditors (IRBA), the Attorneys Fidelity Fund (AFF), the Law Society of South Africa (LSSA) and its constituent members, and other stakeholders.

The Committee will strive to address auditing, accounting and legislation issues proactively affecting attorneys and their auditors.

The Committee will undertake, from time to time, surveys of Committee stakeholders with a view to assessing stakeholder needs and satisfaction levels. This will provide a basis for focusing on areas requiring improvements.

Objectives

The objectives of the Committee include to

- consider matters of joint interest to attorneys and accountants and to inform the respective governing bodies of the views expressed on these matters;
- build a good professional relationship and maintain communication with the respective governing bodies;
- review and monitor legislation and rules affecting the audit of attorneys' trust and business accounts continually with a view to improving and updating guidance for SAICA members;
- proactively create awareness among SAICA members and attorneys of developments affecting them; and
- take cognisance of matters affecting compliance with the various rules of the provincial law societies, the Attorneys Act and any other relevant legislation.

It was noted that attorneys were receiving queries from SARS as to the non-disclosure of interest. As it was necessary to draw SARS's attention to the provisions of s 78(1) of the Attorneys Act and that the nature of the account is that it does not belong to the attorney, SAICA's National Tax Committee (NTC) was requested to make representations to SARS to draw its attention to the fact that it was the money of the client and not that of the attorney.

Interaction with the banks indicated that cellphone banking products were evolving at a rapid pace and SAICA indicated that it would conduct research on the related risks and understanding of internal controls process over such transactions.

Mr Basson, then Acting Chief Master, addressed the Joint Committee at its first meeting in 2011 regarding matters concerning auditors and accountants on the one hand, and attorneys on the other.

An update was provided on the progress regarding the Legal Practice Bill.

A telephonic conference was held with certain members of the Joint Committee to examine the claims that have been filed with the Attorneys Fidelity Fund in relation to bridging finance. Unfortunately, the Bridging Finance Association could not join the discussion.

A report was provided at the Joint Committee meeting regarding the Reform Audit Support System (RASS).

Iqbal Ganie

Chairperson, Joint Attorneys' And Accountants' Committee

LEGAL AID COMMITTEE

Members: Mimie Memka (Chairperson), William Booth, Johann Gresse, Maake Kganyago, Jan Maree, Abe Mathebula and Ebi Moolla

The Committee held only one meeting during 2011. This was a joint meeting between the Legal Aid Committee and the Criminal Law Committee of the LSSA.

It was agreed that a joint meeting of the two committees would be convened. The meeting was duly convened on 20 September 2011.

Various issues relating to legal aid matters were considered, inter alia, the allocation of judicare instructions to attorneys, the judicare tariff and the efficiency of legal aid practitioners and practitioners in general in ensuring that an accused receives a fair trial.

It was resolved by the members of both the Legal Aid Committee and the Criminal Law Committee that from 2012 onwards, these committees will hold joint meetings. The next joint meeting was to be held in March 2012.

The Committee did not have its annual meeting with the executive managers of Legal Aid South Africa during 2011, but a meeting was scheduled to take place early in 2012.

Mimie Memka

Chairperson, Legal Aid Committee

LIQUOR MATTERS COMMITTEE

Members: Jacobus Burger (Chairperson), Guy Dakin, Solly Epstein, Barry Kruger, Eugene Kruger, Mashuda Kutama and Mxolisi Nxasana

It was evident from the Committee's meeting that took place on 29 November 2011 that most liquor licensing authorities are still battling to provide a fair administrative process.

At the time of writing this report at the end of 2011, it is only the Eastern Cape, Gauteng, Northern Cape and the Free State that have implemented their own provincial liquor legislation. All the other provinces still function under the Liquor Act 27 of 1989. We might see the Western Cape and KwaZulu-Natal introducing their provincial legislation some time during 2012.

Reports from the Eastern Cape indicate that the Eastern Cape Liquor Board's Senior Administration Manager advises that its Legal Department has been instructed to initiate an overhaul of its legislation. It remains to be seen whether this initiative will entail amendments to the current Act and related regulations, or a complete overhaul via a new Act with new regulations. There is no question that there are shortcomings in both the current Act and regulations. The difficulty is that such shortcomings are often 'cured' by way of the Liquor Board adding requirements in respect of the application process, the content of the application, annexures and by the imposition of conditions. Certain aspects are clearly ultra vires and would not stand scrutiny by the Courts. There are also reports that the functioning and turnaround times of applications in the Eastern Cape have improved radically since the appointment of the current Senior Administration Manager. New applications relating to completed premises have been finalised within the sixty-day period stipulated in the Act. The Liquor Board also conducts its hearings in a professional manner, affording parties an opportunity to argue their positions. A qualified attorney has been appointed as its legal adviser. This is believed to be a positive initiative in order to provide assistance from a legal position.

The Gauteng Liquor Board is struggling to provide a proper service. On 8 October 2011 it introduced a six-month moratorium in respect of all new applications, transfers and temporary liquor license applications. An urgent court application was brought to set aside the moratorium, but was turned down on urgency. A second application is still pending and finalisation was expected during February or March 2012.

The Liquor Board of the Free State is also battling with a huge backlog of not only applications that were lodged in terms of Act 27 of 1989, but also in respect of applications that were lodged since the commencement of the Free State Gambling and Liquor Act in June 2010. It is difficult to determine what the turnaround time is, as many applications that had been lodged as far back as three years ago, have not yet been dealt with. Numerous successful court applications have been brought against the Liquor Board to compel it to finalise liquor applications within a specific time.

In the Western Cape it appears that the Liquor Board's turnaround time is now about eight months in respect of new applications and transfers. Last year, its turn-around time was approximately four months. It is also a problem to make enquiries, especially telephonically.

It was reported that, similarly, the KwaZulu-Natal Liquor Board is struggling to provide a proper service and that transfer applications in some instances take as long as three years to be finalised.

It seems that the other provinces are also having their problems, which frustrate practitioners. Many attorneys have resorted to the courts for orders to compel the Liquor Boards to attend to their applications. It seems that a fair turnaround time would be approximately three months.

It was decided at the Committee meeting that letters be addressed to the various Liquor Boards in an attempt to encourage them to improve their services.

Jacobus Burger

Chairperson, Liquor Matters Committee

MAGISTRATE'S COURT COMMITTEE

Members: Graham Bellairs (Chairperson), Johan Fourie, Vanessa Graham, Danie Olivier, Gerhard Painter, Thami Tembe, Praveen Thejpal and Jan van Rensburg

The Committee had two formal meetings during the year under review; one in February 2011 and another in June 2011. A combined meeting with the High Court and Costs Committees was held in October 2011 and further exchanges on issues were dealt with telephonically and by e-mail. During these meetings the Committee gave consideration to attorneys' queries, proposed amendments to statutes and rules and made comments on these. These included the Draft Land Tenure Bill and the State Liability Amendment Bill.

The Committee also gave input to the High Court Committee in relation to Uniform Rule 49 (11) which deals with the stay of execution in the case of appeals and reviews and made proposals in relation to the application of the new Magistrate's Court Rules to existing matters at the time of their promulgation. The issue has been finalised and promulgated in *Government Gazette* 34892 of 30 December 2011, to which practitioners are referred.

Practice directives had been issued from the Regional Court President's office. These were considered and commented on. Generally, the Committee is of the view that the directives are helpful, but they should not go so far as to attempt to change existing rules of court or the common law, in which event they would be *ultra vires*. It also recognises that it would be of benefit if the practice directives were of uniform application throughout the country.

The Committee was pleased to note that its comments on the proposed Debt Counselling Regulations were incorporated in the regulations promulgated in *Government Gazette* 34281 of 11 May 2011.

Much of the Committee's focus was on the issues which involved meetings with the Rules Board and the Department of Justice and Constitutional Development (DoJ&CD). These issues concerned

- the Civil Justice Reform Project;
- compulsory mediation rules; and
- an application for an increase in the Magistrate's and High Courts tariffs.

Before commenting on each of these matters, it is pleasing to note that our ability to communicate with the DoJ&CD and build relationships with its members has been enhanced through these meetings. In addition, communication was enhanced by the fact that Danie Olivier of our committee sat as a member of the Rules Board and the LSSA's previous CEO, Raj Daya, presently holds the position of Deputy Chief State Law Adviser and his function is to manage the Rules Board. Unfortunately, the tenure of the Rules Board came to an end in December 2011 and a new Board is still to be appointed. Hopefully our relationship and lines of communication will be sustained if not improved during the course of 2012.

Civil Justice Reform Project

Members of the committee attended meetings with the DoJ&CD and other stakeholders. The project was introduced to us as an overall review process, with the object of simplifying court procedures and making them more affordable, thereby promoting access to justice. Debate on the issue

was largely general in nature, but specific attention was paid to the role of mediation and also sales in execution of immovable property.

In line with the aims and objectives of this project is the national survey of the courts, an initiative which was formulated by this Committee and which has been sent out to the provincial law societies for distribution. The Committee awaits the responses of the provincial law societies and will feed the results into the project.

Compulsory mediation rules

In line with the objectives of the Civil Justice Reform Project, the Rules Board produced a draft set of compulsory mediation rules for consideration and input by the various committees of the LSSA and other stakeholders. In principle, the idea of compulsory mediation was approved by the committees, but after a more detailed consideration by an *ad hoc* committee made up of the LSSA's High Court, Magistrate's Court and Alternative Dispute Resolution Committees, it became clear that a 'one-size-fits-all' approach would do the cause of mediation no good. A more flexible process for compulsory mediation was necessary and its implementation should be handled by judicial officers at the courts rather than by administrators who would be relatively inexperienced in dealing with litigious matters. Written submissions have been made and a meeting has been held with representatives of the DoJ&CD and other role players, where the rules were discussed at length. The process of determining workable rules continues. It is the Committee's concern that, if the rules are adopted in their present form, they will do more harm than good to the cause of mediation and, indeed, to access to justice.

Costs

Representatives of the Committee also sit on the LSSA's Costs Committee. The latter has met and formulated representations which have been submitted to the Rules Board. They cover

- an adjustment to the basic tariff in undefended matters of scale A;
- an increase of all of the tariffs generally;
- the introduction of a Regional Court tariff as a scale D;
- a proposal that there be no set tariff for Rule 58 matters dealing with interim maintenance, contributions towards costs and interim custody and access to children; a bill of costs should be drawn and taxed for such applications in the same manner as other applications;

- an increase in the tariff applicable to matters before the Supreme Court of Appeal; and
- an automatic annual inflation-linked adjustment for tariffs.

A meeting was held with the DoJ&CD and the Rules Board in early December 2011 and these issues were debated there.

It is hoped that once a new Rules Board has been appointed these initiatives will be developed and refined through continued consultation between the LSSA committees and the DoJ&CD.

Graham Bellairs

Chairperson, Magistrate's Court Committee

PROPERTY LAW COMMITTEE

Members: Selemeng Mokose (Chairperson), Johan Anderson, Dave Bennett, John Christie, Hussan Goga, John Gomes, Ken Mustard, Wilfred Phalatsi and Mpostoli Twala

The past year has been a very busy one for the Committee which held three meetings.

As was decided by the Committee previously, dialogue has continued with role players in the industry during the year. Notably, the Committee had meetings with the Estate Agents' Affairs Board (EAAB), the South African Revenue Service (SARS), the Office of the Chief Registrar of Deeds and conveyancing software suppliers. More meetings are envisaged with other role players in the industry in due course.

The development of electronic deeds registration is proceeding well. Meetings were held with members of the profession where they were advised on progress with the developments. The Office of the Registrar of Deeds intends to hold quarterly feedback meetings as the developments progress.

SARS e-filing presented a challenge to the profession during the course of the year. Through regular meetings between members of the Committee and SARS representatives, most of the issues have been ironed out and most problems resolved. The Committee continues to engage with SARS on developments affecting the industry.

Concerns were raised by the Committee about the low pass rate in the conveyancing examination. These concerns have been referred to the convener with suggestions to improve the standards.

A matter of grave concern was brought to the attention of the Committee by the Attorneys Insurance Indemnity Fund (AIIF), relating to the substantial increase in numbers of claims, as well as in the amounts of the claims. The Committee continues to meet with the AIIF to discuss ways of dealing with this problem.

The members of the Committee have made contributions to the industry by participating actively in the Deeds Registries Regulation Board, the Sectional Titles Regulation Board and, most of all, by attending the Registrars' Conference. Our suggestions for changes and amendments to conveyancing practice have been much welcomed.

Selemeng Mokose

Chairperson, Property Law Committee

ROAD ACCIDENT FUND COMMITTEE

Members: Jacqui Sohn (Chairperson), Susan Abro, Ronald Bobroff, Vincent Matsepe, Jan Maree, Matodzi Neluheni and Bennock Shabangu

Road Accident Fund Amendment Act, 2005 and regulations

More than three years have passed since the coming into effect of the Road Accident Fund Amendment Act, 2005 (the Amendment Act) on 1 August 2008, and a year has gone by since the Constitutional Court confirmed the validity of the abolition of the common law right by the Amendment Act which, until then had always been a cornerstone of our law, offering an option to road accident victims (at least in theory) to claim any compensation due in delict not covered by the Road Accident Fund Act from the negligent wrongdoer. This applied, in particular, under the old Act to passengers whose claim arose from the sole negligence of the driver of the vehicle in which they were traveling. It is now denied to all claimants whose claims are capped or excluded by the provisions of the Amendment Act.

The right to claim full and fair financial compensation for injuries suffered as a result of another's negligent act not only provides just compensation to victims but also serves as an effective inducement for those who would be exposed to the risk of having to pay financial compensation to others for their own (or their servant's) negligence to take due care to avoid incurring liability.

Since the passing of the Act, the carnage on our roads has continued unabated, the statutory compensation to which injured victims are entitled has been limited and capped and those responsible for the loss suffered by others are completely immune from any financial responsibility whatsoever. This means that innocent road accident victims have no remedy available to recover losses suffered that are not covered by the Road Accident Fund Act.

Recently, it also seems that the accident rate may even have increased and this despite the fact that significant publicity has been given to the harsher criminal sanctions being sought when prosecuting owners of unroadworthy transport and/or reckless drivers. One cannot help but feel that the effective immunity from financial responsibility may well have resulted in increased irresponsible conduct on the part of owners and drivers of motor vehicles.

During the course of this year several cases were decided on the provisions of the Amendment Act and regulations promulgated in terms of the Act. In particular the following cases were decided in claims against the Road Accident Fund (RAF) in the South Gauteng High Court:

- *Louw v The Road Accident Fund*;
- *Makhombo v The Road Accident Fund*;
- *Mngomezulu v The Road Accident*;
- *Smith v The Road Accident Fund*; and
- *Tshabangu v The Road Accident Fund*.

These judgments of the South Gauteng High Court can be accessed on the SAFLII website. In all these matters special pleas were raised and dismissed in some cases with special cost orders.

In all the reported cases the plaintiffs have relied on the narrative test in order to prosecute claims for non pecuniary loss (general damages). The courts have also held that the prosecution of a claim relying on the narrative test is an alternative to a claim based on a 30% impairment rating in terms of AMA Guides VI and, therefore, the requirement that the claimant should have reached maximum medical improvement is irrelevant to a claim made in terms of the narrative test.

The courts have also held that if the RAF fails to reject the serious injury assessment report or direct that the claimant submit himself to further assessment (at its cost) within 60 days from the day upon which the claim was lodged, then the plaintiff's claim is deemed to be valid in law in all respects as contemplated in terms of s 24(5) of the Act. In effect, the cases have so far held that the RAF is deemed to have accepted that the injuries suffered were serious and can no longer place this in issue.

Finally, more than three years after the implementation of the Amendment Act and regulations, it appears as if the Appeal Tribunal is not yet functioning (or even established).

Passenger claims prior to 1 August 2008

The Constitutional Court judgment in the matter of *Mvumvu and Others v The Minister of Transport and the Road Accident Fund 2011 (2) SA 473 (CC)* was handed down on 17 February 2011. The Constitutional Court confirmed the declaration of invalidity of the provisions of ss 18(1)(a)(i) and 18(1)(b) of the Road Accident Fund Act, as they stood prior to 1 August 2008, made by the Cape High Court and also recorded that the remaining provisions of s 18 – s 18(1)(a)(ii), s 18(1)(a)(iii) and s 18(1)(a)(iv) – suffered from the same defect. The court went on to say:

‘When deciding the amount of compensation to which the applicants are entitled it is desirable that Parliament address the plight of those affected by these sub-sections as well.’

The effect of the order was suspended for 18 months from the date of the order to enable Parliament to cure the defect. This time period will run out on 16 August 2012. In anticipation of this, on 15 August 2011, the Minister of Transport published a Bill for public comment, aimed at remedying the defect. Comments were submitted by the LSSA and a copy of the full comment is on the LSSA website, as is the proposed Bill.

In brief, the Bill proposes the creation of a transitional third party who, subject to certain procedural steps, is entitled to claim compensation as if his claim had arisen on 1 August 2008, and thus be governed by the provisions of the Amendment Act (the transitional regime). In other words the Bill seeks to apply the provisions of the Road Accident Fund Amendment Act, 2005 retrospectively to a limited class of claimants, being the same class of passengers who had challenged the constitutionality of the provisions of certain subsections of s 18 of the old Act (the impugned provisions).

Thus, in the Bill there is still a differentiation between proposed transitional third parties and other passengers whose claims also arise under the provisions of the old Act. It is submitted that this differentiation would once again give rise to the following enquiry:

- (a) Does the differentiation amount to ‘discrimination’; and if so
- (b) does it amount to ‘unfair discrimination’; and if so
- (c) can it be justified under the limitations clause contained in s 36 of the Constitution

When suspending the operation of the declaration of validity the Constitutional Court stated that

‘in determining a suitable remedy the Courts are obliged to take into account not only the interests of parties whose rights are violated, but also the interests of good government. These competing interests need to be carefully weighed.’

The Minister of Transport and the RAF had presented evidence that an order of invalidity with unlimited retrospective effect would increase the RAF’s financial liability by approximately R3 billion which, so they argued, would pose a serious threat to the sustainability of the RAF. The Court accepted this evidence and thus suspended the invalidity of the order stating as follows:

‘This Court has cautioned against remedies that are likely to lead to unsupportable budgetary intrusion. Two reasons motivate this approach. First, budget matters fall eminently within the domain of the legislature and the executive. Secondly, ordinarily Courts are ill-suited to determine such matters.’

The transitional regime proposed in the Bill is complicated and cumbersome and, furthermore, places a time limit of one year within which a passenger must not only make an election as to whether he wishes to become a transitional third party but also to submit to the RAF RAF 1 and RAF 4 (serious injury) forms.

The LSSA has argued that the time period proposed is manifestly unfair and unrealistic.

A further consequence of opting for the transitional regime is that, by so doing, the transitional third party forfeits any common law claim that he or she might have had against the wrongdoer. The reason for this is unclear.

If the Bill is passed, effectively imposing the provisions of the Amendment Act retrospectively, insofar as passengers in single-vehicle accidents are concerned, then those passengers who cannot prove that they suffered a serious injury will be no better off and will be obliged to settle their claims for general damages in a limited amount of R25 000 and proceed with any claim they might have had in terms of the common law. However, they have to take this gamble upfront because of the one-year time limit.

Although not in any way minimising the amounts involved, to put the reserve of R3 billion into perspective, it should be borne in mind that the pay-outs for the affected classes of passengers would be spread over several financial years and would also be made at a time when it is anticipated that the

effects of Amendment Act, 2005 would have already started to impact positively on the RAF’s cash flow. The R3 billion estimate is, in fact, added to the actuarial reserve, the validity whereof in relation to a pay-as-you-go scheme, remains a contentious subject.

It was also pointed out in the LSSA’s submission on the Road Accident Fund Benefit Scheme (see below) that the three government social insurance schemes (Unemployment Insurance Fund, Workmen’s Compensation and the RAF), taken as a cluster, were cash-flow positive to the tune of R9 billion in 2009 and that a portion of the surplus could be used to cover the anticipated cost of lifting the caps retrospectively, in full.

The Road Accident Fund Benefit Scheme (RABS)

On 21 November 2011 the Minister of Transport published, for general information, the policy for a Road Accident Fund Benefit Scheme (RABS) which it had been announced had been previously approved by Cabinet in a Policy Statement in September 2011.

The current policy document is an abbreviated and truncated version of the original draft Policy on Restructuring of the Road Accident Fund as Compulsory Social Insurance in Relation to the Comprehensive Social Security System, which was published in the *Government Gazette* for public comment on 12 February 2010. The current version records that, following the receipt of public comments, the policy was amended and abbreviated and simplified, in response to requests for a document that was less technical and contained less detail.

The RABS provides benefits on a no-fault basis, abolishes common law rights and pays no compensation for general damages, regardless of the nature of the injuries suffered. Medical and hospital treatment will be rendered within the provincial hospital system and loss of income will be subject to caps and conditional on proof of income, failing which, it will be paid at disability grant levels (provided the injuries qualify the claimant for 100% disability). In essence the scheme is comparable to the Compensation for Occupational Injuries and Diseases Act (COIDA), without access to private medical and hospital treatment. Children and students, as well as the unemployed, are the worst off as they will be compensated for loss of earning capacity only at the minimum national average wage (disability grant levels) commencing, in the case of children, at age 18 and payable, in all cases as a monthly pension (no lump sums).

In the current policy document the private healthcare sector no longer seems to play a major role. The policy document states that

‘[m]edical and health care provided will be paid in terms of a tariff designed for RABSA or adopted from another security scheme. Payments will be made directly to service providers.’

It also states that

‘RABSA will support and facilitate access to quality healthcare by implementing quality assurance measures, protocols or treatment which set minimum standards, case management interventions and appropriate cost control measure as may be provided for in national health legislation’,

and

‘RABSA should be able to review, revise or terminate a Claimant’s entitlement to benefits. In this regard the system of medical preview should facilitate objectivity and consistency of medical and disability assessment. It should also enable cases to be reviewed and assist in the resolving of disputes relating to assessments affecting entitlement to RABS benefits.’

It is to be assumed that an assessment method such as the *AMA Guides* will be legislated as the system for medical preview. COIDA currently applies an assessment system based on *AMA Guides IV*.

Income support is subject to a ceiling of R192 000 per annum and in cases of a 100% disability, further limited to a maximum of 75% of the victim’s income or R192 000 (less tax) whichever is the lesser. All income and loss of support benefits will be paid as pensions (no lump sums).

Injuries resulting in permanent disability will (as under COIDA) be assessed with a view to determining a degree of disability and continued entitlement to benefits is subject to participation in rehabilitation and vocational training programmes in order to encourage injured claimants to reintegrate into the labour market.

Income support will cease at age 60 (or whenever deemed able to work). After age 60, the state old-age pension will apply.

Loss of support claims are further reduced by half the surviving spouse’s actual income and are payable to a surviving spouse for a maximum period of 15 years or until the age of 60, whichever is the sooner. Loss of support benefits to children cease at age 18.

A flat-rate funeral benefit of R10 000 as a once-off lump sum is proposed.

It is proposed that an aggrieved claimant should be afforded the right to an internal appeal or mediation process and, thereafter, either to another appeal to or review in a court or another independent impartial tribunal or forum. It is motivated that the approach of the appeal body should be to resolve disputes in a facilitative, constructive cost and time-effective manner. It is contemplated that RABS claims procedures will be simple and accessible so that claimants should be able to administer their claims themselves, without professional assistance.

There is no clear indication as to what and when further steps will be followed in relation to implementing the policy and, in particular, whether there will be any public hearings or a further Bill published for comment. It has been rumoured that the intention is to implement the scheme with effect from 1 March 2012. However, there is no official statement to this effect and this is speculation only.

Mandatory mediation pilot project

The Rules Board has announced a mandatory mediation pilot project and to this end has published draft rules for comment. Stakeholders had until the February 2012 to make submissions. As the project will affect all those involved in litigation in both the High Court and the Magistrate's Court, practitioners were encouraged to acquaint themselves with the provisions of the draft. A copy of the draft rules and the LSSA submission on the draft rules were disseminated to all practitioners in the LSSA's electronic newsletter in December 2011 and are also on the LSSA website.

In principle, no doubt, most practitioners would support any process that expedites resolution of disputes and reduces the costs of doing so. However, as with most things, the devil is in the detail.

The main objections to the draft as it currently stands are, among others, that the parties, themselves, are obliged to pay the fees of the mediators and that the mandatory mediation process is triggered by an entry of appearance to defend an action or a notice of opposition in an opposed motion. As currently drafted there is no proper timetable to prescribe or curtail the time taken to mediate. If the mediation fails, then this time would have been lost in addition to the lengthy waiting time for the allocation of trial dates experienced in certain divisions of the High Court.

For impecunious litigants, having to bear the cost of a mediator appointed by the court could be an effective bar to access to justice. For attorneys acting on contingency and/or carrying the costs of disbursements pending recovery, this will be yet another expense to be disbursed in prosecuting a claim. The cost of obtaining medical and other records as well as medical reports has already materially increased. This additional expense could result in attorneys not being able to carry disbursements on contingency for all impecunious clients, thus denying a potential litigant access to justice.

The alternative would be to refuse mediation, which is permitted. However, the proposed rules afford a sanction whereby the court award costs against a party refusing to mediate costs:

'At the trial of any action or the hearing of an opposed application where mediation was refused, should the court find that the refusal was unreasonable and that mediation may have resulted in substantially the same finding as the court, the court may make such order as to costs as it considers appropriate, against the litigant that refused mediation.'

If economic reasons constitute a reasonable refusal to mediate, then the pilot scheme may be subverted on this ground alone, as many plaintiffs may avail themselves of this option to avoid the costs, unless there is a strong prospect that the mediation will, in fact, produce a satisfactory early settlement. Previous experience in the Cape in the RAF Pilot Arbitration Project does not provide much encouragement for this as, although the project was successful for many other reasons, early settlement was not, in my experience, one of them.

The proposed rules also provide that the parties have to be represented at mediation by a person competent to make an offer. Although attorneys may be present they may not participate in the process.

In the case of the RAF, branch mandates end at R1 million. Will the RAF have persons readily available to travel around the country to attend mediation proceedings in matters where the quantum exceeds the branch limit? Similar concerns apply to State, municipal and provincial defendants, represented, in the main, by the State Attorney, and also in regard to nominal defendants, who are insured, and where the litigation is, in effect, conducted by the insurance company. Will those defendants have appropriate people with mandates readily available to attend mediation proceedings?

Perhaps, if attorneys were to be permitted to play a more meaningful role in the mediation process, some of these issues could be resolved.

Jacqui Sohn

Chairperson, Road Accident Fund Committee

SMALL CLAIMS COURTS COMMITTEE

Members: Johann Gresse (Chairperson), Ettienne Barnard, Crystal Cambanis, Siva Chetty, Sithembiso Kunene, Joseph Mhlambi, Molefi Ramotsehoa and Butch van Blerk

The Department of Justice and Constitutional Development (DoJ&CD) continued to increase the number of Small Claims Courts operating throughout the country throughout 2011. Members of the profession participated in redrafting the revised guidelines for clerks and commissioners for the Small Claims Courts, and this resulted in the publication of a fairly comprehensive manual which was distributed to the relevant clerks and commissioners.

The DoJ&CD also published an invitation to comment on the Judicial Matters Amendment Bill, 2010 which in para 3.7 referred to an amendment to s 9 of the Small Claims Courts Act, 1984 so as to enable a commissioner, who was appointed for a particular Small Claims Court, also to preside over cases in other Small Claims Courts within the province. The proposed amendment was supported by the profession as it would make it possible for a particular commissioner in an area such as the Witwatersrand not only to preside in the court for which he has been appointed, but in any of the surrounding courts as well.

In the Witwatersrand area, in particular, there are a number of Small Claims Courts which formerly functioned under a single court, but have now been proclaimed as independent courts for each of the particular magisterial districts. They now have all the administrative facilities of the Magistrate's Office for that district, so litigants are no longer required to travel to a central point far from their homes to have summonses and other process issued.

When reviewing the activities of the Small Claims Courts over the past year, it is obvious that the courts continue to play a very important role in the administration of justice. However, efforts must be made to encourage practitioners to make themselves available for service as commissioners in the Small Claims Courts.

Johann Gresse

Chairperson, Small Claims Courts Committee



**THE LAW SOCIETY
OF
SOUTH AFRICA**

304 BROOKS' STREET