

**MEMORANDUM BY THE LAW SOCIETY OF SOUTH AFRICA (LSSA)**  
**IN RESPECT OF AN INCREASE IN THE COURT TARIFFS**

**1. INTRODUCTION**

It is necessary to commence this memorandum by referring to the LSSA's motivation to the Rules Board in respect of the previous request for an increase in 2008. This is set out as follows:

**2. MOTIVATION**

2.1 In its representation to the Rules Board dated 18 June 2008, the LSSA, acting as the umbrella body of and for its constituent members in all matters relating to, *inter alia*, professional affairs, the maintenance and promotion of professional standards and interaction with the consumers of legal services, motivated an increase in the party and party tariffs applicable to the legal practice in the Magistrates' Courts and the High Courts. The following reasons were advanced in motivating the increase:

2.1.1 A lapse of considerable time since the last increases in the tariffs. It was stressed that this has brought pressure to bear on the practice of law in both the Magistrates' Court and the High Court. An increase was overdue and had same not been attended to as a matter of urgency, it would have caused further hardship for the consumers of legal services.

2.1.2 The argument that an increase in tariff negatively affects access to justice and only benefits the practitioner, since it has become too expensive to litigate, is fallacious since it ignores the primary consideration in devising a tariff structure, which is to indemnify a successful litigant against liability for costs arising from litigation.

2.1.3 Economic factors such as escalating overhead costs in practice, have required attorneys to adjust (and mostly increase) attorney-client scales periodically,

however, statutory party-and- party tariffs have not been adjusted to keep up with economic factors and realities. The effect is that a successful litigant cannot nearly recoup the costs incurred in pursuing his or her claim and is almost always out of pocket, despite having litigated successfully.

- 2.1.4 The result of having an inadequate statutory tariff in both courts has also created a public lack of confidence in the practice of law and the courts. For example, friction is caused between the attorney and client if the attorney fails to recover all or the greater portion of the client's costs or even guarantee that same will be recovered. This leads to a lack of confidence in the legal system. Needless to say and as indicated below, that impacts on access to courts.
- 2.1.5 The holistic effect of a failure to implement an immediate increase in tariffs would be to deny the general public access to justice.
- 2.1.6 In a document prepared by The Bureau for Economic Research dated 29 May 2008 (marked **Annexure "A"**), consideration was given *inter alia* to consumer price indexes and inflation rates and increases of 68.8% in the High Court and 72.8% in the Magistrates' Courts tariffs were proposed.
- 2.1.7 Regarding a report prepared by the Johannesburg Attorneys' Association on a survey of current trends with regard to attorney and client rates in that area, it was recommended that increases in statutory tariffs should be in the region of 140% in the High Court and 240% in the Magistrates' Courts.
- 2.2 In its supplementary submission dated 26 June 2008 (marked **Annexure "B"**), the LSSA considered various factors, including economic factors, trends in other professions, salary scales at the University of Pretoria and the legal profession itself, and recommend that an increase of 100% in statutory tariffs (in the Magistrates' Courts and the High court) was appropriate. (Although, pursuant to the survey by the Johannesburg Attorneys' Association - see paragraph 2.2 above - it appeared that an increase of 140% in respect of the High Court tariff and 240% in respect of the Magistrates' Court tariff would have been warranted).

### 3. RECOMMENDATION AND APPROVAL

Notwithstanding the motivation by the profession for a percentage increase of 100%, the Rules Board decided on a percentage increase of 70% in the High Court and 75% in the Magistrates' Courts tariffs, regard being had to all relevant factors, would be reasonable and appropriate. This was approved by the Honourable Minister of Justice and Constitutional Development, subject to the increases being effected on a staggered basis over two years, the first in 2009 and thereafter 2010. This was communicated to the Co-Chairpersons of the Law Society of South Africa by the Honourable Minister by letter dated 1<sup>st</sup> May 2009.

### 4. THE CURRENT POSITION AND THE WAY FORWARD

Having regard to the motivation previously accepted by the Rules Board, it is necessary to ensure that there is not a further inhibition of access to justice as a result of a further stagnation of the tariffs. It is necessary and appropriate to note and record that the previous motivations and submissions were accepted by the Rules Board as well as the Honourable Minister of Justice, albeit that the percentage increase was reduced from 100% to the lower percentages referred to in 3 above, and any further motivation would be an exercise in effectively "preaching to the converted". That, however, was in 2008, and it is necessary to provide revised data to the Rules Board and the Honourable Minister of Justice to update the tariffs, having regard to the lapse of three years. In essence, this process requires the updating of the data previously furnished by the expert economists, as well as identifying particular and specific issues in the different tariffs that require attention. This process has been undertaken and the economists' report is herewith enclosed as **Annexure "C"**.

#### 4.1 HIGH COURT TARIFF

It is suggested that, taking into account the fact that the profession had previously requested an increase of 100% and had been granted 70% only (30% less of what had been requested) and, in addition, the economist has recommended a 20% increase on the current tariffs, is the LSSA therefore recommends that the tariffs be increased by 40%, as this will have the effect of updating the tariff, having regard to both historical limited increases and economic considerations.

It is also proposed that the tariff be increased every two years having regard to the implementation of the methodology utilised in the adjustment of the tariffs based on the CPIX. It is also necessary for disbursements to be adjusted so as to ensure that the tariff is updated, having regard to the cumulative percentage changes commencing from the date other increases in the tariffs were effected. This includes “expense items” such as the qualifying fees of expert witnesses, travelling and accommodation allowances, as well as facsimile/copy charges and travelling costs

## **4.2 MAGISTRATE’S COURT TARIFF**

For the same reasons as indicated under 4.1 above (except that an increase of 75% had been allowed previously – see paragraph 3), an increase by 40% is proposed, except in respect of the following items:

### **Part I Undefended actions Items 2(a) and Item 3(a)**

The committee recommends that these fee items be increased from R98.00 to R250.00 in respect of item 2(a) and to R175.00 in respect of item 3(a).

The motivation for this is that, with the increase of the Small Claims Courts jurisdiction from R7,000.00 to R12,000.00 the existing tariff for summonses and judgment for amounts within this range have been reduced. The fee for a summons claiming an amount within that range was R327.00 and the fee for a judgment in the same range was R250.00. As a consequence of the aforesaid increase, the fees for both these items have dropped to R98.00. It is submitted that it was never intended that the Rules Board would reduce these fees and accordingly the aforesaid recommendation is made to compensate for the reduction in fees consequent upon the increase.

It is further recommended that, similar to the proposals in respect of the High Court tariff, the Magistrate’s Court tariff be increased every two years having regard to the implementation of the methodology utilised in the adjustment of the tariffs based on the CPIX.

Please note that not all attorneys support this proposal and request the reinstatement of the tariff for claims from R7 000 to R12 000 as it was prior to the December 2010 amendment. See in this regard the attached correspondence for your consideration. (**Annexure “D”**).

#### **4.3 REGIONAL COURTS TARIFF**

##### **Introduction of a Scale D for matters falling within the jurisdiction of the Regional Courts, being claims in excess of R100,000.00 and divorce actions**

It is proposed that a Scale D be introduced in respect of the Magistrate’s Court tariff for actions instituted in the Regional Courts, being equivalent to 30% greater than Scale C in respect of civil claims and 35% in respect of divorce matters. Given the fact that there are three Scales namely A, B and C in respect of defended actions in the Magistrate’s Court Act, with Scale B generally approximately 24% to 28% above Scale A and Scale C being approximately 16½% above Scale B, so too should Scale D be introduced and set at the proposed increase.

When the Regional Courts Amendment Bill was initially being discussed amongst the legal profession, the Department of Justice and Constitutional Development and other role players, indication was made that the tariff for the Regional Courts would be the 30% and 35% increases referred to above. These increases would still be well below the existing High Court tariffs. For example, the time charge on Scale C of R140.00 per quarter hour, if increased by 30%, would be R182.00 per quarter hour for civil claims and in respect of divorce matters, if increased by 35%, it would be R189.00 per quarter hour. The High Court tariff allows a charge of R213.00 per quarter hour, which remains considerably higher than the rates for the proposed Scale D. It is also to be remembered that an increase is being sought in respect of the High Court tariff, which will result in the High Court tariff being increased even higher than that of the proposed Scale D.

A further example to motivate the introduction of a Scale D is the charge for drafting documents on the Magistrate’s Court tariff, which is a standard fee of R19,00 per folio across the Scales A to C and which equates to R47.50 per page where a page is 2.5 folios. A page is the yard stick applied to drafting charges in the High Court tariff. The charge allowed for formal drafting in the High Court tariff is R85.00 per page and for drafting

necessary documents is R213.00 per page. If the Magistrate's Court tariff for the proposed Scale D for drafting is increased from R19.00 per folio by 30%, the charge would amount to R24.70 per folio, which equates to R61.75 per page and a 35% increase in the drafting charge for divorce matters would be R25.65 per folio or R64.13 per page.

The proposed Scale D drafting charge is therefore well below the existing High Court tariff.

It is suggested that, if at all possible, the tariff for the Regional Courts should be implemented as from 15 October 2010 and be published in the Government Gazette as a matter of urgency.

#### **4.4 SUPREME COURT OF APPEAL (SCA) TARIFF**

##### **4.4.1 Introduction**

The existing party-and-party tariffs in respect of the Supreme Court of Appeal (SCA) and Constitutional Court matters came into operation on 6 June 1998. A SCA "Practice Directive" came into operation on 7 August 2006. Currently, all party-and-party bills in the abovementioned courts are taxed in accordance with this "Practice Directive".

Taking into consideration the lapse of time since the implementation of the tariff, it is quite clear that this tariff must be amended and increased on an urgent basis.

##### **4.4.2 Motivation**

As from the date of the last amendment of the SCA tariff in 1998, the tariffs in respect of the Magistrates' Courts and the High Courts were amended and increased on various occasions, i.e. during 2002, 2009 and 2010 in respect of the Magistrates' Courts and 2004, 2009 and 2010 in respect of the High Courts.

The motivations and submissions by representatives of the LSSA regarding tariff increases over the last more or less 10 years, were duly considered and accepted by the Rules Board as well as the Honourable Minister of Justice and Constitutional Development, hence the increases in prescribed tariffs in respect of the Magistrates' Courts and High Courts over the last few years.

It was clearly due to an oversight by the relevant parties that increases in the SCA tariffs were never considered. The LSSA submits that this should be rectified in accordance with the percentage increases, etc. as applied in respect of the other tariffs mentioned earlier.

#### **4.4.3 Recommendation**

4.4.3.1 The LSSA is of the view that there is not really a need for separate tariffs in respect of all the "Higher Courts". 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.

It is submitted that one set of tariffs in respect of the High Court, the Supreme Court of Appeal and the Constitutional Court would be appropriate. Perusal charges can then be allowed at half of the prescribed tariffs for the courts of second instance or more, as the legal representatives are aware of the contents of all pleadings, notices, affidavits and other documents.

4.4.3.1 We further submit that the current SCA tariff, read with the SCA "Practice Directive", should be increased at once as from 1998, by a certain percentage, in conjunction with the increases in respect the other courts.

4.4.3.2 Once these new tariffs come into operation, the further annual increases can be done on the same basis as in respect of the other courts.