

Annual Report April 2008 - March 2009



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



LAW SOCIETY
OF SOUTH AFRICA



LAW SOCIETY
OF SOUTH AFRICA

ANNUAL REPORT | APRIL 2008 TO MARCH 2009



© LAW SOCIETY OF SOUTH AFRICA

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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 is the umbrella body of the attorneys’ profession in South Africa.

The Law Society aims to promote the common interests of its members, having regard at all times to the broader interests of the public whom the profession serves.

AIMS AND OBJECTIVES

THE LAW SOCIETY 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 practise 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 harmonization, 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 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

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P O Box 5217, Johannesburg 2000

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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

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200 Hoosen Haffejee Street, Pietermaritzburg

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E-mail: info@lawsoc.co.za

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Law Society of the Free State

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P O Box 319, Bloemfontein 9300

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Law Society of the Northern Provinces

Procforum, 123 Paul Kruger Street, Pretoria

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E-mail: info@northernlaw.co.za

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National Association of Democratic Lawyers

3rd Floor, Commerce House, 55 Shortmarket Street, Cape Town

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Report by the Co-Chairpersons

The year under review saw us taking the helm as Co-Chairpersons of the Law Society of South Africa (LSSA) at a time of economic downturn, political uncertainty and significant developments in the legal profession.

THE ECONOMIC ENVIRONMENT

Many attorneys' firms are facing difficulties as a result of the downturn in the economy. This affects particularly firms that focus on conveyancing and property-related work; but reduced cashflow and increasing interest rates have had an impact on most other areas of practice. They have also had an effect on the staffing, management and business aspects of firms. There has been the additional pressure of some fields of practice being threatened by legislative changes.

Although the circumstances were not easy to predict and prepare for, the LSSA has had to reflect on the extent to which attorneys' firms have been affected and what the LSSA can do to support firms both in times of economic challenge, as well as new firms opening their doors with little or no infrastructural and financial resources. One of the most significant developments during 2008 has been the establishment of the LSSA's Practice Development Committee which will concentrate its efforts on supporting and assisting newly admitted practitioners and practitioners who are in the first five years of practice. This committee will also take responsibility for the Attorneys Development Fund which the LSSA has championed and which we hope will come to fruition in the months ahead with the cooperation of all the LSSA constituents and the Attorneys Fidelity Fund.

To gain empirical data to underpin the transformational imperatives of the profession, the LSSA commissioned a national survey of the profession. The results have, for the first time, provided a snapshot of the equity ownership, management structures and fields of practice of law firms. They also raised a number of challenges for the LSSA to consider:

- Why is the attorneys' profession not as attractive to black graduates as other career opportunities?
- Are there specific impediments to black graduates entering articles of clerkship?
- What is causing the attrition of black and women attorneys from the profession?

The survey also reflected a need for the LSSA to promote the profession, among other things, by

- attending to the issue of reservation of work for the attorneys' profession;
- exploring and promoting new fields of practice;
- improving access to the profession by members of the public; and
- informing the public of services rendered by attorneys.

The LSSA's Legal Education and Development department is actively engaging with some of these issues through its skills development, skills transfer and mentorship initiatives. New venture creation is an area which must enjoy greater focus in the months ahead.

To counter some of the effects of the economic crisis, the LSSA this year approached the newly reconstituted Rules Board for an increase in tariffs, something which had not been considered by the Board for a number of years. We are confident that the Minister will soon consider the LSSA's request and the Rules Board recommendation in this regard favourably. On the other hand, the law societies may have been remiss some years ago in allowing the conveyancing fees to be negotiable, although we are conscious of the Competition Commission's scrutiny as regards the law societies setting tariffs and recommending fee guidelines.

One of the negative effects of the economic downturn has been an increase in the number of attorneys who resort to unethical measures and cooperating with touts to obtain work to keep their practices running. We urge the statutory provincial law societies to tackle the issue of touting

The Management Committee (Manco) of the LSSA bade farewell to Co-Chairperson Vincent Saldanha at its meeting in June 2008. Mr Saldanha took up his position as a Judge of the Cape Town High Court in July 2008. Pictured at the June meeting are Manco members Henri van Rooyen; Peter Horn; Praveen Sham; Co-Chairpersons CP Fourie and Vincent Saldanha; Max Boqwana, who replaced Mr Saldanha as Co-Chairperson; Thoba Poyo-Dlwati and Sithembele Mgxaji, as well as LSSA CEO, Raj Daya. Sheila Mphahlele replaced Mr Saldanha on Manco from the August 2008 meeting.



seriously, particularly because it has been under review by the courts this year.

The survey also served to highlight the importance and relevance of the Legal Services Sector Charter. A technical team, which included David Gush, Max Boqwana and Sithembele Mgxaji, liaised with the constituents on scorecards drafted to complete the Charter process. The final version of the scorecards was submitted to the Director-General in September 2008, and although the Charter and scorecard must still be submitted to Cabinet by the Minister, the LSSA technical team has already engaged with the statutory law societies to give practical implementation to the Charter imperatives.

THE POLITICAL ENVIRONMENT

The charged political climate that has preceded the election period has seen what can be perceived as an increased threat to the rule of law. On a number of occasions, the LSSA felt compelled to issue statements raising its concern about the attacks on the independence of the judiciary, as well as what we viewed as threats against the rule of law. We also spoke out publicly to voice the profession's disquiet at the President's decision to recommend to Parliament the dismissal of the National Director of Public Prosecutions, when he had been found to have been a fit and proper person for the position by a duly appointed commission of inquiry.

We had the opportunity to express our solidarity and support for the judiciary at a dinner which the LSSA hosted for the delegates attending the Commonwealth Magistrates and Judges Association conference in Cape Town in October 2008. The independence of the judiciary and of the legal profession, as well as the supremacy of the Constitution, the separation of powers and the rule of law are cornerstones on which our democracy is built, and it remains our duty to protect and preserve them.

ROAD ACCIDENT FUND MATTERS

In the interest of the public, the LSSA successfully challenged the Road Accident Fund's proposed implementation of a direct payment system in the Cape High Court in August 2008, after the RAF announced the system in the media on 21 July. On the same day notices were promulgated in the Government Gazette bringing into effect the substantive provisions of the 2005 Road Accident Fund Amendment Act and promulgating new regulations which also came into effect on 1 August 2008.

The urgent interim relief in the form of an interdict to apply country wide was granted prohibiting the implementation of the direct payment system pending the final outcome of the review. The review is proceeding in terms of Rule 53.

At the end of February the LSSA served court papers on the Minister of Transport and the RAF, challenging the constitutionality and legality of the Amendment Act and some of its regulations. The LSSA submitted in its founding papers that it is inexplicable and unjustifiable that, at the very time that the legislature has substantially reduced (and in some instances entirely removed) the right to statutory compensation, it has also deprived injured parties of the right which they have always had to seek compensation from the wrongdoer. The case has been brought by the LSSA on behalf of the many road accident victims who cannot themselves challenge the rights removed by the Amendment Act because they are too badly disabled, live in remote areas or are disadvantaged by poverty.

THE LEGAL PRACTICE BILL

As far as the legal profession itself is concerned, we faced the task of revisiting the Legal Practice Bill with renewed vigour. Meetings were held with the advocates' profession to try to achieve consensus on our divergent positions. Discussions with the advocates are ongoing, but in the meantime, the LSSA has made a detailed submission to

CO-CHAIRPERSONS:

CP Fourie (left) and
Max Boqwana (right)



the Justice Department on the two drafts of the 2002 Bill. These submissions summarise the LSSA's vision of the future regulation of the profession. The LSSA continues to warn against fragmentation of the profession and interference by government, which could be perceived as a threat to the profession's independence.

The LSSA met with new Minister of Justice and Constitutional Development, Enver Surty, and we were pleased also to interact with him during his attendance of the annual general meetings of both the Cape Law Society and the Law Society of the Northern Provinces. His undertakings at these forums that he would consult with the profession on the Bill are welcomed. Our interaction with the Minister has been productive and the position he has taken in the matter is very encouraging. We reiterate our ongoing commitment to working with the Minister to finalise this long-outstanding and crucial piece of legislation.

In the meantime, a three-person LSSA task team, with the assistance of two legal advisers, has been reviewing the LSSA's version of the Bill. The basis of the LSSA's views is informed by the concept of a unified, independent and well-regulated legal profession. The LSSA will guard against fragmentation of the profession at all costs. In the view of the LSSA, if practitioners can practise outside a formal structure, this will make for a confusing regulatory set-up. It raises the question of who exercises discipline over practitioners who are not members; how does one get consistency of treatment and how does one build credibility with the public if there is a multiplicity of organisations through which discipline is exercised? On balance, and even if in the end it should turn out that the legal profession is governed by a regulator whose members are not elected, we prefer a structure where membership of a representative body is compulsory. In our view this will be more conducive to the proper and consistent regulation of the profession, will avoid the proliferation of splinter groups and will engender a spirit of cooperation and a sense of belonging among its members.

After discussions on the Bill at the annual general meeting at the end of March 2009, the LSSA will convene a national indaba with the advocates' profession – to be chaired by Prof Kader Asmal – where we will workshop the Bill and seek further consensus. In the interim, and in preparation for the new dispensation, the Directors' Committee of the LSSA has undertaken a unification process of the four disparate sets of statutory law societies' rules to produce one set to regulate all practitioners uniformly.

PROFESSIONAL AFFAIRS

Some of the 30 or so specialist committees that fall under the LSSA's Professional Affairs department did exceptional work this year. Among these we wish to highlight

- the submissions and contribution of the Financial Intelligence Centre Committee which dealt with amendment legislation that could have had far-reaching consequences for the independence of the attorneys' profession had it been left unchallenged;
- the sterling work done by the Costs Committee in preparing and motivating the LSSA's submission for tariff increases to the Rules Board; and
- the enormous amount of work done by the Road Accident Fund Committee in launching the challenges to the RAF direct payment system and the Amendment Act, as discussed above.

There is, however, still much that can be done by the specialist committees, and the LSSA needs to continue considering how greater participation and commitment by committee members can be encouraged.

We record the resignation of the Manager of Professional Affairs, Nosipo Matanzima, in October 2008 and wish her well in her future endeavours.

REGIONAL AND INTERNATIONAL LIAISON

As Co-Chairpersons we represented the LSSA at the SADC Lawyers Association (SADCLA) conference in Gabarone, the International Bar Association (IBA) conference in Buenos Aires and the Commonwealth Lawyers Association (CLA) conference in Jamaica.

At the SADCLA meeting, we highlighted the issue of cross-border practice rights for legal practitioners in the region. We continue this discussion at the AGM with the inclusion of colleagues from the Southern and East African regions. We have also undertaken to make available our resources as well as our educational and skills transfer initiatives to our colleagues in the region and to strengthen the infrastructure of the SADCLA.

We were proud to celebrate the election of LSSA council member Thoba Poyo-Dlwati as Vice-President of the SADCLA, and the election of Co-Chairperson Max Boqwana to the council.

From the IBA meeting, the benefit was derived not as much from the numerous sessions, but from the meetings that

could be arranged on the sidelines of the formal sessions. This included discussions with the leadership of the General Council of the Bar, as well as a discussion for an outreach programme by the IBA's monitoring unit at the International Criminal Court at The Hague. As a result of the latter, the LSSA will be cooperating with the IBA to present two workshops for South African lawyers on the ICC in April 2009.

Our recommendations from the IBA conference were that we need to

- reduce the size of the LSSA delegation;
- establish more bilateral meetings with similar jurisdictions;
- ensure our participation at the Bar Leaders' Forum which is relevant for law societies' purposes;
- make closer contact with the African Regional Forum and establish a working relationship;
- encourage individual firms to participate in the IBA;
- create a forum of large law firms under the auspices of the LSSA, to create a working relationship and promote the sharing of skills; and
- create a young lawyers forum under the auspices of the LSSA to deal with the issues of younger practitioners in the profession.

As regards the CLA, we anticipate the election of LSSA council member Mohamed Husain as President of the Association in April 2009. This will be the first time that an African lawyer heads this body and we are all justly proud.

OPERATIONAL ISSUES

As Co-Chairpersons, we worked closely with the Chief Executive Officer and the management team at the LSSA. One of our main objectives was to create stability and foster better cooperation among the management members. This was undertaken through a series of meetings and workshops facilitated by a consultant, and was achieved to the extent that it is reflected in regular management meetings and an improvement in the format of agendas and minutes.

A number of new positions were created at the LSSA. These include the long-overdue post of National Projects Coordinator who will take responsibility for creating a national policy and framework for *pro bono*, as well as the implementation of various projects envisaged by the LSSA's specialist committees, including prison projects, 16 Days of Activism and other initiatives. Petunia Ramela took up this position in February 2009.

Key positions, such as the Senior Manager at LEAD and the Parliamentary Liaison Officer, as well as others that appear in the Human Resources report, are still in the process of being filled.

CONCLUSION

In conclusion, we express our thanks to the CEO, management and all staff at the LSSA for the assistance and cooperation we received throughout the year.

We thank the members of the LSSA's Management Committee (Manco) for their cooperation and guidance, as well as the councillors of the LSSA. We thank also all those practitioners that give of their knowledge, skill and time to participate in the LSSA's standing committees and to discuss and draft all the representations and comments made to various bodies; as well as the more than 600 attorneys and others involved as instructors, assessors and drafters in the LEAD programmes. Our thanks also extends to those attorneys who participate in *pro bono* initiatives in the profession, including sitting as commissioners of the small claims courts.

Finally, we would like to pay tribute to our colleague Vincent Saldanha who was appointed to the bench of the Cape Town High Court after serving as Co-Chairperson of the LSSA from 1 April 2008 until his elevation to the bench in July 2008. Judge Saldanha played a seminal role in the LSSA since his appointment to the council of the LSSA in 1998. He was at the forefront of the profession as regards issues of transformation, governance, social responsibility and public interest. His experience and skills are sorely missed by the attorneys' profession and are, no doubt, enriching the Bench, as are the numerous other attorneys who have taken their places among the judiciary and of whom the attorneys' profession is very proud.

CP Fourie and Max Boqwana

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].' (From the constitution of the LSSA)

COUNCILLOR	CONSTITUENCY	MEETING ATTENDED
CP Fourie	Co-Chairperson	05, 08, 09, 11, 02
Max Boqwana (from July 2009)	Co-Chairperson	05, 08, 09, 11, 02
Vincent Saldanha ¹ (April-July 2009)	Co-Chairperson	05
Koos Alberts	CLS	05, 07, 09, 11, 02
Dave Bennett	LSNP	05, 08, 09, 11, 02
Ronald Bobroff	LSNP	08, 09, 02
William Booth	CLS	11,02
Igshaan Higgins ²	CLS	05
Peter Horn	CLS	05, 08, 09, 11, 02
Mohamed Husain	LSNP	05, 08, 11
Jan Janse van Rensburg	LSNP	05, 08, 09, 11, 02
Maake Kganyago	Nadel	05, 08, 09, 11, 02
Lulama Lobi	BLA	05, 08, 09, 11, 02
David Macdonald ²	CLS	08, 09
Babalwa Mantame	BLA	05, 08, 09, 11, 02
Davies Mculu	BLA	05, 08, 09, 11, 02
Sithembele Mgxaji	BLA	05, 08, 09, 02
Silas Nkanunu	Nadel	08, 09, 11, 02
Sheila Mphahlele	Nadel	05, 08, 11, 02
Henry Msimang	BLA	08, 09, 02
Thoba Poyo-Dlwati	BLA	05, 08, 09, 02
Praveen Sham	KZNLS	05, 08, 09, 11, 02
Jan Stemmett	LSNP	05, 08, 09, 11, 02
Henri van Rooyen	LSFS	05, 09, 02
Mtutuzeli Zepe	Nadel	05, 08, 09, 11

1. Mr Saldanha was appointed a Judge of the Cape Town High Court in July 2008.
2. Alternate for Mr Booth.
3. Alternate for Mr Booth.

KEY:

05	-	May 2008
08	-	August 2008
09	-	September 2008
11	-	November 2008
02	-	February 2009
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

Report by the Chief Executive Officer

2008 passed us by with haste. Perhaps it was the many interactions and communications that the LSSA was involved in that kept us extremely busy. Almost everyone I have spoken to has been under pressure. A general commitment to make the year productive in the face of economic challenges was encouraging and mustered within us all a sense of work ethic.

I separate my report into interactions with

- stakeholders internationally;
 - stakeholders nationally;
 - the LSSA directorate; and
- challenges for the LSSA.

INTERACTION WITH INTERNATIONAL STAKEHOLDERS

I witness and indeed am part of an ever-increasing interest by international delegations who wish to interact with the organised attorneys' profession in South Africa. The obvious port of call and body that speaks for the entire profession is the LSSA and it is enjoined to render this service.

Able assisted by Barbara Whittle, our Communication Manager, we meet, facilitate, interact and offer basic advice and information to and have further deliberations with many international visitors. The Co-Chairpersons are an integral part of the process depending on their availability. The proximity of Co-Chairperson CP Fourie's offices to the LSSA has made this even more convenient. The interest in the LSSA clearly demonstrates that the LSSA is a prominent law society in Africa and indeed is viewed internationally as being a leader in providing information and vision in the ever-increasing globalisation of legal services. The LSSA, together with the constituents, form a formidable partnership in presenting a cohesive body vested with governance capacity and experience. It is not uncommon for the LSSA to refer matters to the constituent members to take up the interaction when they are better suited to do so.

Southern African Development Community Lawyers Association (SADCLA)

The Past President of the SADCLA, Vincent Saldanha, and Council member Thoba Poyo-Dlwati paved the way for the LSSA to be at the leadership level of this august body of jurists. Late last year Ms Poyo-Dlwati was elected as Vice-President of the SADCLA and Max Boqwana as a council member. He took over from now Judge Saldanha. The experience and dedication of both members will this year see further challenges being made to how the South African legal profession, through the LSSA, can play an even



Raj Daya, Chief Executive Officer

more meaningful role in making the SADCLA more relevant and united in our commitment to human rights advocacy, practice harmonisation within the region and the easier recognition of law degrees within the region inter se.

The General Agreement on Trade in Services (GATS) challenges are still very much where they were, and the time is ripe for the LSSA to lead discussions in this regard. True to this challenge, the LSSA will, at its annual general meeting on 31 March 2009, host a session on cross-border practice. The panelists include the President of the SADCLA, Mabvuto Hara, and the CEO of the East Africa Law Society, Don Deya.

South Africa is the biggest law society within the SADC region. Has the time not come for the LSSA to set up its own internship programme that will see developing Bars benefit from our systems of regulation and representation? Funding to achieve this should be made available. This must be an activity that can be realised in 2009 and I intend to place it on our agenda.

Commonwealth Lawyers Association (CLA)

Members attending the CLA annual general meetings have often expressed the view that the CLA is more relevant to us than the International Bar Association. The current Vice-President of the CLA is our own Council member, Mohamed Husain. His expected election as President of the CLA this year in April (and indeed we are confident that he will be elected unanimously to this important leadership position) will certainly place South Africa in the best possible position to champion the South African cause and place us at the forefront in terms of the role that the CLA can play in dealing with the issues of practice advancement, legal education and trial advocacy.

We watch the developments in this regard with keen interest.

Attending the CLA conference in Jamaica late last year with the Co-Chairpersons was encouraging and educational.

My challenge is to interrogate the many papers delivered there and ensure that value passes on to our profession. Constituents have received documents that highlighted those areas of importance to us. Our involvement in participating in the CLA deliberations must be enhanced and I am pleased to report that Nic Swart, our Director of Legal Education and Development (L.E.A.D.), has been invited to deliver a paper at the CLA conference in Hong Kong in April 2009.

International Bar Association (IBA)

The IBA is a forum that caters mainly for business lawyers. Here discussions focus on international cooperation and association. The biggest meeting of lawyers internationally attracting some 5 000 practitioners, the event is a shopping mall of activity. Leading law firms arrange breakfast sessions creating conducive environments to meet and forge links with global partners. The merger and acquisitions market is profiled and matters focusing on international law are showcased. The IBA human rights sessions are particularly popular with African delegates.

I am not convinced of the benefit we derive by our attendance. Indeed, there is a view that if we are to have any presence at the IBA, we must increase our numbers. I disagree. We are not organised, and because of the pitch and focus of the IBA, we are often lost in the discussions. Representatives of the large law firms attend and participate in deliberations which are relevant to them. However, the majority of law firms in South Africa are small to medium-sized. The role of the LSSA must, therefore, be to ensure that all useful information is passed on to them. Our Council member at the IBA, Iqbal Ganie, participates in council deliberations and his reports are always informative. What we do with this information is more important.

I take responsibility for not focusing in a cohesive manner on receiving reports and channeling them more effectively to members. The IBA is attended by all constituents' presidents and some members of executive management. Perhaps better synergy between us needs take place. I commit to ensuring this in 2009.

The Young Lawyers Division at the IBA must be a forum that our lawyers locally can benefit from. Having attended these sessions, it is my intention to make submissions to launch a similar forum within the LSSA. Young lawyers are often left to fend for themselves and have difficulty approaching their peers with an ever-increasing need to be educated and supported. The LSSA has a role to play here.

INTERACTION WITH NATIONAL STAKEHOLDERS

Who are our stakeholders?

- Constituent members – the four statutory law societies, the Black Lawyers Association (BLA) and the National Association of Democratic Lawyers (Nadel)
- Every attorney and candidate attorney.
- Legal Aid Board
- Advocates' profession
- Judiciary
- Department of Justice and Constitutional Development
- Government
- Universities
- Chapter Nine institutions
- NGOs and CBOs
- Public

Constituents' involvement

The LSSA represents all the statutory law societies as well as BLA and Nadel. Our proportional representation model makes it possible for the LSSA to speak on behalf of the profession.

The Council of the LSSA, although the latter is a voluntary association, seeks to set national guidelines and create uniformity in national thinking and resolutions. The advent of the Legal Practice Bill will create statutory provision for the LSSA and perhaps then it will be possible that resolutions taken at national level will be enforced by all branches of the LSSA.

The approximately 32 specialist committees of the LSSA are made up, in the majority of cases, by representation from all constituents. These committees seek to establish national positions on a wide range of interventions that the profession must make. In this regard, the committee chairpersons as well as individual committee members are saluted for their sacrifice of time and commitment to see the profession speak with one voice. The area of synergy must be for Professional Affairs to be able to receive all minutes of committee meetings at provincial level to filter through to the LSSA so that it is possible for one constituent to say that it has dealt with an issue and resolved a challenge, instead of the LSSA having to deal with matters *de novo*.

The joint educational programmes run by L.E.A.D and the BLA are fairly entrenched and fully functional. The understanding between the BLA Legal Education Centre and L.E.A.D serves to avoid duplication.

National coordination on projects has gained ground in 2008. The well-organised National Wills Week campaign – based on the model used successfully by the Law Society of the Northern Provinces – was taken on as a national campaign. The results were excellent; provincial law societies coordinated the activities and a national outcome was achieved. 2009 will see a National Attorneys Week being discussed, as well as the prisons project.

Pro bono will receive a boost with the recent appointment of Petunia Ramela as National Projects Coordinator at the LSSA. Her immediate and most important remit is to organise *pro bono* on a national basis by bringing together all the provincial law societies and facilitating a conference or seminar on how best to move *pro bono* from a talking point to a model that can be implemented. The Cape Law Society will no doubt serve as a point of reference as it leads the way with rule adoption and implementation as regards *pro bono*.

Attorneys and candidate attorneys

De Rebus, the premier attorneys' publication, reaches every single legal practitioner including candidate attorneys. Unlike developed Bars which have available resources and all their members have access to the Internet, in South Africa we have the challenge to educate and inform attorneys, and *De Rebus* serves, in many instances, is one of the only sources of update on the latest legal developments for some attorneys. The specialist columns are areas that receive accolades from practitioners, and the practice development columns fill a vacuum that, hopefully, will also soon be supplemented by the work of the recently formed Practice Development Committee.

The creation of the Attorneys Development Fund, which is still under discussion, will be a welcome development. If every attorney is able to have basic IT access, communication will improve and e-learning by L.E.A.D can be realised.

The 10 centres of the School for Legal Practice run by L.E.A.D, are the flagship of the LSSA. I am not aware of this level of involvement in legal education by a law society anywhere else. L.E.A.D trains approximately 1 000 candidate attorneys per year. Often, candidates are unable to obtain articles of clerkship, and by attending L.E.A.D's six-month School, they are already credited with a year's articles. Often placements are easier after attendance at the School and law firms engage with the directors of the various schools to seek out candidate attorneys.

Legal Aid Board (LAB)

The LAB and the LSSA have a healthy working relationship. Areas of concern for both institutions are discussed openly and joint programmes for training and *pro bono* are ongoing. Attorneys and candidate attorneys employed by the LAB's Justice Centres are members of the attorneys' profession.

Advocates' profession

The Legal Practice Bill seeks to redefine advocates and attorneys as legal practitioners, with and without fidelity fund certificates. The General Council of the Bar (GCB), Advocates for Transformation and the LSSA have engaged in ongoing discussions and deliberations in preparation for the LPB. It is encouraging to note that discussions are professional and the legal profession will benefit if consensus can be reached with the GCB on the governance and accreditation model in the Bill. The LSSA has always advocated a unified profession and continues to do so.

Currently the Director of L.E.A.D, Nic Swart, is in discussions with the GCB on joint training initiatives.

Judiciary

Closer contact and communications with Chief Justice Pius Langa and the Heads of Courts is vital for the attorneys' profession. The LSSA attends the Heads of Courts meeting at which issues that challenge the judiciary are discussed. The Chairperson of the High Court Committee, Etienne Horn, together with the Co-Chairpersons and the CEO attend these meetings. This forum allows the LSSA, through its various committees, to add value by filtering through areas of concern to the Heads of Courts. The Heads of Courts Meeting has an ongoing responsibility of monitoring racism and sexism, issues relating to court rolls, outstanding judgments and the administration of the courts in general.

A number of times during the year, the LSSA has publicly voiced its concern about the ongoing attacks on the independence and integrity of the judiciary.

As regards training, L.E.A.D provides the infrastructure and facilities of the Johannesburg School for Legal Practice to the Chief Justice for the special project to fast track the training of women judicial candidates. This has been welcomed and appreciated by the Chief Justice. L.E.A.D also offers a Judicial Skills Training project where judicial officers tutor attorneys who aspire to be judges. These projects all show the level of cooperation between the judiciary and the LSSA.

Department of Justice and Constitutional Development (DoJ&CD)

The LSSA interacted extensively with the DoJ&CD, and in particular with the Director-General, during the Legal Services Sector Charter deliberations. However, the interaction was not at the same level when it came to the Legal Practice Bill.

The LSSA's position is simple. Issues involving the legal profession require timeous consultation with the LSSA. The appointment of the new Minister of Justice and Constitutional Development has heralded a positive and open-door relationship with the DoJ&CD.

Government

The LSSA continues to have ongoing meetings with government departments that have an impact on the work of attorneys and the courts. Interventions are made strategically as and when it is deemed necessary.

Universities

Mr Swart is charged with ensuring that the profession's concerns and recommendations regarding education and training are channeled to the relevant institutions. The Council for Higher Education (CHE) interrogates the LLB. The concerns of the profession are conveyed to the CHE through the Standing Committee on Legal Education of the LSSA. I am confident that we are making inroads. The profession must be able to convince the universities to create electives that assist a graduate in embarking on a career in the legal profession. The difficult attitude of the academic community to move from the position that universities do not train lawyers but law graduates, must be challenged.

On the other hand, the support by the universities for the schools for legal practice is to be commended.

Chapter Nine institutions

The LSSA needs to create better synergy with the Chapter Nine institutions. Often the profession acts in a vacuum, and the LSSA's Human Rights and Constitutional Affairs Committee needs to forge relationships with these institutions.

Non-governmental and community-based organisations

Pro bono initiatives will bring us into contact with organisations on which we will rely for referrals of *pro bono* work. The role of the National Project Coordinator is vital in this regard.

The public

Attorneys act for communities and exist because of their communities. The Legal Services Sector Charter speaks clearly to the role of attorneys in communities. There is a need to consult with communities and formulate the profession's advocacy role. This is an additional challenge for 2009.

LSSA DIRECTORATE

The Directorate comprises L.E.A.D Director Nic Swart; Finance Director Anthony Pillay; Editor of *De Rebus* Philip van der Merwe; Communication Manager Barbara Whittle; Human Resources Officer Poppy Ngesi and the Manager of Professional Affairs. As regards the latter, we were sorry to lose the services of Nosipo Matanzima in October 2008. We thank her for her contribution to the LSSA during her years with us, and wish her well in her future career.

The Directorate has fostered greater interaction and synergy with management meetings taking place every Monday. A business plan for 2009 is a focus area for the directorate to give effective implementation to the LSSA's policy and resolutions.

LSSA CHALLENGES FOR 2009

Legal Services Sector Charter (LSC)

The LSC was handed to the Minister of Justice at the end of 2007 and the scorecards drafted, debated, finalised and delivered to the Justice Department in 2008. Through the LSC we have all committed to access to justice. The LSSA is of the view that the statutory, provincial law societies are best placed to serve as verifying agencies on the scorecards. The ability to assist attorneys to comply with the LSC rather than force compliance must be carefully negotiated.

While being mindful of our rules of professional ethics and acknowledging that the legal profession is indeed different, we need to be more supportive of attorneys in their need to market, attract work and run law firms in a business-like fashion, while at the same time being able to make positive contributions to access to justice and skills development.

Legal Practice Bill (LPB)

The AGM in March 2009 sees an entire session dedicated to the LPB. Whatever model is finally negotiated, the LSSA has divisions that are established, competent and will remain relevant in a future dispensation.

The challenge and indeed the need to be open and frank as regards national versus provincial commitments must be discussed. A reading of the LSSA's version of the LPB clearly demonstrates the need to work as a united national structure with uniform rules. This national cooperation is the basis for the work of the LSSA's Directors' Committee which, throughout 2008, has undertaken the enormous task of unifying four sets of provincial rules into one national version. I advocate more discussions with all constituents with the aim of complementing what we all do. I repeat the plea of past Co-Chairperson David Gush, that we accept that the LSSA speaks for all attorneys, that we strive to abide by national policies and that we not be in competition with each other, but work towards a better understanding.

From where I sit on a national structure, the greatest challenge has been the inability to resolve many issues because the LSSA is a non-statutory structure. Imagine the ease with which we can attain uniformity if resolutions at a national level are automatically enforceable provincially.

Provincial law societies are entrenched in autonomism, not by their own volition, but by virtue of legislation. The role and support of the provincial law societies cannot be understated. Their ability to be in touch with their members is an asset. The ability of us all to embrace the imperatives of the LPB must be carefully managed. The uncertainty surrounding the role of the provincial law societies under a new dispensation cannot be brushed aside.

Website and IT

Like most organisations, the LSSA seeks innovative ways to enhance communication and productivity. The LSSA is challenged currently in this regard, and we are commissioning an IT architect to inform us on the best possible way forward.

L.E.A.D has increasing demand for e-learning and training facilities. One of the objectives of the envisaged Development Fund will be to ensure that every attorney will have access to a computer and Internet facilities. If this can be achieved, the flow of information to every practitioner will be facilitated.

The LSSA website is under construction so as to create an interactive environment where the specialist committees and members with preferred areas of practice can share ideas, and discussions are held in real time. Protocols regarding confidentiality will obviously have to be put in place.

Video-conferencing

The LSSA and the Attorneys Fidelity Fund are currently investigating the viability and funding of video-conferencing facilities. If we are able to have facilities at each law society and L.E.A.D school, we will be able to operate more efficiently and cost-effectively. The operation at Professional Affairs becomes more advanced and committee members will be able to reduce the time spent in traveling to meetings in Gauteng. I acknowledge that not all committee meetings will be restricted to video conferences and that some face-to-face meetings will always be necessary.

L.E.A.D will be able to offer seminars to more attorneys through video and interactive technology.

Representatives nominated to committees of the LSSA

I reflect on criticism often aired at many of the specialist committee meetings I have attended. Often, attorneys with little or no interest in the relevant field are nominated to the 32 specialist committees at LSSA level. Committee chairpersons are, therefore, by default driven to shoulder the work of the committees. We must be more serious in what it is we want to achieve. The dismal performance of many committees came under scrutiny last year and, as can be noted from the specialist committee reports later in this Annual Report, there was improved committee activity this year.

Unless attorneys nominated to the LSSA committees are also part of provincial committees, no *nexus* will exist in terms of feedback, or this will be limited to those committee members who do actually give feedback to the provincial law societies.

Some feel that the committees at LSSA level are a duplication of what exists at provincial level. This may be valid in some instances. It can also be said that some provincial law society committees are more effective and functional. The time must come when we are able to acknowledge this and perhaps do away with committees at the LSSA that may be regarded as redundant.

Parliamentary Liaison Officer

The interview process for the newly created position of Parliamentary Liaison Officer will take place in March 2009, and I am hopeful that a suitable candidate will have been appointed by the time of the AGM. The role of the Parliamentary Liaison Officer cannot be understated. The myriad of draft legislation and legal comment the LSSA needs to scrutinise, increases with each year.

Our committee members are practising attorneys and often there is limited time to scrutinise and comment on legislation. The brief of the Parliamentary Liaison Officer is to act as a conduit between Professional Affairs and the parliamentary structures, so that the LSSA has early and timeous notification of draft legislation, as well as parliamentary debates and discussions.

Advocacy

The advocacy role of the LSSA must be interrogated. Are we able to be leaders in acting as conduits to bring persons, institutions and organisations together to foster debate and deal with the hard questions and issues that sometimes we ourselves shy away from?

If the profession in South Africa wants to be an effective leader within the SADC region and then internationally within the Commonwealth, we need discussion, commitment and then the availability of financial resources to meet challenges.

We have a body of constitutional lawyers as part of our membership. Have we challenged them to be involved in precedent-setting cases before the Constitutional Court? We have among us experts in various areas of law. Have we used their services? The LSSA must interrogate what role it can play in this regard.

CONCLUDING COMMENTS

I attend the International Institute of Law Association Chief Executives (IILACE) conferences and focus on encouraging African law societies to join the activities. We have, in recent years, increased our membership and created an African Chapter of IILACE on which I serve as chairperson.

All chief executives and directors of provincial law societies are also members of IILACE and participate in the conferences. The 2008 conference was held in Windhoek, Namibia, and the agenda was driven by the African bloc. It is at these conferences that we interact with chief executives

from around the world and where we learn and share experiences. I am indebted to the LSSA for my continued involvement in this forum.

Last year I was awarded a fellowship by the British Council to attend an oversight programme at the Law Society of England and Wales (LSEW). The five-week fellowship during January 2009 was extensive and I was able to come to grips with how regulatory and representation functions at the LSEW were separated and the current challenges facing them in this regard. I am also indebted to the LSSA for allowing me to attend this fellowship programme.

The Co-Chairpersons, with whom I work closely, have been available to me during and outside office hours. Both CP Fourie and Max Boqwana have supported my office and the entire directorate. Manco members Sithembele Mgxaji, Thoba Poyo-Dlwati, Henri van Rooyen, Peter Horn, Praveen Sham and Sheila Mphahlele showed commitment and support throughout the year.

The directorate and staff of the LSSA are all indebted to the Council, committee members and attorneys across the country for their support. In turn, we commit ourselves to being of service to the new Council in 2009. I also acknowledge the support of the directors of the provincial law societies – Thinus Grobler, Nalini Gangen, Almé Stanton and Gavin John and their staff.

Raj Daya

Chief Executive Officer

COMMUNICATION

The Communication Committee of the LSSA was reconvened in 2008 with new terms of reference and after being inactive for some years. The broad mandate and terms of reference of the committee were approved by the LSSA Council as follows:

- The committee will deal with communication issues and problems that are common to all the constituents.
- The committee will work on communication projects of a national nature.
- The committee will facilitate and ensure the implementation of national projects at regional and constituent level.
- The committee members will be the conduit between the constituents and the LSSA to exchange information and to contribute items and update information to the LSSA website from the constituents.
- The committee members will relay information from the LSSA to the constituents and then on to practitioners.

The committee comprises representatives of the six constituent members of the LSSA, as well as representatives of L.E.A.D and *De Rebus*. Max Boqwana represented Manco on the Committee.

Several face-to-face meetings and a number of teleconferences were held throughout the year. The first, major initiative undertaken by the committee was the

National Wills Week, held for the first time on a national basis from 1 to 5 September 2008. Some 1 000 attorneys' firms participated in the Wills Week, and the committee arranged posters and flyers in English, Afrikaans, isiXhosa, Sesotho, isiZulu and Tshivenda for distribution to firms, municipalities and libraries.

A media campaign was undertaken to promote the Wills Week, and the initiative received extensive coverage particularly in the community press and community radio stations.

The committee has resolved to extend the initiative to a full Attorneys' Week in 2009.

The LSSA was invited by the Department of Justice and Constitutional Development to cooperate with it in its 'Justice on the Airwaves' project, and the LSSA has provided attorney speakers for relevant programmes on the SABC's black radio stations, which have a great footprint among the communities.

During this year the committee will consider a standardisation of information brochures that can be used by all constituents as well as attorneys' firms. It will also undertake communication activities for any major projects undertaken by the LSSA's committees.

Barbara Whittle

Manager of Communication

The members of the LSSA directorate:

Poppy Ngesi, Anthony Pillay, Nic Swart, Barbara Whittle, Philip van der Merwe and Raj Daya.



DE REBUS THE SA ATTORNEYS' JOURNAL

De Rebus celebrated the 52nd year of its existence in 2008 with its role as a credible voice of the attorneys' profession firmly rooted.

The challenges that the ever-changing socio-political and economic landscape of our country presents have a daily impact on the legal profession. For some attorneys they mean new sources of legal work and for others increased areas of difficulty. The mandate of our journal is not as broad as that of the public news media. However, *De Rebus* attempts to reach out to all attorneys and also to those in the broader profession, including the judiciary and law academics, to provide a forum for their thoughts and to disseminate to them information on all developments in the law.

The year under review saw the completion of the Intellectual Property Law 'primer' column, aimed at introducing younger lawyers to this field of practice. The successful series of articles on the basics of Practice Management by Centurion attorney Peter Rafferty – aimed especially at newer and younger practitioners – is set for completion early in 2009.

New columns on IT Law – chaired by Pretoria attorney Sizwe Snail – and on the ramifications of the Constitution for branches of the law other than constitutional law per se have been commissioned to start in 2009.

The LexisNexis Prize for the Best Article in *De Rebus* by a Legal Practitioner in 2007 was awarded to Louis Kernick, an attorney from Johannesburg who is a recognised authority on trusts and trust law, for his article 'Declaration of independence' which discussed the implications of the Supreme Court of Appeal's suggestion that, when registering a trust, the Master should insist that there be at least one 'independent' trustee (2007 (Jan/Feb) DR 27).

The growth of *De Rebus* is evidenced by

- the large number of articles that are received monthly and the lively letters column that is always full;
- the increased circulation figures, namely 21 330 as at December 2008, to members of the profession;
- paying subscriptions of non-members which stood at 1 370;

- the overall circulation which topped 23 300;
- increased income from advertising of more than R4 million, which was very close to achieving budget despite the severe economic downturn which increasingly, towards the end of the year, affected income; and
- our very active website www.derebus.org.za, with its powerful search engine which enables browsers and researchers to access any item swiftly.

For all of this we acknowledge our editorial staff for their dedication, our contributors for the high quality of their work and the members of the Editorial Committee for their commitment. During 2008 Peter Horn replaced Ed Southey, who had made an enormous contribution as a member of the Editorial Committee since 1984 and as chairman for eleven years. We have also seen changes in our editorial staff, which have been announced in the journal.

The Editorial Committee also acknowledges with appreciation the participation and involvement of the CEO of the LSSA, Raj Daya, and the unstinting support of the Manager of Communications of the LSSA, Barbara Whittle.

With the approval of the LSSA's Management Committee, *De Rebus* will, from the beginning of 2009, send 20 copies of every issue free to each the law faculties, for distribution to deserving senior students. This exciting initiative has been warmly welcomed by several of the law deans.

The printing of, and the sale of display advertisements in, *De Rebus* was put out to tender towards the end of 2008, attracting considerable market interest. This process will be finalised in 2009.

In conclusion one may say that the magazine is a powerful medium for our profession in our vibrant democracy and is a shining star on the continent of Africa, especially to the wider legal world. 2009 is going to be a year for many new challenges, as the recent robust political activities have shown. We have every confidence that *De Rebus* and the LSSA will meet them.

Krish Govender

Chairperson, De Rebus Editorial Committee

Philip van der Merwe

Editor, De Rebus

FINANCE AND DEVELOPMENT

AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 DECEMBER 2008

The 2008 audited financial statements are unqualified and are enclosed in this Annual Report in a separate booklet

CORPORATE GOVERNANCE

The LSSA established an Internal Audit (IA) committee in 2008. The summary matrix below outlines the functions of the Finance Committee (Audit, Remuneration and Finance Committee), and the IA committee.

INTERNAL AUDIT COMMITTEE	FINANCE COMMITTEE
Three members nominated by Council.	Consultant member (nominated by SAICA) Others nominated by Council (currently 7)
Reports directly to Council.	Reports directly to Council.
Members must be independent from Council or other LSSA governance committees.	Chairperson is independent from Council.
<p>Objectives:</p> <ul style="list-style-type: none"> • Complement existing processes and controls including external audit. • Responsible for internal audit function, using consulting and or IA activities. 	<p>Objectives:</p> <ul style="list-style-type: none"> • Ensure efficient audit appointment. • Determine, agree and develop policy on remuneration. • Ensure compliance with HR policy and review staffing resources, including alignment of KPAs with LSSA objectives.
<p>Provides Council with an additional layer of assurance that internal controls are adequate, and that internal policies and procedures and statutory requirements are complied with.</p> <p>The implementation thereof is designed specifically to assist the LSSA to accomplish its business objectives by ensuring a systemic and disciplined approach to evaluate and improve</p> <ol style="list-style-type: none"> the effective risk management (business risks); internal control; governance processes. 	<p>Subcommittees:</p> <p>Remuneration (Remco) - Determine, agree and develop policy on remuneration.</p> <p>HR Committee - Ensure compliance with HR policy and review staffing resources and performance systems.</p> <p>Budget Committee – Ensure efficient and accountable budget process.</p> <p>Other key functions:</p> <ol style="list-style-type: none"> Oversight of the preparation of the annual budget and financial statements. Oversight of the administration, collection and disbursement of the financial resources of the LSSA. Advise Council with respect to making significant financial decisions.

MEETINGS

Internal Audit Committee (IA)	3
Audit and Remuneration Committee (Fincom) meetings	5
<ul style="list-style-type: none"> • excludes Fincom Remuneration sub-committee meetings: 	2

- excludes Fincom budget sub-committee meetings: 3
- excludes AFF/LSSA joint 46(b) committee meeting: 1

STAFF

The Finance Department under the Finance Director comprises 11 staff members, with the transfer of the L.E.A.D learner database administrator. The post of Registration Officer at L.E.A.D, budgeted for 2009, will also be transferred to Finance to ensure efficiency and lines of reporting.

RISK ASSESSMENT

This was conducted by PriceWaterhouseCoopers under the supervision of the IA Committee. The key strategic risks identified for action in 2009 and in the longer term were identified, with proposed interventions.

- Appropriate facilities: LSSA employees split into two buildings.
- Business continuity: To develop and include disaster management.
- Client/Stakeholder service: Clients needs to be established (needs analysis). Client satisfaction levels not measured.
- Collaboration with other legal professionals: To draw on the collective energies of all legal practitioners for the benefit of the public and the sector. Possibility of inadequate collaboration with legal profession as a whole leads to not speaking with unified voice on issues.
- Communication: To ensure effective and efficient communication within the LSSA as well as externally. Communication to external and internal stakeholders may be inadequate to provide information regarding
 - proposals received;
 - approved projects;
 - progress reports; and
 - outcome results of projects.
- Make the public aware of specialised skills of attorneys. Public awareness may not be adequately and effectively achieved. Efforts may be duplicated in the awareness campaign or insufficient to ensure public buy-in.
- Continuous Professional Development: To build education and training among black attorneys. Education and training may not ensure increases numbers of black attorneys remain in the profession. Skills development may not be stimulated and supported in small or rural towns. Access to further education in terms of locality

and finance. Mandatory continuing education and training to admitted attorneys.

- Fraud and corruption.
- Health, safety and security: Health and safety of staff members at premises. Security of premises.
- Information management: To provide monitoring and controlling mechanism for ensuring that the achievement of targets is on track. All reports and reviews by Manco, Council, Fincom and operational committees may assess performance inadequately against operational targets.
- IT infrastructure and capacity: Quality of management information relies on IT systems. Distance training (e-learning). Present IT capacity is insufficient to fulfill needs of LSSA.
- Policy position on funding and resource allocation: Decision-making roles and levels of authority not clear. Interrelations between standing committees, governance committees and Council need to be clarified and adhered to by Executive. Clarity of policy: Policies need to be developed by Management and agreed to by Council.
- Procurement: Procurement process and supply chain.
- Skills development data and information: To ensure credible data collection, interpretation and dissemination in order to advise relevant parties. Data manipulation, analysis and interpretation of skills planning information may not provide adequate input into achieving a culture of high-quality lifelong learning. Data may not be verifiable and accurate to achieve an understanding of the sector. Incomplete or inaccurate reports to inform stakeholders.
- Skills development of wider legal profession: To meet the training objectives of the Attorneys Act, and the LSSA constitution. Skills development in the legal profession may not increase productivity and grow employment opportunities for attorneys. Social development initiatives may not promote skills development for employability and sustainable livelihoods. New entrants may not be adequately assisted into employment. Practice development of new/small firms to grow as business concerns. Skills transfer to new and existing practitioners with specific focus on previously disadvantaged attorneys.

- Staff numbers and capacity: Attraction and retention. Appropriate skills levels to perform work.
- Strategic leadership within the profession: To align the LSSA with the objectives of the Constitution of the country, its national priorities and the Legal Services Sector Charter. To be raised at Council level.
- Strategic planning: To give direction to the LSSA. Strategic planning may not be adequately developed and timeously reported. Plans may not be suitably developed to identify targets, objectives and budgets for future business cycles.
- Sustainability of Attorneys Fidelity Fund (AFF) income: To fund training and professional initiatives for legal profession. AFF may, in the future, be unable to fund existing levels due to organic growth and additional demands on resources.
- Transformation of profession: Increase number of black and female lawyers. Capacity of firms to offer articles may impact negatively on the profession. Loss of reserved work to other industries.

LSSA Registration number: 021-221-NPO
Department of Social Welfare and Development

Anthony Pillay
Finance Director



HUMAN RESOURCES

This report covers the period January to December 2008.

STAFF NUMBERS

CONSOLIDATED LSSA STAFF NUMBERS	TOTAL AS AT 31/12/2007	NEW POSTS	ADD TRANSFERS IN	LESS TRANSFERS OUT	LESS RESIGNATIONS	ADD APPOINTMENTS	TOTAL AS AT 31/12/2008
LSSA	24	0	1	0	-3	3	25
De Rebus	4	0	0	0	-1	2	5
L.E.A.D	43	2		-1	-8	9	43
Total: Actual	71	2	1	-1	-12	14	73
Budgeted	76	2					78

STAFF MOVEMENT REPORT

PERIOD: 1 JANUARY 2008 TO 31 DECEMBER 2008			
TITLE	NAME	REPLACED	START DATE
News Editor	Bongi Mdebele	Barbara Whittle (ex Deputy Editor)	11/2/2008
Secretary to CEO	Debbie Nieuwoudt	Yuthika Soman	01/09/2008
Senior Seminar Coordinator	Sharon Lee	Jeanette Gobelaar	01/03/2008
Cashier/clerk	Daniel Mphahlele	Cathy Tshetlo	11/9/2008
School Director (Durban)	Vaneetha Dhanjee	Mohini Murugasen	01/10/2008
Sub-Editor	Kevin O'Reilly	Chuma Makeleni	01/10/2008
School Administrator (Johannesburg)	Lario Malungana	Roeline Folscher	01/10/2008
School Director (Port Elizabeth)	Lionel Lindoor	Vaneetha Dhanjee	01/11/2008
School Manager (Pretoria)	Ursula Hartzenberg	Yvonne Sinclair	01/11/2008
Training Coordinator	Beverley Chueu	Thembakasi Koni	01/12/2008
Seminar Coordinator	Tamara Sihlangu	Beverley Chueu	01/12/2008
Receptionist (East London)	Neliswa Dibela	Sinah Mbutuma	01/12/2008
Senior Training Coordinator	Martha Lubasi	Glenrose Manzini	01/12/2008

Resignations

NAME	TITLE	EFFECTIVE DATE
Roeline Folscher	School Administrator (Johannesburg)	31/07/2008
Mohini Murugasen	School Director (L.E.A.D) (Durban)	31/07/2008
Thembakasi Koni	Training Coordinator: Distance Education (L.E.A.D)	31/07/2008
Chuma Makeleni	Sub-Editor (De Rebus)	31/08/2008
John Mokumo	IT: Administrative Assistant (L.E.A.D)	30/09/2008
Nosipo Matanzima	Manager: Professional Affairs (LSSA)	31/10/2008
Sinah Mbutuma	School Receptionist (L.E.A.D) (East London)	31/10/2008
Shitereka Ashley Mashaba	Skills Development Officer (L.E.A.D)	31/10/2008
Glenrose Manzini	Senior Training Coordinator Practice Management (L.E.A.D)	03/11/2008

Vacant positions unfilled as at 31 December 2008

Sub-Editor De Rebus
Practice Development Coordinator L.E.A.D

E-learning and IT L.E.A.D
Registrations Officer L.E.A.D

New posts for 2008

Senior Manager L.E.A.D
National Projects Coordinator LSSA
Parliamentary Liaison Officer LSSA
Course Developer L.E.A.D

TRAINING

The LSSA strives to ensure that individuals should develop to their full potential, with the emphasis of those previously disadvantaged. Training budgets were combined and this motivated staff to attend training as one group from the LSSA.

TRAINING EXPENDITURE - 2008	ATTENDANCE: STAFF NUMBERS	TOTAL WORK DAYS	TOTAL COST: R
Corporate governance	1	4	11 300
Project management	10	5	30 000
Speed reading and techniques	1	2	2 080
Basic publication workshop	1	2	2 800
Technical	8	3	22 800
Assertiveness and leadership	10	2	8 500
Photoshop CS2 beginner course	4	2	14 000
Accpac	1	2	4 104
Certificate in Office Management	1	1	20 340
Finance, accounts and budgets for non-financial managers	12	2	39 501
Photography	1	5	2 890
Coaching	10	2	20 178
Business leadership	10	2	16 530
Adobe CS2	2	2	10 000
Total	71	36	186 717

OCCUPATIONAL INJURIES (COID) – REPORTABLE

	NUMBER	NATURE
2008	0	0
2007	0	0
2006	0	0
2005	1	Serious

Resources and the Finance Director.

The CEO, directorate and staff are constantly updated on the process.

PERFORMANCE MANAGEMENT SYSTEM

Managers and directors had a clear understanding of the revised performance management system that was implemented in 2006.

Human Resources provided training to supervisors and the process was completed timeously.

- Managers and directors conducted performance appraisals only for the measurement of performance.
- The Human Resources Manager utilised the performance appraisals to recommend salary increases based on the appraisals.
- Directors were informed about the allocation only once

STAFF TURNOVER

Staff turnover at the LSSA is still a problem. From the exit interview report most staff members leave the LSSA because of better opportunities.

All positions are advertised and filled immediately.

SALARY BANDING

This process will be finalised at the end of April 2009. This exercise is done by consultants with the input of Human

approval was obtained. This ensured objectivity in the completion of appraisals.

- All staff members obtained a rating scale that exceeds minimum position requirements.
- Three staff members were considered for a once-off merit bonus.

EMPLOYMENT EQUITY

Both the Chairperson and Vice-Chairperson of the Employment Equity Committee resigned from the LSSA towards the end of the year. Replacements will be made in 2009. During 2008 the LSSA's Employment Equity Committee (EEC) focused on training staff about employment equity and why it is important to have an Employment Equity Committee. Questions regarding employment equity were sent to the Communications Manager who referred them to the Human Resources Officer. An EE report was submitted to the Department of Labour on time by the Human Resources Officer. The EEC continues to meet on a regular basis and replaces members as soon as they are notified of a resignation by a member. The members, who represent the LSSA staff at all levels, are:

Raj Daya (CEO)
 Tony Pillay (EE Officer)
 Poppy Ngesi (Human Resources Officer)
 Shireen Mahomed (De Rebus)
 Belinda Van Rensburg (L.E.A.D.)
 Lazarus Dlamini (LSSA)
 Seth Hermanus (LSSA)
 Zukiswa Kala (L.E.A.D.)
 Selina Ramano (L.E.A.D.)
 Jaco van Niekerk (LSSA)
 Barbara Whittle (Communication Manager)

INDUCTION PROGRAMME

The first induction programme for new LSSA staff took place on 21 January 2009. All new employees were introduced to the activities of the LSSA and welcomed by senior management.

Poppy Ngesi

Human Resources Officer

LEGAL EDUCATION AND DEVELOPMENT

The Legal Education and Development (L.E.A.D) division continued with its training and development activities for the profession at both pre and post-admission level, with a record attendance of more than 8 000 persons in 2008.

LOCATION

L.E.A.D is situated in Sunnyside, Pretoria from where it coordinates all activities, including training provided at the 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 combined).

FINANCE: BUDGET

It appears that there has been a substantial saving on the 2008 budget without curtailing delivery of services. The savings resulted mainly from the fact that the practice management course did not become mandatory, certain income increased and various savings were achieved.

STAFF

Employment equity and quality of service

The division 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.

L.E.A.D staff in Pretoria: Anthony Mathimbe, Dudu Sibanyoni, Diane Angelopulo, Gail Mason, Glenrose Manzini (until 31 October 2008), Imtiaz Mohammed, John Makumo (until 17 October 2008), Lolita Pieterse, Maria Mokwape, Martha Mokweba, Nic Swart, Ogilvie Ramoshaba, Ria Mahlangu, Selina Ramano, Tasha Roestoff, William Khunou, Beverly Cheu, Portia Kadi, Amanda Kibido, Thembakazi Koni (until 30 September 2008), Ntokozo Manzi, Grizelda Moseletho, Shitereka Mashaba (until 31 August 2008), Sharon Lee, Belinda van Rensburg, Stephne Pieterse and Martha Lubasi (from 1 December 2008).

Bloemfontein: Willem Spangenberg and Marietjie van der Westhuizen.

Cape Town:* Gail Kemp, Melanie Boltman, Ian Yuill and Dawn Arendze.

Durban:* Mohini Murugasen (until 30 June 2008), Nadira

Sewnarain, Ntokozo Ndlovu, Vaneetha Dhanjee (from 1 August 2008).

East London: Bongji Nkohla, Sue Donovan, Sina Mbutuma (until 31 October 2008), Neliswa Dibela (from 1 December 2008) and Thandi Ncukuna.

Johannesburg: Chandika Singh, Titus Mbatha, Connie Malinga, Louisa Madikoe, Roeline Foelscher (until 20 June 2008), Lario Malungana (from 1 October 2008).

Polokwane:* Mokgadi Mabilo, Louisa Motana, Matilda Molepo and Doreen Mamabolo.

Pretoria: Yvonne Sinclair (until 30 June 2008), Maggie Ballakistan, Zuki Kala, Ursula Hartzenberg (from 1 October 2008).

Potchefstroom:* Andrew Morathi and Isabel Bouwer.

Port Elizabeth:* Vaneetha Dhanjee (until 31 July 2008), Anita Strydom, Lionel Lindoor (from 1 November 2008).

LSSA-Unisa distance learning school: Simla Budhu and Parma Govender.

*Coordinators at these centres are appointed by universities.

GENERAL DEVELOPMENTS IN 2008

Commercial law training

Twenty-five attorneys received training in commercial law at a course in Pretoria from Irish and South African lawyers. Irish Aid provides the funding for the training (R2 million over two years).

Transfer of skills and other aspects of skills development

Skills transfer: More than 100 attorneys were recruited as learners and most were placed in mentorship. Advanced commercial law training was a new development. Numeracy training: Implemented at School and PLT courses. Additional trial advocacy training was presented to 300 candidate attorneys.

Training in judicial skills (Sassetta funded)

Eighteen attorneys attended a five-day course in Pretoria. Regional magistrates provided the training, which was evaluated as extremely successful. The focus was on criminal law.

Practice development activity

The Practice Development Committee (PDC) was established. The PDC adopted a strategic plan at its third meeting; it has decided to appoint a coordinator; it has approved a proposal for the establishment of an Attorneys Development Fund.

Mandatory practice management training

The amendments to the Act were approved by Parliament and now await implementation by the Department of Justice and Constitutional Development.

LSSA-Unisa distance learning school

One hundred and one persons attended the third programme.

International client-counselling competition

This competition was replaced by an inter-School competition.

Pro bono work

A programme was offered by the School for Legal Practice in Pretoria in conjunction with law firms, in Mamelodi and Pretoria West. It was resolved that all Schools must implement 'social responsibility' programmes.

Foreign liaison

The Law Society of Ireland provides commercial law training. The United States Embassy offered seminars in practice development in legal writing by visiting experts. The Director of L.E.A.D and the Chairperson of the Standing Committee on Legal Education attended the SADC Lawyers Association annual conference in Botswana.

EDUCATION AND DEVELOPMENT ACTIVITIES

Conveyancing and notarial training: 638 persons participated in 2008.

Seminars: 3 098 persons attended seminars in 2008.

The following topics were offered:

- FICA/FAIS
- Sexual offences
- Opinion writing
- State tender procedure
- High Court litigation annual workshop
- Divorce and pension benefit
- Divorce mediation follow-up
- RAF update
- DVC Cooperation: Nine steps to a successful law practice
- DVC Cooperation: Staff recruitment and retention
- Administration of estates (three-day workshop)

- The business of practising law
- Conveyancing
- Developing your practice
- How much can I charge?
- Legal developments
- Managing my money
- National Credit Act
- Trusts

Certain seminars were funded by the Sassetta, which enabled L.E.A.D to offer more training in rural areas.

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 on a part-time or full-time basis and, in one centre, after hours. 1 912 Candidate attorneys attended in 2008.

Instructors and presenters involved in L.E.A.D activities: More than 600 practitioners and other experts were involved in the activities of L.E.A.D in 2008.

School for Legal Practice (five-months full-time uninter-rupted): 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.

SUMMARY OF ATTENDANCE OF ALL L.E.A.D PROGRAMMES

	2007	2008
School for Legal Practice	1 088	1 094
Conveyancing and notarial training	638	964
25-day courses for candidate attorneys	1 912	1 686
Diplomas and certificates (distance)	192	152
Practice management training	61	114
Seminars	3 098	2 070
Other training: Trial advocacy; Supports staff; Client care; Judicial skills; Trade marks; Skills transfer courses, Conveyancing ABC, Irish commercial law course	1 272	957
Total	8 216	7 037

Abe Mathebula

Chairperson, Legal Education and Development Committee

1 088 persons attended the day, night and distance programmes in 2008.

Statistical information: L.E.A.D collected information on attorneys, candidate attorneys, law graduates and training on a race and gender basis. This information gives a clear indication of how many persons study for and graduate with an LLB degree, and what the trends are with regard to admission, practice and training.

Placement information: L.E.A.D maintains a database of persons who are searching for articles of clerkship.

Selling of documentation: L.E.A.D has sold a substantial number of its publications in hardcopy and electronic format in 2008. These publications included PLT manuals, conveyancing and notarial manuals, Consulta and E-PLT (CDRom).

Distance education programmes: L.E.A.D offered diploma and certificate programmes in conjunction with the University of Pretoria, UNISA, University of KwaZulu-Natal and North-West University in labour law, corporate law, administration of estates, tax and insolvency.

Course for conveyancing assistants: L.E.A.D presented a successful course in Pretoria which was attended by 27 people.

Nic Swart

Director, Legal Education and Development

Specialist Committee Reports

ALTERNATIVE DISPUTE RESOLUTION

During the period under review, the committee was involved in the following activities and/or imperatives:

Attempting to ensure and oversee, through L.E.A.D training once legislation is in place, for attorneys to become accredited by the LSSA and/or the statutory provincial law societies, as mediators, arbitrators and, generally, alternative dispute resolution (ADR) practitioners capable of appearing in or before all legal forums.

Arranging that, on the websites of the LSSA, the provincial law societies and elsewhere, as also in or on any publications or media as may be appropriate, there are lists of attorneys trained and accredited by the LSSA and/or the provincial law societies, to the extent described above, to which lists the members of the public and commerce would have access.

Selling the notion to government that the profession is best placed to train and accredit attorneys to the extent described above, 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 the making available of information could be controlled.

Engaging with the court structures, the Department of Justice and Constitutional Development and with other applicable committees of the LSSA, with 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, and to make litigation attorneys more aware of the benefits of mediation and arbitration.

Dealing with the ADR imperatives in both existing and new legislation including, but not limited to, the Children's Act, the National Credit Act and SARS Regulations and, to this end, to follow up and pursue the outcome of, and the objectives debated at the L.E.A.D workshop at OR Tambo International Airport on 31 January 2007, to be followed eventually by a special meeting of the committee in order to make recommendations to the LSSA.

Generally, and perhaps most importantly, the committee strives to do all such things and take 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

The Committee on Company Matters is a committee which operates on an *ad hoc* basis. The committee members are Miranda Feinstein (Chairperson), John Simon, Davies Mculu, Nontuthuzelo Mimie Memka and Patrick Maybin. Two members of the committee, Ms Feinstein and Mr Mculu are also members of the Company Law Sub Committee of the Law Society of the Northern Provinces.

The committee meets only on an *ad hoc* basis as and when circumstances dictate. The committee did not meet as a committee in the period covered by this report. In conjunction with the members of the Company Law Sub Committee of the Law Society of the Northern Provinces, the committee extensively debated the content of the second public draft of the Companies Bill earlier in the year. Together the two committees made written submissions to the Portfolio Committee on Trade and Industry, and the chairperson, representing both committees, made oral representations to the Portfolio Committee in Parliament.

At the request of the Portfolio Committee, further substantive and explanatory written submissions were made by the two committees. It is regretted that very few of the submissions made to the Portfolio Committee have been incorporated into the revised draft of the Companies Bill. However, as the final Companies Bill has not, at the time of writing this report, been published as yet, it is still possible that some of the other submissions made by the committee might yet be taken into account.

Miranda Feinstein

Chairperson, Committee on Company Matters

COMPETITION

The committee is fairly balanced with adequate representation of the four statutory law societies, the Black Lawyers Association (BLA) and the National Association of Democratic Lawyers (Nadel). The following persons were the members during the year under review: Paul Coetser (Chairperson); Michael Katz (Law Society of the Northern Provinces); David Bekker (Law Society of the Free State);

David Thompson (Cape Law Society); Eric Mbhele (BLA); and Saloshna Moodley (Nadel).

Roger Green of the KwaZulu-Natal Law Society resigned during the course of the year. We are thankful for his huge contribution to the committee over many years and our best wishes accompany him. We will miss his input in the future.

The main focus of our activities this year was considering and commenting on the Competition Amendment Bill. This Bill proposed far-reaching changes to the Competition Act, 1998, which came into effect in 1999. The changes will make a fundamental difference to the way in which competition law is practised in South Africa by competition lawyers, and they will have constitutional implications.

The committee, therefore, resolved to provide written comments to the Department of Trade and Industry (DTI) on the Bill. The main areas of concern in the Bill relate to the following:

- A new competition offence of engaging in complex monopoly conduct, is created. This is unprecedented in competition jurisprudence. The committee was of the view that the new offence is described vaguely and is overbroad.
- The actions of directors or managers engaged in or having acquiesced in cartels, are criminalised and these persons can now receive substantial individual penalties and jail sentences. The committee was concerned, *inter alia*, about the constitutional implications of a reverse onus, the practicalities of prosecution and the risk that the provision will hamper the Competition Commission in the application of its corporate leniency policy, which assists in the detection of cartels.
- There is a new power to conduct market investigations and any person can be summoned to appear at a public or private hearing called to conduct such an investigation. The committee was concerned that, without proper jurisdictional facts to trigger such an enquiry, this provision would be an invasion into legitimate business conduct.
- The corporate leniency policy is now embodied in the Competition Act. The committee was of the view that the wording was not appropriate and could lead to abuse.
- There was an attempt to address the boundaries of concurrent jurisdiction between the Commission and the various industry-specific regulators. The committee considered whether the various law societies would be viewed as such regulators.

The committee made various counter-proposals to suit the intended objectives of the Bill. The Chairperson of the committee was delegated to make oral representations to the Parliamentary Portfolio Committee considering the Bill, and he received a good hearing from that Portfolio Committee on 29 July 2008. An interesting feature of the hearings was that the enforcers of the Competition Act, namely the Competition Commission and the Competition Tribunal, opposed several provisions in the Bill in direct opposition to the DTI's intentions. This speaks well for the independence of those agencies.

After the hearings, the most concerning provisions of the Bill were substantially ameliorated and some of the drafting problems cleared up. We would like to think that the committee's submissions played a role in that regard. The Bill was passed by Parliament towards the end of 2008 and is expected to be signed into law by the President in the first quarter of 2009.

In addition to its work on the Bill, the committee also considered the scope of the LSSA's national survey of the legal profession, and the chairman assisted the KwaZulu-Natal Law Society in a High Court dispute with one of its members relating to its professional rules.

Paul Coetser

Chairperson, Competition Committee

CONTINGENCY FEES

No meeting of the Contingency Fees Committee took place this year because of the split in the committee described in my earlier reports.

In place of a meeting, much time has been spent by me in liaison with George van Niekerk (as Vice President of the Cape Law Society) trying to fashion an approach so that the Council of the Cape Law Society can be persuaded to move away from its present stance whereby (unlike the rest of the country) there is insistence on the application of the Contingency Fees Act.

Mr Van Niekerk and I had hoped to complete this exercise by the end of 2008. In the meantime, however, I have learned that there has been litigation in the Johannesburg High Court whereby it is sought, *inter alia*, to challenge the constitutionality of certain sections of the Act.

Clem Druker

Chairperson, Contingency Fees Committee

COSTS

The Costs Committee was established in 2008 by the Council of the LSSA.

The committee is constituted as follows:

The Chairperson of the LSSA Committee on High Court Matters (who is also the convener of the committee); the Chairperson of the LSSA Magistrate's Court Committee; one additional member of each of the High Court and Magistrate's Court Committees; and two members nominated by the General Council of the Bar (GCB).

At its inaugural meeting, the committee resolved to focus on the following matters in 2008:

- To apply for an urgent increase in the statutory tariffs as contained in both the High Courts and Magistrate's Court Acts.
- To consider and promote an application by the GCB to have a separate additional preparation fee in appeals and applications sanctioned.
- A general overall review of the tariff structures, inclusive of the tariffs relating to litigation 'out-of-pockets', eg witness fees, qualifying fees of experts, travelling expenses and subsistence allowances, which have become totally outdated.

Most of the time and effort of the committee was, however, directed at engaging the Rules Board for Courts of Law so as to secure an urgent increase in the statutory party-and-party tariffs, which increase is long overdue. In this regard, the following can be reported:

During the course of 2004 an application was made to the Rules Board for Courts of Law for an increase in the statutory party-and-party tariffs.

Nothing was heard from the Rules Board, despite follow-up enquiries. In February 2008, the LSSA's Manager of Professional Affairs was informed by the Secretary of the Rules Board that the application was being referred back to the LSSA as the Rules Board was of the opinion that it did not conform to the format guidelines previously issued by the Board.

The 2004 motivation was supported by a report by Prof Chris Harmse, dealing in essence with CPIX so as to find a basis for an increase. Due to the failure of the Rules Board to consider the application, the data contained in the Harmse document became outdated. Prof Harmse declined to assist the LSSA with an update of the document, with the result that the committee had to source someone else to do so.

Ablly assisted by the LSSA's Finance Director, Tony Pillay, the Costs Committee managed to secure a report from the Bureau for Economic Research, Stellenbosch (BER) as well as a Guideline on Fees for Audits done on behalf of the Auditor-General, which documents were to serve as support for the motivation in terms of prevailing economic factors and trends in other professions. The committee was also furnished with a document prepared by the Chairperson of the Johannesburg Attorneys Association, dealing with trends in that jurisdiction with regard to the quantum of attorney- and-own-client fees.

The application and motivation document on behalf of the profession was finalised and submitted to the Rules Board through the office of the LSSA's Manager of Professional Affairs.

The Chairperson of the LSSA committee was advised that the Costs Committee of the Rules Board would be meeting on 19 June 2008. An audience with that committee was requested and granted and the Chairperson of the LSSA committee was mandated to attend the meeting and speak to the application on behalf of the profession.

All relevant issues were debated and discussed with the Rules Board Committee at the meeting in June 2008. The Chairperson of the Rules Board also attended the presentation and actively participated in the discussions.

The outcome of the meeting was that the profession was requested to submit a supplementary motivation as to how the proposed increase of 100% in the tariffs was calculated and arrived at. The Rules Board itself would be meeting towards the end of June 2008 and the Chairperson of its Costs Committee wished to be informed of these issues so that his committee could debate the increase and the quantum with the full Rules Board.

The request of the Rules Board was considered and a supplementary motivation/submission prepared. The Chairperson of the LSSA committee was informed on 25 June 2008 that the Rules Board was to meet on 27 June 2008, and was hard-pressed to finalise the supplementary motivation. In preparing the latter, he took the liberty of referring also to the Zevenbergen Report of 2002, which supported the profession's application for an increase at that time. The supplementary motivation was duly submitted to the Rules Board Cost Committee for its debate with the full Board. As indicated above, the main issue raised by the Costs Committee was how the profession could motivate a

100% increase in the tariffs. This was fully addressed in the supplementary document

The Chairperson of the Rules Board Costs Committee advised that the presentations on behalf of the profession were well received.

The LSSA Committee is positive that the application has been successful and a final response is being awaited.

The members of the LSSA Costs Committee wish to express their appreciation to the then Manager of Professional Affairs of the LSSA and her personal assistant, Kris Devan, for their support in respect of all administrative arrangements, as well as the LSSA's Finance Director for his assistance in obtaining the supporting documentation.

The issues relating to the application by the GCB in respect of preparation fees and the general review of the tariff structures have been debated, but no formal submissions have, as yet, been made to the Rules Board. These two matters will be pursued in 2009, as soon as the exercise with regard to the increase in tariffs has been finalised.

In pursuing its mission, the LSSA Costs Committee strives to strike a balance between the interests of the profession it serves, and those of the consumers of legal services, ie the public at large. In addressing the Rules Board on the above issues, the committee has repeatedly emphasised the fact that the present procedure of having to motivate at length an application for an increase in tariffs, is counter-productive and to the detriment of the public. A mechanism whereby an automatic annual increase is allowed must, therefore, be devised and implemented.

Etienne Horn

Chairperson, Costs Committee

CRIMINAL PROCEDURE

The Committee on Criminal Procedure held a meeting on 12 July 2008 and held two teleconferences on 30 September and 10 November 2008. The members of this committee are Nobulawo Martha Mbhele (Chairperson), William Booth, Llewellyn Curlewis, Xolani Mpeto, Strike Madiba and Eric Zaca. An aspect of concern for the committee has always been the issue of independent advocates, and the committee was of the view that it is important to raise awareness continuously in this regard. The committee joined a delegation from the Legal Aid Committee at a meeting with the Legal Aid Board to discuss issues that are of concern to both committees.

The conditions of inmates in correctional facilities and the issue of parole were discussed. It had come to the attention of the committee that there had been a directive indicating that legal representation should not be allowed in parole hearings. The committee felt that this was not just, impacts on the rights of applicants and that the Correctional Services Department must be approached in an effort to look into reviewing this instruction. The committee was of the view that people who serve on parole boards are often not sensitive to the needs of inmates. The delay in and declining of parole applications is a direct cause of overcrowding in prisons which further leads to the deterioration of health conditions in correctional facilities. The committee noted the footage that was broadcast on SABC3 Special Assignment which brought to the fore the conditions in prisons and the type of life that some prisoners are subjected to as a result of the unreasonable denial of parole applications.

Attorneys are encouraged to do prison visits regularly and to link with the office of the Judicial Inspectorate of Prisons.

Committee members also noted that the lack of consultation facilities in prisons and in court is still a problem. They were of the view that the Department of Correctional Services and the Department of Justice and Constitutional Development must be engaged further to make these facilities available.

Attorneys were encouraged to raise these issues continuously in case flow management committee meetings. Members of the committees of the provincial law societies are encouraged to become part of these committees as they deal with issues that affect court administration.

The Department of Justice launched a Criminal Justice System Review Committee and the LSSA committee members were invited to participate in this committee. The committee members presented papers on various topics at the Criminal

Justice System Review research seminars which were held in the Free State, KwaZulu-Natal and the Western Cape.

The objective of the research was to identify blockages in the criminal justice system and to make recommendations for the improvement of the system. In these seminars stakeholders had an opportunity to comment on matters that really needed attention in the criminal justice system and tried to find a common ground on issues of concern.

Committee member Strike Madiba formed part of an LSSA delegation that met with a representative of the International Bar Association's outreach programme for the International Criminal Court.

The committee has from time to time been asked to comment on new Bills. It is always very difficult to get all the committee members to comment and often the committee gets the request at the eleventh hour. This makes it difficult for members to draft in-depth responses. However, the committee has done its best to comment.

Nobulawo Martha Mbhele

Chairperson, Committee on Criminal Procedure

DECEASED ESTATES, TRUSTS AND PLANNING

The members of the committee are Hussan Goga (Chairperson), Mervyn Messias, David Bekker, Prof Willie van der Westhuizen, Anthony Jenkins, Kums Makume and Nicholas Yeowart.

The following meetings were held:

3 March 2008: The Chairperson met with Mr A Roup, Secretary of the Association of Trust Companies;

31 October 2008: The Chairperson, Mr Messias, Mr Makume and Gavin McLachlan, representing the LSSA E-Commerce Committee, met with members of the Justice Parliamentary Portfolio Committee and the Justice Department.

OFFICE OF THE CHIEF MASTER OF THE HIGH COURT

There was minimal interaction between the Office of the Chief Master of the High Court and the LSSA, and this was disappointing. It is reasonable to expect that there should be a high level of synergy and interaction between the Office of the Chief Master and stakeholders. It is important for the Chief Master to take urgent steps to develop vibrant and dynamic relationships with stakeholders in order to improve efficiency levels.

REPORT ON WORK PLAN FOR 2008

Intestate Succession Act 81 of 1987

The share of the spouse in terms of s 1(1)(c)(i) of the Intestate Succession Act was fixed by the Minister of Justice on 18 March 1988 at R125 000. This has not been increased for some 20 years and is causing considerable hardship to surviving spouses and minor children, particularly in historically disadvantaged communities. A submission was made by the LSSA to the Portfolio Committee on Justice and Constitutional Development that the amount fixed by the Minister for the purposes of s 1(1)(c)(i) of the Act be increased from R125 000 to R250 000 for the purposes of the said section. It is incumbent on the Minister to ensure that statutory figures that determine rights should remain realistic and relevant. The figure of R125 000 is now totally unrealistic. The value of property has increased dramatically in recent times which often results in joint ownership with the minor children of the deceased. This is neither practical nor desirable. Some concern has been expressed that an increase in the amount may leave children in a weaker position. However, it must be borne in mind that the surviving spouse has, in any event, a duty and a legal obligation to support his or her minor children. Furthermore the amount of the increase applied for has taken into account the interest of minor children. The LSSA applied to increase the amount to only R250 000; although, if the figure of R125 000 were to be adjusted in terms of the Consumer Price Index growth up to September 2008, it would amount to a staggering R660 143.

Administration of Estates Act 66 of 1965

The amount determined by the Minister of Justice for the purposes of s 18(3) of the Act is R125 000. This determination was made as far back as 1 December 1993. If this amount is increased to an amount of R500 000, it would significantly reduce the workload in the Master's Office, thereby increasing productivity. The Department of Justice indicated that the office of the Chief Master is supportive of the proposed increase to R500 000.

The amount determined by the Minister of Justice for the purposes of ss 80 and 90 of the Act is R100 000. This determination was also made as far back as 1 December 1993. Section 80 deals with the restriction on alienation or mortgage of immovable property by a natural guardian, tutor or curator, whereas s 90 refers to payments to natural guardians, tutors and curators, or for and on behalf of minors and persons under curatorship.

The following submissions were made by the LSSA to the Portfolio Committee on Justice and Constitutional Development with regard to the Administration of Estates Act:

- The amount determined by the Minister for the purposes of s 18(3) be increased from R125 000 to R500 000 for the purposes of the said section.
- The amount determined by the Minister for the purposes of s 80(2)(a) be increased from R100 000 to R1 000 000 for the purposes of the said section (s 80(2)(a) refers to any alienation of property belonging to a minor).
- The amount determined by the Minister for the purposes of s 80(2)(b) be increased from R100 000 to R265 000 for the purposes of the said section (s 80(2)(b) refers to any mortgage of any such immovable property of a minor).
- The amount determined by the Minister for the purposes of s 90 be increased from an amount of R100 000 to R265 000 for the purposes of the said section.

Judicial Matters Amendment Bill, 2008

The committee made submissions to the Portfolio Committee on Justice and Constitutional Development in regard to the Judicial Matters Amendment Bill, 2008 which, among other changes, seeks to amend the Intestate Succession Act, 1987 so as to regulate the position of permanent same-sex life partners. The committee, in its comment on the Bill, pointed out that making the legislation retrospective to 1994 was legally untenable, absurd and repugnant to the rule of law, and opened the legislation to constitutional challenge. The committee is of the view that this retrospectivity will open the floodgates of litigation against the intestate heirs and minors who have lawfully acquired such inheritance going back some 14 years.

Master's Office: Functionality

The law societies are inundated with complaints regarding poor service levels at the Master's Offices. Many of the Master's Offices are not functional. The Director-General and the Chief Master should steer away from denial and must make every endeavor to fulfill the constitutional imperative of providing speedy access to justice for all, in an enabling environment where service excellence is the norm rather than the exception. The current problems encountered in the Master's Offices are all too well known. The following are some of the chronic problems that are frequently encountered:

- failure to issue letters of executorship timeously;
- failure to answer the telephone;
- failure to examine liquidation accounts timeously;

- failure by the Master to notify that an account has lain for inspection free from objections;
- delay in obtaining s 42(2) endorsements;
- delay in issuing certified copies of wills;
- delay in accessing funds from the Guardians Fund, which currently takes some three months;
- inability to locate files / loss of files;
- delay in the issue of estate duty assessments;
- delay in the amendments to trusts/letters of trusteeship;
- no registry for incoming mail sent by docex;
- repeated errors on correspondence, letters of executorship and letters of authority; and
- the wife being reflected by reference to her maiden surname instead of her married surname in the letters of executorship/letters of authority, even where the married surname is reflected on the acceptance of trust documents and a marriage certificate provided, etc.

Uniformity and standardisation of practice and procedures in the various Master's Offices

It is desirable, from a practitioner's point of view, to have uniformity and standardisation of practice and procedures in the various Master's Offices. This is currently not the position. Some Masters, for example, allow VAT on executor's remuneration where the attorney attending to the winding up of an estate is registered for VAT, but not the executor in the estate, whereas other Masters do not allow such VAT on executor's remuneration. This may also lead to practitioners being required by the Master to amend the liquidation and distribution account (when the VAT on executor's remuneration is reflected as an administrative expense in the liquidation account, but disallowed by the Master). This results in further delays and causes frustration. There are also inconsistent practices among the various Masters when making appointments of executors/Master's representatives, and also in respect of the noting of the death of an executor. The death of an executor is usually dealt with by the Master by issuing a certificate that the executor has died and that the remaining executor is authorised to liquidate and distribute the estate. However, some Masters note the death of an executor on the letters of executorship. These aspects need to be addressed, preferably by way of a Chief Master's Directive.

Deceased estates reporting package

The development of a basic deceased estates reporting software package at a modest project cost of R50 000 did not materialise. A concerted effort to obtain funding for this project was unsuccessful. This was arguably the greatest disappointment in the year under review as a deceased

estates reporting package would have had immense benefits for both students and practitioners alike.

Capital Gains Tax (CGT)

We requested the SARS Operations Support, Ops Legal Support, Tax Technical-Direct Taxes on 20 June 2008 whether they would be agreeable to making short and incisive presentations on CGT in relation to deceased estates at all major centers in all provinces for the benefit of legal practitioners. A reply was received from SARS Legal and Corporate Services on 30 June 2008 that time does not permit them to undertake such a training programme. Training programmes have, in the past, been conducted by SARS for members in the fiduciary industry attending to the winding up of estates. The matter is currently under consideration and may have to be taken up directly with the Commissioner of Inland Revenue.

Legal issues relating to a Shared Services Office

A new electronic system is in the course of being implemented at the Master's Office and it was anticipated that the system would go live in January 2009. The program would be web-based and, therefore, cost effective. The Department of Justice will arrange with the LSSA E-Commerce Committee to be part of the forthcoming web-based test run and forum discussion of the e-management system as it applies to the Master's Office.

CONCLUSION

I wish to express my sincere appreciation to all members of the committee for their assistance, commitment and guidance. I also wish to express my sincere gratitude to Mr McLachlan, Chairperson of the LSSA's E-Commerce Committee, for all his assistance.

Hussan Goga

Chairperson, Committee on Deceased Estates, Trusts and Planning

E-COMMERCE

The committee had two face-to-face meetings this year, which were useful.

WHAT HAS THE COMMITTEE DONE DURING THE CURRENT YEAR?

We have continued to work with the Estates Committee to interact with the Chief Master about forthcoming electronic services that practitioners can access. The Chairperson, at the request of the Estates Committee, recently attended

a joint meeting with that committee, members of the Parliamentary Portfolio Committee and the Chief Master. We have consequently arranged to participate in a trial of the Master's online access once it is ready early 2009, and will ensure the profession's interests are advanced in this process.

We will shortly be delivering a written submission for consideration on the draft Online Gambling Bill. Online gambling is currently illegal in South Africa and the Bill represents a significant apparent change of attitude on the part of the legislature.

Improved contact with Government departments such as Communications and Justice has been and is also being sought wherever possible. It is necessary to interact as positively as possible with the State, especially as its online services develop.

It is still important to try and arrange assistance on electronic law and practical issues to practitioners throughout the country as there is a very clear need for such assistance at present. The Chairperson and other members will be involved in the production of various articles in collaboration with various electronic law practitioners for De Rebus in the next 12 months.

Ms Kekana and the Chairperson were involved in the South African IT Practitioners' Association 2008 workshop and led various panel discussions. We invited their chairperson to address us to let us know more about this association and others with a view to working with them in future. We intend to increase contact with local electronic law practitioners and others (such as SAPS investigators with its Commercial Crimes team).

The Chairperson attended a Cyber Crime Conference and met various people from other countries, apart from chairing one day of the conference. It seems also that we will be invited to participate in future meetings of a Pan-African committee which is currently being set up.

We met the researchers who are 'polishing' the pending data privacy legislation which should reach its final form by late this year. The profession should lead in the adoption of personal data privacy principles as this will, we believe, become a 'hot' topic this year, together with consumer rights generally.

We have commented, as and when requested on a pending

High Court application to allow electronic submission of documents for court purposes and will continue involvement as and if requested by the LSSA's Manco. It appears probable now that the Rules Board and the Department of Justice would like to develop rules for online access to our courts, as well as general interaction and we need to become involved more actively in such a process.

We have communicated with the High Court and Magistrate's Court Committees accordingly and will keep them involved. The Chairperson also met two senior representatives from the Justice Department who are involved in the so called E-Justice Project and will invite them to the next committee meeting to advise us on the steps already taken and to be taken. The State has begun to move much more quickly in this regard, and we must keep the profession involved.

We must also try to enable practitioners to acquire and use the e-tools and skills that will be required to empower them properly for practice in the 21st century. L.E.A.D will be very important in this regard.

We have made contact recently with key people in the State Information Technology Agency (SITA) (the State's information technology manager) and will invite a senior SITA representative to address our committee on progress made and future plans. They are interested in collaboration with the profession.

WE WILL CONTINUE TO

- assist and advise the LSSA and any of its committees whenever requested;
- work with the LSSA and the other formal structures on useful ideas. For example, we are currently involved in investigating a video-conferencing system that would be as interoperable as possible and should save considerable time and money if implemented;
- work with business development and practice support managers of the law societies to spread ideas and provide assistance as widely as possible;
- provide reports or comments on behalf of LSSA when necessary especially in respect of developing legislation such as the forthcoming Personal Data Privacy Act; and
- engage Government proactively and contribute to the development of South Africa as a modern information technology-based society.

Gavin McLachlan

Chairperson, E-Commerce Committee

ENVIRONMENTAL AFFAIRS

The Committee on Environmental Affairs consists of Norman Brauteseth; Ilan Lax; Joseph Mhlambi; Bongji Mpitso; Jerome Mthembu; Bulelwa Ndamase; Steven Raney; Catherine Warburton and Terry Winstanley (Chairperson).

There were many pieces of draft environmental legislation which were considered by the committee this year. In particular those related to environmental management generally, waste management, protected areas and marine and coastal zone management.

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 members of the LSSA regarding environmental law.

In order to achieve those ends, this year, the committee met once and made representations to the Parliamentary Environmental Portfolio Committee on the National Environmental Management Laws Amendment Bill, 2008, dated 20 May 2008. In particular, we directed our comments towards those aspects of the law, as then drafted, that we felt would not result in an improvement of the law.

The most recent draft of that amendment Bill suggests that our comments were considered and taken into account.

Next year we will aim to have two meetings, one of which will be a workshop for committee members and possibly other members of the LSSA, if that is considered appropriate.

Terry Winstanley

Chairperson, Committee on Environmental Affairs

ETHICS

By far the most important issue considered by the Ethics Committee in the past year was the impasse in the Law Society of the Northern Provinces regarding the appointment of councillors. Arising out of this and on the instruction of the three-person committee appointed by the LSSA in terms of the resolution of the LSSA Council in August 2008, the following *Draft Protocol for Councillors of Law Societies* was prepared by Krish Govender, the Chairperson of the Ethics Committee of the LSSA. It was circulated to all the LSSA constituents for comment:

The LSSA has identified the need for a national protocol for all councillors which will address all realisable problems that could affect the good governance and functions of the law societies and related structures. This protocol is in the national interest and for the good name and reputation of the legal profession. In the national interest, the LSSA believes that all citizens should feel secure in the knowledge that the operations of the law societies are transparent, responsible and accountable, and are managed by officials and lawyers in whom they can have full confidence and faith.

With the above in mind, the LSSA proposes that the draft protocol should contain the following guidelines:

1. Any persons nominated or appointed as a councillor to serve on any council of a law society shall declare all previous convictions and, furthermore, disclose particulars of any matter(s) in which he/she might be the subject of investigation or which may be pending before any disciplinary committee, or any court of law. Full details of the nature and date of the offence and the sanction, if imposed, must be disclosed.
2. The above disclosures must be made before there is acceptance of any prospective councillor onto any council of a law society.
3. All councillors shall affirm their unequivocal commitment to all the codes of conduct and good practice [that constitute official documents adopted by all or any of the law societies] before accepting appointment to a law society council. Where an attorney has prior convictions in a court of law or disciplinary tribunal, he/she shall declare whether the sanction has been complied with and whether he/she has been properly rehabilitated in respect of such offence(s).
4. All councillors shall, furthermore, affirm and commit to uphold all the rules that advance professional good conduct and ethics in all their deliberations and dealings with the council.
5. The council shall consider the disclosed offences with regard to, *inter alia*, the following considerations:
 - 5.1 the nature and seriousness of the offence(s);
 - 5.2 whether the offence(s) relates to the honesty and integrity of the prospective councillor;
 - 5.3 whether the offence(s) relates to the diligence of the prospective councillor in the handling of his/her affairs or the affairs of his/her clients;
 - 5.4 whether the councillor has taken appropriate measures to rectify such conduct and behaviour, and displays a measure of contrition for the commission of such offence(s);

- 5.5 the perceptions and views that the public might reasonably hold with regard to whether the prospective councillor is a fit and proper person to hold the office of a councillor;
 - 5.6 the imperatives of both rehabilitation and transformation, and the role that the prospective councillor has played in both the profession and the community (broader society);
 - 5.7 any other relevant information and considerations with regard to the offence(s) that the council may deem reasonably necessary for such purpose.
6. Any prospective councillor who makes any disclosure for the above purpose and provides any further information shall be entitled to be assured that such disclosures and information shall be dealt with in confidence, expeditiously and in a dignified manner.

There have been many submissions but, to date, the draft protocol has not been finalised and adopted all by the constituents.

Some of the other issues discussed by the committee were the following:

1. IBA General Principles for the Legal Profession adopted by the International Bar Association.
2. Rules of Professional Conduct and Etiquette of the Tanganyika Law Society.
3. Code of Ethics for Legal Practitioners.
4. Should the issue of advertising be revisited in view of the touting implications?

GENERAL

There are many serious challenges that the legal profession faces throughout the world as a result of the global economic meltdown which is bringing in its wake widescale poverty and unemployment. A fundamental question arises in relation to the causes of this catastrophe, namely, how did the heads of the major multinationals, big banks and other companies get away with such massive misrepresentation and manipulation of their books of account? This could not have been done without the collusion of accountants/auditors and lawyers. The ethical standards for big business are as good as non-existent. The auditors seem to use ethical rules as mere guidelines. The King Commission has come up with 'recommendations'. All of this should alert us to the campaigns that are underway to squeeze ethics out of our daily practices such that hard rules become 'paper walls', that is, a sophisticated camouflage for compromising the rights of clients for the benefit of the big giants in the legal profession.

Every big merger of legal firms brings with it grave risks if these merged firms do not shed clients who were the opposition. However, the pressure to keep all the clients under the same roof is great, otherwise the merger could be in jeopardy.

Are the law societies able to monitor this? Are they not too small for the big giants? More often it is the poor, single practitioner and the small and medium-sized firms that are the ones to fall foul of the consequences of any breach of ethics and professional rules of the law societies. The large firms are organised and prepared for any query or enquiry. A look at the role of lawyers who advise the big companies that are regularly found guilty by the Competition Commission, raises questions. Very often they are accused of delaying or 'filibustering' to delay justice. We need to ask these questions as the large firms of lawyers have become centres of power within the profession and, therefore, difficult to challenge as regards the good, old-fashioned values of fair play and integrity.

Krish Govender

Chairperson, *Ethics* Committee

EXAMINATIONS

Practical examinations in attorneys' practice, notarial practice and conveyancing practice as prescribed by the Attorneys Act, 1979 were written twice during the period under review in the various centres. Because the procedures relating to these examinations have now been properly established and because the panels who prepare the examination papers had been fixed in the previous year, it was not necessary to have a formal meeting of the Examinations Committee.

On the whole all of the examinations went off without a problem. An exception to this occurred in KwaZulu-Natal when the attorneys' practice examination had to be postponed because a student strike on the morning of the examination prevented candidates from entering the venue. An emergency telecom of the Examinations Committee decided that the examination would be postponed and that one of the examination papers which had been set for the next year would be used for the postponed examination. With the help of the KwaZulu-Natal Law Society all of the affected candidates were informed of the new date and venue in time and the examination finally went off without a hitch.

It became clear that no contingency plan is in existence to cover this type of mishap and I recommend that the incoming Examinations Committee considers the problem and puts a contingency plan in place to cover such eventualities.

The general feeling of the examiners throughout the country and of the Examinations Committee was that the papers were fair and that the overall pass rate, except in the conveyancing examination, was acceptable. The low pass rate in the conveyancing examination is an ongoing cause for concern and, during the year under review, various meetings were held with the roleplayers involved in setting and marking the examination papers. Some of these meetings were attended by senior officials from the Deeds Offices. The consensus at these meetings was that, while the examination papers constituted a fair test of the candidates' knowledge, the failure rate can be attributed to lack of proper preparation and training and the lack of application on the part of the candidates. The Examinations Committee also considered the question as to whether it should be made compulsory for candidates in the conveyancing examination to attend a compulsory course. It was decided that this would not be practical and that, in any event, the Attorneys Act would have to be amended in order to make the attendance at such a course compulsory prior to writing the examination.

The number of candidates who write these examinations is increasing every year. This particularly relates to the attorneys' practice examination. The increasing number of candidates places a heavy burden on the officials of the Law Society of South Africa and the various provincial law societies who are responsible for the administration of the examinations. I must express my thanks to these officials – and particularly to Tasha Roestoff of the LSSA – for their hard work without which it would not be possible to run the examinations efficiently.

The Examinations Committee is of the view that the procedures that are now in place relating to the various examinations are adequate, particularly insofar as they relate to the security of the question papers and the manner in which they are distributed.

Chris Petty

Chairperson, *Examinations* Committee

EXCHANGE CONTROL AND TAX MATTERS

The key objective of the Committee on Exchange Control and Tax Matters is to assist the LSSA with the formulation of representations on and responses to tax and exchange control issues relevant to the profession.

The most public of the issues recently addressed is the proposed regulation of the attorneys' profession under the guise of the proposed Regulation of Tax Practitioners Bill. In its original form it included, within the scope of the definition of a 'tax practitioner', a great number of attorneys who in their everyday professional lives would have very little to do with tax. The LSSA, guided by the committee, has filed strong and motivated objections to this Bill over a number of years and members of the committee have represented the LSSA at various discussion groups and workshops with the South African Revenue Service and National Treasury. As is apparent from the current draft of the Bill, we have achieved a measure of success when considering the proposals in the first draft.

On a far less glamorous level, the committee responds on an annual basis to the draft tax and revenue Bills. As it happens, the committee is now in discussions with National Treasury to formalise our exchanges in this regard in order to allow more time for comment and improve the quality of the legislation.

I wish to emphasise that the LSSA input is not confined to the dry technicalities of revenue legislation. It is frequently directed at protecting the constitutional values, which are often overlooked in revenue legislation. Access to the Tax Court, which is under the control of SARS, is a current issue under discussion. To the extent that we are able to make a contribution to the technical quality of even the dry aspects of revenue legislation, we are acting in the interest of the public in general and of the profession in particular.

As has become customary, the committee continues to receive and deal with suggestions from members of the profession. In this regard, members are again invited to communicate with the committee through the offices of the LSSA.

Henry Vorster

Chairperson, *Committee on Exchange Control and Tax Matters*

FINANCIAL INTELLIGENCE CENTRE ACT (FICA)

The members of the LSSA's Financial Intelligence Centre Act Committee are Marelise van der Westhuizen (Chairperson), Mervyn McKay, John Anderson, Leon Rousseau and Raj Badal.

No meetings of the Money Laundering Advisory Council were held in this calendar year. Accordingly, members of the committee did not attend these meetings.

Throughout 2008 the committee, on behalf of the LSSA, liaised with the media, attorneys and the Financial Intelligence Centre (FIC) regarding FICA and its practical implementation.

During May 2008, the committee considered the Financial Intelligence Centre Act Amendment Bill, liaised with Mr Trengove SC and Mr Cockrell from the Johannesburg Bar, prepared submissions to the Parliamentary Portfolio Committee on Finance on behalf of the LSSA and presented those submissions on 7 May 2008. The committee also took charge of liaising with the media in regard to the Amendment Bill and the impact it will have on the profession, and assisted in the preparation of articles for publication in *De Rebus*.

The Chairperson of the committee, along with Law Society for the Northern Provinces representatives, Selemeng Mokose and Gustav Radloff, attended a meeting in June 2008 with the Banking Council to discuss and agree on a response to circulars distributed by the major banks to their panel attorneys dealing with charges raised by those attorneys for performing FICA compliance obligations on behalf of the banks.

The Chairperson of the committee attended a meeting with representatives of the Financial Action Task Force (FATF) during the FATF's country visit to South Africa when the profession's compliance with FICA was debated at length and difficulties experienced by the profession raised.

My thanks to all members of the committee for their contribution during the period under review.

Marelise van der Westhuizen

Chairperson, *Financial Intelligence Centre Act* Committee

FOREIGN QUALIFICATIONS

The Committee on Foreign Qualifications met once during the year under review. This meeting was a joint meeting with the LSSA's GATS Committee.

It became clear during the meeting that considerable confusion surrounds the question as to which foreign qualifications are acceptable in terms of the Attorneys Act, 1979 for a foreigner to be admitted as an attorney. The meeting decided that the provisions of the Attorneys Act are clear and that only persons who are South African citizens or who have permanent residence in South Africa can become admitted as attorneys, and that only certain foreign qualifications in designated countries are sufficient to enable a prospective attorney to be admitted as such. The problem, however, arose because it is possible for a foreigner to enter into articles of clerkship and also to attend the School for Legal Practice.

The meeting decided that the law societies should be requested to advise prospective candidate attorneys at the time when they require their contracts to be registered of the specific provisions of the Attorneys Act relating to requirements for admission as attorneys, and that a foreign degree does not necessarily entitle a person to be admitted as an attorney.

Consideration was also given to re-establishing the panel to assess the standard of a foreign qualification. This, however, will require new legislation, and it was proposed that a joint meeting should be held between the Gats Committee, the Foreign Qualifications Committee and the Department of Justice in order to discuss this matter. This meeting has, to date, not been held. It involves not only foreign qualifications but also various Gats implications.

Chris Petty
Chairperson, Committee on Foreign Qualifications

GENDER EQUALITY

The Committee on Gender Equality had two face-to-face meetings and one telecon for the year under review. The other meeting was a joint meeting with the Family Law Committee. The Chairperson also attended the meeting of the chairpersons of committees at the end of July 2008.

The committee had planned to co-host a family law conference with the Family Law Committee. This was to take place during the month of November as part the

Sixteen Days of Activism of No Violence against Women and Children. This, unfortunately, failed because of problems relating to budget. The conference was to address the developments in the field of family law and the developments around pension law. As a preparation for the conference the committee invited the South African Women Lawyers Association (SAWLA) to one of its meetings. The purpose of inviting the Chairperson of SAWLA was to identify issues of common concern jointly and to develop programmes that will encourage joint participation.

Members of the committee took part in the Access to Justice Week that was organised by the Department of Justice and SAWLA during the month of August. During this week, attorneys went into communities and gave legal advice to members of the community at no cost. Members also rendered free services to clients at family law courts.

The committee agreed that the development and empowerment of female attorneys stays on top of its list of priorities. It was agreed that the LSSA Manager of Professional Affairs would collect data from provincial law societies and develop a questionnaire that would investigate the fields of law that most women practise in and also determine why many women attorneys do not practise in the more lucrative fields of law. Once this data has been collected, a way must be found to introduce women attorneys into fields of law that will help them to sustain their practices.

In order to encourage transformation, the Manager of Professional Affairs was to collect data from the six constituent members of the LSSA and establish the composition of their leadership and encourage them to raise the level of female representatives to reflect the demographics of the country.

The committee is of the view that the conference that was aborted in 2008 should still be held as it is a step towards empowering and affirming attorneys in the family law field where most women are involved.

I would like to thank the members of the committee for their commitment and hard work and wish them a fruitful year.

Nobulawo Martha Mbhele
Chairperson, Committee on Gender Equality

GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

At the AGM of the LSSA in March 2008, the Standing Committee on GATS was reconstituted by Council with the following members: Esmé du Plessis (Chairperson), Iqbal Ganie, Krish Govender, Edward Ngubane; Silas Nkanunu, Wilfred Phalatsi and Vincent Saldanha (until July 2008). Peter Levenberg of the Johannesburg Bar represents the General Council of the Bar on the committee. Furthermore, in the past, meetings frequently were in the form of joint meetings of the GATS Committee with the LSSA Committee on Foreign Qualifications.

In addition, both the Department of Trade and Industry (DTI) and the Department of Justice and Constitutional Development were represented at committee meetings.

BROAD MANDATE

The committee, when it was initially created in 2002, was given the following broad mandate:

- to make a study of the GATS agreement (the General Agreement on Trade in Services) of the World Trade Organisation (the WTO);
- to 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;
- to meet with representatives of DTI and other government departments (such as the Department of Justice and Constitutional Development) and other role players (such as the GCB), and to participate in the formulation of an official position in regard to legal services;
- to 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 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
- to report to the LSSA on these matters.

The Chairperson attended the meeting on 31 July 2008 convened for the LSSA Directorate to address committee chairpersons to discuss protocol, policy and strategy matters. The committee was identified (for the time being) as a committee of particular relevance to the LSSA, mainly

due to the potential impact of the issues with which the committee dealt. This means that the committee is privileged to have, and can enjoy the benefit of, the attendance of its meetings by the Co-Chairpersons.

ACTIVITIES OF THE COMMITTEE

In the run-up to the WTO Ministerial Meeting in Hong Kong in December 2005, the committee had to meet frequently to carry out its mandate. This was an extremely active period for the committee, as is evident from its reports for 2005 and 2006.

When the Doha Round of negotiations was suspended after the Hong Kong meeting, which negotiations would have had an effect on the implementation of the next phase of the GATS agreement, the activity around GATS came to a virtual standstill. No further developments on international level took place which required the attention of the committee, as appeared from the 2007 report.

A bilateral matter in the area of legal services came up during 2008, on which the Department of Justice required the advice of the LSSA. The committee accordingly had a meeting on 9 April 2008 to address a proposed Memorandum of Understanding to provide for cooperation in the legal field between South Africa and the People's Republic of China.

On the basis of the deliberations a Memorandum with recommendations was submitted to the LSSA Council. In formulating the committee's recommendations, the following factors were taken into account:

- The need to preserve national regulation of the legal profession.
- The importance of skills transfer.
- The principle of the independence of the judiciary.

FUTURE WORK

The committee monitors developments in the international arena. Once the WTO negotiations are resumed (which is expected during 2009), GATS issues will be high on the agenda and the GATS Committee will have to become more active again.

Another matter which was raised at its previous meeting, is the need to address the issue of cross-border practice of lawyers within the SADC region.

Finally, once progress is made with the Legal Practice

Bill, the committee will have to meet again jointly with the Committee on Foreign Qualifications to ensure that the issue of the recognition of foreign qualifications and 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: GATS Committee

HIGH COURT MATTERS

Apart from actively participating in the programmes of the LSSA Costs Committee to secure an urgent increase in the statutory party-and-party tariffs as contained in, *inter alia*, the High Court Act, the 2008 plan of the High Court Matters Committee focused mainly on practical issues relating to High Court practice.

One face-to-face meeting was convened, whereas a number of teleconferences were held during which urgent and actual matters were discussed and dealt with.

Two specific practical matters relating to High Court practice were brought to the fore and also discussed with the Chief Justice at the two meetings held by him with representatives of the Heads of Courts, the magistracy and the organised legal profession, namely

- delays in obtaining trial dates in the various jurisdictions;
- delays in allocation of dates for and finalisation of taxations.

The ultimate responsibility for ensuring speedy finalisation of litigation and the determination of costs arising from litigation lies with the Judges President of the various divisions of the High Court. Circumstances and factors influencing these two aspects differ from jurisdiction to jurisdiction, and the organised profession has informed the Chief Justice that it would gladly participate in all initiatives aimed at reducing the backlogs relating to finalisation of trials and taxations.

To achieve this, the organised profession has to make a contribution; and for that purpose, attorneys practising in the various jurisdictions have been engaged to assist the committee in compiling data with regard to the status of allocation of trial dates and finalisation of taxations in their jurisdictions. All attorneys practising in the High Courts of the country have been requested to participate.

The committee also had cause to consider, debate and comment on the following:

- the impact of the Jurisdiction of Regional Courts

Amendment Bill on the High Court practice;

- the determination of venues for attendance of rule 37 conferences where counsel and attorneys attend (referred to the committee by the KwaZulu-Natal Law Society);
- the Re-naming of High Courts Act, 2008;
- the introduction of a marriage and divorce database;
- the Consumer Protection Bill;
- the South African Law Reform Commission (Project 25): General Statutory Law Revision;
- the South African Law Reform Commission Project on the Revision of the Law of Evidence, with specific reference to hearsay and relevancy;
- the Judicial Matters Amendment Bill; and
- integrated case management (Electronic Communications and Transactions Act 25 of 2002).

The last-mentioned aspect, inasmuch as it relates to the so-called 'online' courts project and the e-service of court documents, was pertinently discussed by the chairpersons of the High Court and Magistrate's Court Committees and Gavin McLachlan of the E-Commerce Committee subsequent to the closure of the annual LSSA Chairpersons meeting. A number of ideas were exchanged with regard to the impact of the Act on court practice and, more particularly, the practicalities and realities of e-service of court documents. In the subsequent exchange of correspondence, reference was made to the fact that the traditional role of lawyers will change in future. In particular reference was made to the challenge which Richard Susskind, Emeritus Professor of Law at Gresham College, has laid down to all lawyers:

How can the role of the traditional lawyer be sustained in coming years in the face of challenging trends in the legal market place and new techniques for the delivery of legal services?

In that regard the author states as a fact that information technology will shape and characterise 21st century legal services.

The organised profession in South Africa will have to come to grips with the fact that the online exchange of pleadings (and issuing of court process) via the Internet will become part of everyday court practice in the very near future. These developments imply that court practitioners will have to adapt or die. It is understood that the profession will, in due course, be requested to comment on draft rules relating to the e-service of court documents.

Etienne Horn

Chairperson, Committee on High Court Matters

IMMIGRATION AND REFUGEE LAW

During the year under review the relationship between the organised legal profession and the Department of Home Affairs has been a reasonably proactive one, despite the Department's falling levels of service delivery and despite the initiation of the Ministerial Turnaround Task Team and its recommendations which have formed the basis of most of the interactions between the profession, the Ministry of Home Affairs and the Department of Home Affairs.

This has made for an extremely active year for our committee.

During the course of this year we met on two occasions with the Director-General's office in an effort to continue engaging with the Department of Home Affairs at the highest level. We have also met at provincial and regional director level on several occasions.

While these meetings have been cordial, it has ultimately been on service-delivery issues that the biggest headaches have continued for practitioners.

During this year two joint workshops were held with Lawyers for Human Rights on refugee issues. These were extremely well attended by a broad spectrum of participants including Refugee Status Determination Officers and senior members of the Department of Home Affairs, attorneys, candidate attorneys and other interested parties.

The committee has continued to meet on an ongoing and regular basis and has been taking advantage of the opportunity to meet at relatively short notice via telephone conferencing.

Key committee members have continued to appear regularly as panelists and commentators on television, radio and in the print media, and have continued to contribute articles to *De Rebus*, the provincial law society newsletters and numerous other prominent publications.

We have also, on an ongoing basis, kept attorneys updated on the latest developments regarding policy, regulatory or other changes that have taken place by utilising e-mail as a convenient medium for updating. Court decisions and court orders that have been handed down have similarly been circulated to practitioners as soon as we received these, as well as the minutes of all Home Affairs Portfolio Committee meetings which have kept the profession in the loop as regards what is transpiring at that level.

The committee has interacted during the course of the year with the Ministerial Turnaround Task Team and specifically with the committees and task groups that are dealing with permitting and refugee affairs, on the one hand, and enforcement and corruption issues on the other.

The committee will continue to engage at this level in the coming year.

We were given the opportunity during the year to give input on relevant sections on the Standard Operating Procedures Manual which has been drafted by the Department of Home Affairs and which will, hopefully, come into operation in the foreseeable future.

Significantly during this year under review input was given by the committee on the Draft Refugees Amendment Bill. In addition, oral representations were made to the Portfolio Committee on Home Affairs at Parliament where the Refugees Amendment Bill was discussed.

Several interventions by the committee during the year under review have also brought about significant changes. These have included, *inter alia*, the following:

- Attempts by the Johannesburg Regional Office to prevent candidate attorneys and/or messengers or couriers from lodging applications on behalf of their principals.
- Intervention at head-office level of the Department on the issue surrounding corporate permits and the abuse of these by so-called 'labour brokers'.
- A removal of the insistence by the Department of Home Affairs that individual corporate worker applications would have to bear the disbursement of R1 520 in respect of the Home Affairs administrative fee, even though this is not provided for in the immigration regulations.
- Liaising with the Department of Trade and Industry and Department of Home Affairs preventing an investment facilitation NGO from conducting an immigration practice while also being a certifying body in respect of business permit applications.

We look forward to an exciting 2009 and 2010 in the field of immigration and refugee law given the influx of foreigners into the country for the much-publicised soccer world cup.

Julian Pokroy

Chairperson, Immigration and Refugee Law Committee

INSOLVENCY AND LIQUIDATION MATTERS

The year under review has been an eventful one for the insolvency industry. The Department of Justice and Constitutional Development convened two stakeholders meetings and proposed a draft charter in order to help us regulate the insolvency industry.

Our committee presented counter-proposals to the draft charter which was circulated to all attorneys via their respective law societies. This draft was based on the Legal Services Sector Charter that was adopted by the LSSA in December 2007.

Comments and criticisms were received from members of the legal profession and, after consideration of these, the final draft Insolvency Sector Charter dated October 2008 was presented to the LSSA Council.

However, the Council decided not to adopt this charter for the following reasons, namely

- not all insolvency practitioners are attorneys; and the LSSA, therefore, cannot engage on issues pertaining to non-attorneys; and
- the LSSA had already adopted the Legal Services Sector Charter and felt that this charter served the needs of its members adequately, even in regards to insolvency.

Notwithstanding, the final draft has been well received both by the Association of Insolvency Practitioners of South Africa (AIPSA) and Association for the Advancement of Black Insolvency Practitioners (AABIP) where the membership of both organisations includes attorneys who practise insolvency.

Our final draft Charter is presently with the said organisations for consideration. Upon adoption of this Charter, many of the concerns expressed in the industry, more especially the requirements for admission onto the Master's panel, mentorship, transfer of skills, practice compliance, fronting and cheque collecting etc will be fully addressed.

The Insolvency Sector Charter would lend stability, uniformity and credibility to the industry, and would promote a better working relationship with all the Master's Offices.

Ranjith Choonilall

Chairperson, Committee on Insolvency and Liquidation Matters

INTELLECTUAL PROPERTY

At the AGM of the LSSA in March 2008 the committee was reconstituted by the Council, and the following members were reappointed on the LSSA Committee on Intellectual Property:

Esmé du Plessis (Chairperson), Dan Badenhorst, Dr Tim Burrell, Dr Owen Dean, Pumzile Majeke, Yvonne Mbatha, Madala Nxumalo and André van der Merwe.

The committee members were informed in 2005 that the committee had been classified by Council as an *ad hoc* committee. It is understood that an *ad hoc* committee only needs to convene meetings when issues arise which need to be addressed. Furthermore, an *ad hoc* committee can perform its task by way of telephone conferences or by correspondence.

At the meeting of the committee on 22 February 2008, it was informed that the status had been changed; and the Committee is now a standing committee. This notwithstanding, the committee decided that meetings would be arranged only as and when required by circumstances or developments in the area of intellectual property (IP) law.

BROAD MANDATE

In the past, the mandate of the committee was determined by Council. The chairperson attended the meeting on 31 July 2008 convened for the LSSA Directorate to address committee chairpersons. At this meeting certain committees were identified (for the time being) as committees of particular relevance. This Committee was not included in that list.

Committees were requested to submit proposals for alternative plans of action. Since the committee was satisfied with its existing mandate, and in the absence of contrary directives from Council, the committee conducted its affairs also during 2008 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 of these on the legal position in South Africa, on attorneys in South Africa, and on the structures within the organised profession;
- to participate, as far as this is necessary or appropriate, on behalf of the LSSA in initiatives and projects having a bearing on intellectual property, such as the meetings

of the Joint Liaison Committee (of which the committee is a founding member) with the CEO and other officials of CIPRO (the Companies and Intellectual Property Registration Office); and

- to meet, as and when required, to consider and assess issues within the area of or impacting on intellectual property, to draft and submit comments as and when deemed necessary, or to recommend other appropriate action.

ACTIVITIES OF THE COMMITTEE

It should be borne in mind, in assessing the activities of the committee, that it is a specialised committee responsible for a specialised area of law in which legislative changes do not occur regularly.

Developments on international level

In view of the suspension during 2008 of the Doha Round of negotiations of the World Trade Organisation, which could have and in the past did have a bearing on IP rights, there were no developments on the international level which obliged South Africa to effect national legislative changes.

Developments on national level

Two significant developments of relevance in the IP field occurred during 2008:

- A draft IP Amendment Bill, with a supporting policy document, was made available to the IP profession on an informal basis for consideration and comment.
- The Bill sought to amend four existing IP statutes to introduce provisions for the protection of certain manifestations of traditional knowledge. This draft Bill was submitted to the committee and considered at its meeting on 22 April 2008 (see below).
- The Bill and Policy Framework were subsequently published by way of General Notice 552 of 2008 in *Government Gazette* 31026 of 5 May 2008, for public comment.
- A General Notice no 1791 was published in terms of the Merchandise Marks Act 17 of 1941 in *Government Gazette* 30595 of 14 December 2007, declaring as prohibited marks a number of different words, phrases and emblems that FIFA had applied for to be declared prohibited marks for purposes of the 2010 FIFA Football World Cup event. Although there were certain fundamental shortcomings in the notice as published, these were being addressed by FIFA and by the Minister's Standing Advisory Committee and, since the notice did not have a direct impact on legal practice, no further action was deemed necessary.

MEETINGS OF THE COMMITTEE

During 2008 three meetings of the committee were held:

On 22 February 2008: the following legislative developments were considered:

- Regulations under the Environmental Management: Biodiversity Act, 2004 (to regulate bio-prospecting and related use of traditional knowledge and use).
- Draft IP Amendment Bill, 2007 and supporting Policy Document (to provide protection for traditional knowledge).

On 11 April 2008: After having considered the Draft IP Amendment Bill, 2007 the committee was not unanimous on how it should be dealt with. The committee took into account that the Bill had, at that stage, not been officially published for comment. The committee, in principle, supported the need for the protection of traditional knowledge/intellectual property. However, it resolved that the Bill in its current format could not be supported since it was in conflict with well-established and basic principles of intellectual property law. Such a piece of legislation might undermine South Africa's international IP relations.

Protection for aspects of Traditional Knowledge should be provided for in a different format, eg in *sui generis* legislation or at least in separate chapters in the existing IP Acts. It was recommended that independent professionals/consultants, with expertise in IP law, should be appointed to draft such legislation.

For this reason comments on the Bill in its current format would not be submitted. The above was put to a vote and 6 were in favour with 1 vote against and 1 abstention.

On 29 August 2008: At this meeting the following matters were considered and/or followed up:

- Developments regarding the draft IP Amendment Bill.
- Bill on IP Rights from Publicly Funded Research and Development.
- Publication of prohibited marks under the Merchandise Marks Act, 1941: FIFA World Cup.

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 2009 and the committee will be on the look out for these. The anticipated Bills include

- the IP Amendment Bill (on Traditional Knowledge);
- Trade Marks Amendment Bill (to introduce the Madrid Protocol system);
- Designs Amendment Bill (to introduce the Hague Agreement system); and
- Patents Amendment Bill (to introduce the WTO/Doha compulsory licence model).

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.

Esmé du Plessis

Chairperson: Intellectual Property Committee

JOINT COMMITTEE OF ATTORNEYS AND ACCOUNTANTS

I was appointed Chairperson of the Joint Committee of Attorneys and Accountants on 16 July 2008.

There is usually one meeting held with the accountants each year, and this year it was held on 15 July 2008.

In my opinion, it was the most successful meeting since, for the first time, the accountants understood our position. The Independent Regulatory Board for Auditors (IRBA) had technically taken over from the South African Institutes of Chartered Accountants (SAICA) in relation to the audit requirements. It was agreed what the accountants' duties and responsibilities were regarding the standards to be applied when performing the audit of attorneys' trust accounts.

The rationale behind their appointments, taking into consideration that their costs are paid to them indirectly by the Attorneys Fidelity Fund, appears to be clearly understood by them. Agreement was reached to standardise the format of the Assurance Report required for attorneys' trust accounts.

The establishment of IRBA in 2007 transferred the review and update exercise from SAICA to IRBA. The latest position is that IRBA will be drafting a new set of guidelines, procedures and an audit report for consideration and presentation to our committee and to the legal profession. It was anticipated that these would apply from the end of February 2009.

The Reform Audit Support System (RASS) project, piloted in KwaZulu-Natal and now accepted elsewhere, is being discussed substantially on an ongoing basis.

A report-back by the Attorneys Fidelity Fund is always part of the committee's agenda.

A second meeting was held on 17 September 2008 at the instance of IRBA where it was confirmed that the way forward was the development of a South African Auditing Practice Statement (SAAPS) to replace the present SAICA Guidance for Auditors: The Audit of Attorneys Trust Accounts, in terms of the Attorneys Act 53 of 1979 and the applicable rules of the statutory law societies.

A matter that is still to be debated is where SAICA fits in now that IRBA has taken over. This is expected to be clarified at the next meeting.

This report is brief as, for the first time, the auditors are ad idem as to what the objectives of the JAAC are and it was expected that the Audit of Attorneys Trust Accounts would be standardised from February 2009.

Iqbal Ganie

Chairperson, Joint Committee of Attorneys and Accountants

LEGAL AID

The Legal Aid Committee held four meetings during the 2008 year. The members of the committee are Nontuthuzelo Mimie Memka (Chairperson), William Booth, Jan Maree, Johann Gresse, Ebi Moolla, Phinda Shembe and Maake Kganyago.

The fourth meeting was a joint meeting between the committee and the Chairperson and Management of the Legal Aid Board (LAB).

The Chairperson of the committee also attended a meeting of the Committee Chairpersons of the LSSA on 31 July 2008.

The issues of concern to the committee were discussed with the LAB Management and its Chairperson, and at that meeting it was resolved that the committee and the LAB's senior management would hold a meeting once every year to discuss issues that were of common concern and attempt to keep channels of communication open between the profession and the LAB through these joint meetings.

The principle issue discussed and addressed by the meetings of the committee, as well as the joint meeting with the Legal Aid Board Management, was a qualitative output of the LAB's service delivery. While it appears that significant controls appear to be in place at the LAB to monitor issues of quality, there nevertheless appears to be concern addressed by some members of the profession on this issue which the Management of the LAB as well as the committee have agreed to address on an ongoing basis. In addition, the profession has offered its assistance to the LAB in respect of training.

The Chairperson thanks all the members of the committee for their participation and commitment to the committee.

Nontuthuzelo Mimie Memka

Chairperson, Committee on Legal Aid

LEGAL PROVIDENT FUND

The Legal Provident Fund (LPF) exists to provide retirement benefits to the legal profession (attorneys, advocates and their members of staff) in a cost-effective way.

I have been a Trustee of the LPF for a number of years and have concluded an eventful first year as its Chairman, with an ever-changing regulatory environment and a tumultuous period in the equity markets. I took over from Mike Pinnock, who had been the Chairman since 1994. Fortunately, we did not lose his vast experience as he agreed to act as an independent trustee.

A new face who joined the management of the LPF is Erika Nieuwoudt who became the Principal Officer. She took over from Ros Elphick who had been in the position since 2000. Ms Nieuwoudt has a *BProc* and an advanced diploma in labour law and pension law, and has been employed in the pension funds industry for many years. She has served on various industry committees and tribunals and has been invited to speak at a number of national conferences. She is a regular invitee to the programme *Financially Speaking* on Radio 702 and provides legal consulting to some of the larger retirement funds in the industry.

In 2007, the Financial Services Board issued a rigorous list of requirements for the sound operation of a board of trustees in a circular PF 130. Part of PF 130 requires that all boards of trustees put in place a documented code of conduct, which outlines its duties and obligations, a fund-specific investment policy statement and a communication strategy to members. During the year at its various board meetings,

together with Alexander Forbes (the Administrator to the LPF), the Trustees have been working on the implementation of these policies.

As I mentioned at the start of my report, there has been a global financial crisis which affected South Africa's investment markets. While prospects for financial markets remain uncertain in the short term, aggressive international stimulation policies will hopefully pull the world out of the current downturn in the not too distant future. This current uncertainty means that members' retirement savings are fluctuating in value in line with the market. Past experience has shown that it is not appropriate for trustees to react to short-term volatility as retirement saving is a long-term plan. This is because the members' retirement savings are invested in such a way that these investments grow in the long run and this means that members may experience poor and negative returns in the short run. Given the considerable volatility in market prices on a daily basis, it could be unwise for members to elect to switch out of their market-related investments as they may exit at the bottom just prior to a rebound in market prices.

With regard to the marketing of the LPF to firms who do not presently participate, the Trustees decided to promote an inclusive approach whereby the marketing would be undertaken under the auspices of the Law Society of South Africa (LSSA). This aligns with the LSSA's aim to promote the common interests of its members, having regard at all times to the broader interests of the public whom the profession serves. After working for the Alexander Forbes administrators, Ros Elphick was appointed in a marketing role at the LPF with effect from December 2008. As part of this inclusive approach, the LPF has launched its own new website, which will have links to the various law society websites. Ms Elphick will be attending the law society and L.E.A.D conferences and seminars to promote the LPF. If you are not already a member of the LPF, please take the time to review the information on this valuable benefit for your employees. The Trustees believe that the LPF is the most viable retirement option for attorney firms and the results are beneficial to all parties as this responsible practice assists practitioners to attract and retain skilled workers, enhance productivity and create trust.

LEGAL PROVIDENT FUND TRUSTEES 2008/9

Andrew Stansfield (Chairman); Attorneys Fidelity Fund
Henri van Rooyen; Neumann Van Rooyen Sesele Inc
Raj Daya; Law Society of South Africa
Tony Thobane; S A Thobane

Jacques Malan; General Council of the Bar
 Thinus Grobler; Law Society of the Northern Provinces
 Kedibone Molema; Kedibone Molema Inc
 Gavin John; Kwa-Zulu Natal Law Society
 Edwin Letty; *Independent Trustee*
 Michael Pinnock; Tonkin Clacey Attorneys; *Independent Trustee*
 Vincent Faris; *Independent Trustee*

Andrew Stansfield

Chairperson, Legal Provident Fund

MAGISTRATES' COURTS

The committee met on three occasions during the course of this year at OR Tambo International Airport and held one teleconference. Numerous and various *ad hoc* issues were dealt with, but the main thrust and focus of the committee's meetings and activities related to communication with the Rules Board for Courts of Law, amendments to the rules and tariffs as well as the development and finalisation of a questionnaire to assist the committee in dealing with the Department of Justice on the issue of the administration of the Magistrates' Courts.

During the course of the year the LSSA received notification that the Rules Board was unable to consider the previous application made by the LSSA for an increase in the tariffs of the High and Magistrate's Courts as it required a fully motivated submission. The committee, together with the High Court committee, established the Costs Committee which then put together and submitted a fully motivated submission to the Rules Board. This submission was made during the middle of July and was supported by representations made by Etienne Horn who sits on both the LSSA Magistrate's and High Courts committees. Confusing messages regarding the progress of the submission through the Rules Board channels and the Department of Justice were subsequently received. Presently it appears that the Rules Board has now submitted recommendations to the Minister of Justice and Constitutional Development, and the outcome is awaited.

During the course of the last few years, a number of representations were made to the Rules Board in relation to various aspects of the Magistrate's Court rules, the need to amend same and furthermore the desirability of having a uniform set of court rules which apply to both High and Magistrate's Courts. The lack of response of the Rules Board was considered to be good reason for the committee to open channels of communication with it and on 8 October

2008 an opportunity to raise these issues presented itself when the Rules Board invited a delegation from the High and Magistrate's Court committee to attend a meeting with them in Pretoria to discuss the formulation of court rules for the Regional Magistrates' Courts which have been given civil and matrimonial jurisdiction in terms of the Jurisdiction of Regional Courts Amendment Bill, which was recently promulgated as an Act. The Rules Board is obliged to submit rules in this regard to the Minister of Justice within six months.

Prior to this meeting and in February 2008, the chairman of the committee, Graham Bellairs, attended the public hearing of the Portfolio Committee on Justice and Constitutional Development on the Bill to make submissions on behalf of the LSSA. The submissions in essence supported the granting of matrimonial and civil jurisdiction to Regional Courts, but they also expressed concern regarding the ability of the Justice Department to provide the necessary infrastructure both as regards the competency of magistrates to deal with these matters, and also clerical administrative support.

At a subsequent meeting convened by the Rules Board on 8 October 2008, further submissions were made by the committee. These included the need for the Rules Board to consider whether processes in execution would be issued out of and financial enquiries would be held in Regional Courts or whether such processes should remain with or be referred to the District Magistrate's Courts. The view was expressed that an equivalent to the High Court Rule 43 proceeding would also have to be incorporated in the Rules to deal with interim maintenance, access, custody and costs in matrimonial matters. The view was expressed to the Rules Board that, whereas in the short term, rules of court for the Regional Court would in all probability be based on the existing Magistrate's Court Rules, the need to adopt harmonised rules for High and Magistrate's Courts should be considered in the long term, and that the development of rules for the Regional Court provided an ideal opportunity for such implementation.

The response given at the meeting was that the harmonisation process was a long-term project which was being considered by a sub-committee of the Rules Board, and that progress in relation to the issue could be tracked on the Rules Board's website.

The October meeting also provided an opportunity for the committees to enquire into the progress of amendments to the rules on which comment had been submitted by the

committee during the past few years. The response received was that the Rules Board was presently dealing with them and that communication would be received from it on the matter shortly. As it happens, at the time of the preparation of this report, the Rules Board had submitted to the LSSA proposals with regard to the amendment of the rules for consideration. The committee will be responding to the Rules Board early in 2009.

The point was made at the meeting with the Rules Board that channels of communication have to be set up so that ideas and views can be exchanged and tested on both an informal and formal basis. The proposal was well received, but it remains to be seen whether the Rules Board actually adopts and acts upon the recommendation. It is submitted that these formal and informal channels of communication will facilitate the quick and effective amendment of the rules of court in the future.

The committee also recognised that the civil Magistrates' Courts throughout the country are operating below standard at various levels of incompetence. The need to engage with the Justice Department on this issue has been recognised and it was felt necessary that, in order to make effective representations, specific and factual information from the various magisterial jurisdictions throughout the country should be obtained. An initial questionnaire was formulated and circulated, but unfortunately the response to it was poor. The format of the questionnaire was revisited and the management of the process of collating was done. The contribution of the Law Society of the Northern Provinces in this regard is noted with thanks. This second questionnaire has been disseminated and attorneys were urged to ensure that as much information was recorded and returned to the LSSA.

Other matters which have had the attention of the committee include the application of the National Credit Act as well as an initiative to incorporate the electronic media as a means to exchange pleadings and notices.

Submissions have been made by the committee to the LSSA in relation to the appointment of specialists to consider and comment on voluminous or specialised legislation where such legislation is beyond the scope and capacity of the committee to make meaningful comment.

Finally, attorneys are welcome and invited to submit queries and comments of a general nature to the committee.

Graham Bellairs

Chairperson, Committee on Magistrates' Courts

PRACTICE DEVELOPMENT

The Practice Development Committee was established during the course of 2008 and was mandated to

- coordinate practice development activities nationally;
- investigate and determine specific practice development needs with particular reference to firms in the first five years of their business;
- design development proposals and submit these to the LSSA Council through the relevant committees of the profession;
- initiate and monitor the implementation of development programmes;
- draft a development model for the profession;
- perform its functions in consultation with
 - the Attorneys Insurance Indemnity Fund and the Attorneys Fidelity Fund;
 - the LSSA constituents;
 - the Standing Committee on Legal Education and the Practice Management Advisory Committee; and
 - other relevant bodies/persons; and
- capacitate members of the committee and other designated members with regard to the meaning and implications of the concept of 'practice development'.

The mandate arose from a strategic meeting held by the Practice Development Committee in June 2008.

The committee is still in its infancy and is in the process of finalising proposals for a model for practice development and support. It is concentrating on three categories of practitioners, namely

- newly admitted practitioners,
- practitioners who are within the first five years of practice, and
- established practitioners.

The committee is concerned with the mandatory practice management programme applicable to newly qualified practitioners and is concentrating on this aspect at present. During the course of 2009 it will extend the development of practice development programmes to the second two groups.

The practice management programme will include general management modules, risk management and insurance, finance and bookkeeping, systems and technology, practice administration, marketing, human-resource management and strategic management.

During the course of 2008 the responsibility for the establishment of the proposed Attorneys Development Fund became that of this committee. The committee hopes to bring this proposed initiative to fruition during the course of 2009 as this is a major priority.

One issue that the committee has paid attention to is the results of the national survey of the profession which has highlighted a number of areas of concern which the committee believes require attention. It is envisaged that these matters will form a substantial part of the committee's activities during the year.

David Gush

Chairperson, Practice Development Committee

PRO BONO

This report covers the activities and endeavours of the *Pro Bono* Committee for the year 2008.

The committee met three times during the period under review.

All the provincial law societies have employed *pro bono* coordinators, and the LSSA has appointed the long-awaited National Projects Coordinator, responsible for among other projects, the national *pro bono* project. We welcome the appointment of Matsoene Petunia Ramela and now look forward to accelerating the national *pro bono* roll out.

Our legal profession's commitment to *pro bono* has clearly elevated the profession in the public and government arenas. We need to accelerate the momentum of our national programme, which requires strategic coordination, facilitation and commitment from our members, the respective provincial law society directorates, the LSSA, and the Attorneys Fidelity Fund. We have no doubt that all these strategic role players and stakeholders are committed to contributing towards the success of this important initiative.

The International Bar Association, at its conference in Buenos Aires in 2008, adopted a *pro bono* declaration inspiring members across the world to embrace and implement *pro bono* programmes and methodologies in their respective jurisdictions. This declaration is largely in line with a number of our initiatives, and South Africa is proudly recognised as one of the leaders in this respect.

We require financial support from the profession to establish an effective *pro bono* administrative hub nationally and provincially to enable the efficient execution of our professional ethical and moral obligations – facilitating access to justice for the poor and contributing towards the efficient administration of justice, in building the rule of law.

We appeal to all stakeholders to contribute generously to this imperative.

Taswell Papier

Chairperson, Pro Bono Committee

PROPERTY LAW

One meeting of the Committee on Property Law was held during 2008.

It was the view of the committee that there is a greater need for dialogue between the profession and other roleplayers. A fruitful meeting was held with the Estate Agency Affairs Board (EAAB) during 2007, but follow-up meetings which were organised by the committee were cancelled. Endeavours are still being made to arrange a meeting with the EAAB.

A meeting was held with the Banking Council specifically to discuss the charges which were being levied by conveyancers for FICA compliance. It was agreed that attorneys provide a service for which they are entitled to charge.

It was also thought that it would be beneficial to the profession to meet with roleplayers in government such as the Department of Land Affairs and the Department of Provincial and Local Government. These meetings are to be organised shortly to discuss matters of mutual interest.

A matter of great interest to the profession was the Expropriation Bill. Comments were forwarded to the LSSA by the committee, but no representations were made in Parliament. The Bill was later withdrawn.

The Promotion of Administrative Justice Act (PAJA) came under discussion during the year. The relationship between the Office of the Deeds Registry and conveyancers is not characterised by cooperation and support for each other's legitimate expectations. The Act ensures that notification be given to conveyancers of decisions by deeds examiners prior to rejection of documents.

The committee has received a number of requests from law societies and individual attorneys for an increase in the conveyancing fee guideline. The last increase was in 2002. It was thought that a study should be undertaken in support of such an application prior to such a decision being taken.

Selemeng Mokose

Chairperson, Committee on Property Law

ROAD ACCIDENT FUND COMMITTEE

During the course of 2008 the activities of this committee received wide coverage in the media, De Rebus and on the LSSA website.

Much of the committee's work is ongoing and, seemingly, never-ending. It is only when one pauses to reflect on the events of the past year that the achievements become apparent.

It is also, with great sadness, that we remember the major role played, not only last year, but for the last decade and more, by Monique Woods who died on 6 January 2009. Hereunder is an extract of the message of condolence to her family prepared on behalf of LSSA and this committee by Ronald Bobroff:

On behalf of the Law Society of South Africa and particularly the Road Accident Fund Committee, I extend our sincere condolences and sympathy on the tragic loss of your partner and mother.

Monique's contribution to the interests of the profession and in particular to those members of the profession who represent road accident victims and their families was immense. Her work for many years on the RAF Committee assisted greatly in retaining the rights of road accident victims to appropriate compensation as also the right of members of the profession to represent and assist such victims in the conduct of their practices.

She was a brilliant lawyer and a brave and special person who will be sorely missed by the profession and her colleagues on the Committee.

We will all miss her, indeed.

Much of the committee's work last year was accompanied by widely publicised attacks on the integrity of the legal profession and, even, the judiciary. This took place,

particularly, at the time of the urgent application brought by the LSSA in the Cape High Court.

There was widespread condemnation of the public statements and it was the feeling of this committee that little purpose would be served in seeking redress in the form of damages and, further, that the interests of the profession, as a whole, as well as the dignity and integrity of the judicial system would be better served by a professional media campaign aimed at informing the public of the salient facts as well as disseminating the Law Society's point of view. This was felt to be necessary in addition to the very extensive coverage in all forms of the media at the time which was coordinated very efficiently by the Law Society's Communication Manager, Barbara Whittle. In this she was ably assisted by various members of this committee who appeared many times on television and radio and conducted endless interviews. The time and effort required for this is enormous and my thanks go to all members of the committee who so ably assisted, often at very short notice.

Against this brief background I would report on the major projects still in progress:

MEDIA CAMPAIGN

The LSSA Council and Manco approved, in principle, the mounting of a suitable campaign and this committee was mandated to obtain quotations and strategy proposals from professional media consultants. An outline of an appropriate brief was prepared and this was fleshed out and disseminated to prospective consultants by the Communication Manager. After expressions of interest were received, live interviews were conducted by members of this committee and recommendations made to the directorate and referred to Manco and Council. As with the litigation, the costs of a professional campaign will have to be funded.

DIRECT PAYMENT SYSTEM (DPS)

The profession faced a crisis in July 2008 when the RAF announced, without warning, that it would be implementing a DPS, which would effectively ensure that payment of capital recovered from the RAF would by-pass the claimant's attorney, despite any written mandate to the contrary and despite the obvious financial risk this would expose attorneys to.

This committee was mandated by the LSSA Manco and Council to act on behalf of the profession. An application was launched out of the Cape High Court by the LSSA,

acting in collaboration with the South African Association of Personal Injury Lawyers (SAAPIL) and a claimant, Luvuyo Mbele. All parties were represented by A Batchelor & Associates of Cape Town, on contingency and by counsel Jeremy Gauntlett SC, Geoff Budlender SC and Johan Trengove. As widely reported at the time, an urgent interim interdict against the RAF implementing the DPS was granted with attorney and client costs.

Our thanks go to SAAPIL and Anthony Batchelor for their unstinting and able support, both financial and in time spent at all hours of the day. My thanks also go to members of this committee who gave selflessly of their time and expertise during this very difficult time.

The RAF still appears to be intent on pursuing the main case and their answering papers are currently awaited. Copies of the papers filed to date appear on the LSSA website.

THE AMENDMENT ACT AND THE NEW REGULATIONS

Simultaneously with the DPS, the RAF announced by way of a Proclamation reproduced on their website that the balance of the Road Accident Fund Amendment Act, 2005, and new Regulations would also come into effect on 1 August 2008. The far-reaching changes effected by the Amendment Act and Regulations have been commented on, exhaustively, in the press and in *De Rebus*.

Once again, this committee was mandated to brief counsel and proceed with an application attacking the Regulations as well as various provisions of the Amendment Act. The same team was retained with the addition another junior counsel, Ncumiso Mayosi (also of the Cape Bar) while Bowman Gilfillan of Cape Town were officially appointed attorneys of record.

As a result of prior correspondence emanating from this committee, shortly after the proclamations were published, the Minister of Transport provided the LSSA with a voluminous bundle of documents, relative to consultation and other procedural and administrative actions and decisions relative to the new Regulations.

Since the new Regulations were promulgated, this committee has spent countless hours researching here and abroad, perusing documents and correspondence, co-ordinating witnesses (expert and lay) consulting with counsel and expert witnesses, liaising and consulting with other interest groups, instructing attorneys and counsel and considering and redrafting the draft papers.

The issues to be considered are wide-ranging and the application requires a myriad of supporting affidavits and documents. Considerable progress has been made and it was planned to have a final version by the end of January 2009. The main focus of the attack will be the abolition of the common law claim and that the Regulations in their current form are *ultra vires* the enabling Act. In the alternative, the capping of claims for loss of income and support and the restriction of medical and hospital costs to public health tariffs will be challenged.

There are several other technical and procedural aspects which will become apparent once the papers are finalised. Until then, we have been advised to treat the drafts as confidential.

MORATORIUM ON OFFERS

Once again, without any prior warning, the management of RAF instructed all claims handlers that there was a general moratorium on offers, save in matters about to go to trial (not more than 20 days hence). The directives also prohibited the separation of merits and *quantum* and the settlement of bills of cost without taxation. This provoked floods of concerned attorneys seeking advice from the LSSA Directorate and committee members. Members of the committee considered all the relevant facts and circumstances and eventually came to the conclusion that the motivation for the moratorium (cash flow crisis) would probably hold the day, particularly as it was common knowledge that the RAF had made several pleas to Treasury for additional funding to meet its cash flow requirements. Although this committee eventually recommended that no formal action could be taken, considerable time was spent on this and in liaising closely with and advising attorney firms Lowe & Petersen and Marius Kruger of Cape Town, who did institute proceedings. In addition, the committee had to field numerous requests for advice from attorneys, both in regard to the moratorium and the Amendment Act and Regulations.

The crisis eventually resolved when the RAF was given additional funding and consequently suspended the moratorium before the applications were called.

FUNDING

The necessity for the continuation of the above projects is self-evident. It is also obvious that the litigation in progress as well as the media campaign will require substantial further funding. If one had to prioritise, then, clearly, the litigation should take precedent over the media campaign.

One would hope that funds can be raised for both.

As a very broad-brush approach, this committee has already recommended that a minimum of R2 million be raised from attorneys via the provincial law societies.

I would, in fact, propose that individual attorneys be levied R200 each. If there are 20 000 attorneys, then this should produce R4 million. If one considers what is now at stake and that the work of this committee over the last 15 years has, until August 2008, materially contributed to retaining the rights of road accident victims to appropriate compensation, as also the right of members to represent and assist such victims in the conduct of their practices, then this is, indeed, a small price for attorneys to pay. Without funding our hands are tied.

Jacqui Sohn

Chairperson, Road Accident Fund Committee

SASSETA

During the course of the year the SASSETA (Safety and Security Seta) Committee has met regularly and its membership was revised and finalised. Representation on the SASSETA Committee includes all the constituent members of the LSSA, employees of the various law societies and L.E.A.D.

The designated employee from each of the provincial law societies is the person responsible at the law society for the SASSETA activities in the respective provinces.

A major concern of the SASSETA Committee has been, for some time, the reluctance of attorneys to register with the SASSETA and to submit *inter alia* workplace skills plans which will not only serve to improve skills development, but also entitle attorneys to claim the statutory rebates allowed.

We have achieved an understanding with the SASSETA regarding the LSSA's role as a participating member of the SASSETA and L.E.A.D's role as a service provider. The L.E.A.D Schools for Legal Practice are all provisionally accredited as training providers and the committee has adopted with the SASSETA a Memorandum of Understanding governing the allocation of projects and the use of project management to ensure these projects are completed without impacting on L.E.A.D's day-to-day activities. L.E.A.D will, however, continue to oversee the application of the SASSETA projects.

L.E.A.D's relationship with the SASSETA improved dramatically with the appointment of the new Skills Development Officer, Modi Vinger. Two members of the committee – Nalini Maharaj and Emil Boshoff – are integrally involved in the activities of the SASSETA and we look forward to a greatly improved relationship and application of relevant training projects.

A working group from the committee has met with the CEO of the SASSETA and both parties have committed themselves to greater cooperation in the future.

A matter of concern for some time has been the failure of the educational authorities to recognise the current statutory requirements for admission to practise as an attorney. It is untenable that a candidate attorney who has successfully written the entrance examination, the practice procedure examination, served two years' articles (postgraduate) and is eligible to be admitted by the courts, cannot be registered as a learner.

These discussions continue and we hope that in the course of this year the matter will be remedied.

It is important that the obvious benefits to employers employing learners are extended to the employment of candidate attorneys as this will greatly assist in the increased availability of employment for young attorneys.

A substantial list of projects has been submitted to the SASSETA for the 2009 calendar year. These proposals include support-staff training, learnerships for bookkeepers and legal assistants, assessor training, legal skills transfer/new venture creation training, bursaries for learners at the L.E.A.D Schools, practice management and judicial skills training.

The committee will, during the course of this year, continue its efforts to provide information and assistance to firms to encourage registration with its obvious benefits.

David Gush

Chairperson, SASSETA Committee

SMALL CLAIMS COURTS

No formal meeting of the Small Claims Courts Committee took place during 2008, but members of the committee are still actively engaged in assisting a task team of the Department of Justice and Constitutional Development to revise the Small Claims Courts Act and regulations in an attempt to eliminate some of the problems which have become apparent over the years.

The Justice Department has commissioned an outside organisation to draft the amended Act and rules and also to write a manual for use by commissioners as well as clerks of the Small Claims Courts.

It is apparent that the persons who have been tasked with the revision of the Act are not quite au fait with the workings and requirements of the Small Claims Courts and members of the profession who serve on this committee are obliged to perform a major task in assisting the compilers of the manual and the Act.

Although the revision of the Act has been receiving attention for more than a year, there is still no indication as to when the final document will be available.

Commissioners continue to experience difficulties with the administration of the courts due to the fact that the clerks do not receive proper training and they continue, *inter alia*, to accept matters – such as labour-related matters – which cannot be adjudicated upon in the Small Claims Courts. This causes frustration for both litigants and commissioners.

The proposed manual comprises separate chapters dealing with the functions of the various persons involved in the running of the Small Claims Courts, such as commissioners and the clerks, but the document is apparently going to be very voluminous and it is unlikely that it will readily be consulted by the commissioners and clerks.

Notwithstanding numerous problems which are experienced in the running of the Small Claims Courts, practitioners continue to play a very important role in providing access to justice for a large section of the population, and the committee has, in fact, recommended that the jurisdiction of the courts be increased to R10 000.

The committee received delegations from Zambia and Uganda who are in the process of developing a similar system of Small Claims Courts in their respective countries, and the delegates were provided with valuable documentation

and information regarding the manner in which the Small Claims Courts function in South Africa.

Johann Gresse

Chairperson, Small Claims Courts Committee





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