



LAW SOCIETY
OF SOUTH AFRICA



ANNUAL REPORT 09/10

Committed To *Building* A Better Legal Profession for All



LAW SOCIETY
OF SOUTH AFRICA

ANNUAL REPORT
April 2009 to March 2010



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1 THE LAW SOCIETY OF SOUTH AFRICA

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

MISSION

The Law Society of South Africa

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

AIMS AND OBJECTIVES

THE LAW SOCIETY OF SOUTH AFRICA (LSSA) HAS THE FOLLOWING FUNDAMENTAL, ENDURING AND LONG-TERM AIMS AND OBJECTIVES, NAMELY TO

- promote on a national basis the common interests of members of the profession and the welfare of the profession, having regard at all times to the broader interests of the public whom the profession serves, and to endeavour to reconcile, where they may conflict, the interests of the profession and the public;
- safeguard and maintain the independence, objectivity and integrity of the profession;
- maintain and enhance the professional standards, prestige and standing of the profession and of its members both nationally and internationally;
- uphold and encourage the practice of law, and to promote and facilitate access to the profession;
- provide, where it deems it appropriate so to do, voluntary services in the interest of the public;
- promote legal aid and the accessibility of all to the law and the courts;
- promote legal education and continuing legal education, practical legal training, research in the science of law and in legal practice and in any related science or practice, research in technology as it relates to legal practice, procedure and the administration of justice, and the practical application of technology in those fields;
- encourage the study and development of customary legal systems and their application in practice, and to seek harmonisation, and where appropriate integration, of those systems with the common and statutory law of the Republic of South Africa;
- uphold, safeguard and advance the rule of law, the administration of justice, the Constitution and the laws of the Republic of South Africa;
- initiate, consider, promote, support, oppose or endeavour to modify legislation, whether existing or proposed;
- initiate, consider, promote, support, oppose or endeavour to modify proposed reforms or changes in law, practice, procedure and the administration of justice;
- secure throughout the Republic of South Africa, in so far as it is practicable, uniformity, simplicity and efficiency in the practice of law, in legal procedure and in the administration of justice;
- strive towards the achievement of a system of law that is fair, just, equitable, certain and free from unfair discrimination;
- represent generally the views of the profession on a national basis;

- nominate, elect, appoint or delegate persons to represent the profession or any part or division thereof at any conference or meeting or on any commission, advisory body, committee, commission of inquiry or similar body or proceeding established, convened or instituted by any government or other authority, institution or organisation, whether of a public or private character, for the purpose of considering any matter relating to law, practice, procedure or the administration of justice or any other matter, of whatever nature falling within the aims and objectives of 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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2 REPORT BY THE CO-CHAIRPERSONS

We took office in April 2009 in the same month that South Africans went to the polls to elect their third democratically elected President. We congratulated President Jacob Zuma and new Minister of Justice and Constitutional Development, Jeff Radebe on their appointments and welcomed public assurances by them to respect the independence of the judiciary, the legal profession and the courts.

We said farewell to Chief Justice Pius Langa and three of the original eleven judges of the Constitutional Court bench – Justices Mokgoro, O'Regan and Sachs, all of whom contributed extensively to our constitutional jurisprudence and the internationally acclaimed status of our Constitutional Court. Chief Justice Langa, in particular, steered the judiciary through recent stormy waters in his traditional dignified and exemplary manner.

We welcomed his successor, Chief Justice Ncgobo, and offered the support of the attorneys' profession to his office, to Deputy Chief Justice Dikgang Moseneke and to the judiciary in general.

The year saw many law firms, small and large, bow under the burden of the global economic recession. According to our survey of the attorneys' profession conducted in 2008, 67% of law firms earn some of their income from conveyancing and almost 30% of firms earn more than half of their income from conveyancing. It was these firms that were particularly hard hit by the downturn in the property market as well as other developments in the banking industry which made it more difficult for people to obtain mortgage bonds.

But as we write this report several weeks before the end of our term of office, the country is infused with a spirit of expectation and excitement as we approach the last 100 days before the 2010 World Cup. We are confident that the greatest sporting event in the world will bring positive publicity and some measure of positive economic spin-off for our economy – and indirectly for attorneys' firms – once the heat and light of the spectacle has passed. We call on all attorneys to participate – and allow their staff to participate – in Football Friday, as the rest of the country is doing.

We will touch briefly on various highlights of our term of office:

LEGAL PRACTICE BILL

At the forefront of progress made has been the developments around the Legal Practice Bill. The LSSA's Management Committee (Manco) met with the new Justice Minister shortly after his appointment and outlined the LSSA's views on the structure and governance of the profession. Our team on the Bill worked closely with the Departmental policy representatives and, in August, the Department produced a first working draft of the Bill for discussion and considerations by stakeholders. Initial verbal submissions were made on behalf of the LSSA at a meeting with the Department, and in response to the Department's request for further written

submissions, the LSSA submitted its written comments in November 2009. The LSSA's submissions constitute a positive continuing engagement with the Justice Department.

The LSSA made several broad points in its comments before dealing with more detailed issues:

The independence of the profession: The LSSA has placed its main emphasis on the independence of the profession which it regards as being of the utmost importance and beyond negotiation. As the Bill stands, the profession will be under the control of the Justice Minister, in that the power to appoint Legal Practice Council members rests with the Minister. This is an untenable and unconstitutional development as it will compromise the independence of the profession. The LSSA has submitted that the power to appoint council members should fall to the Chief Justice.

Regulation of the legal profession: According to the LSSA, the draft Bill must make it clear that it does not seek to regulate legal services, thus, appropriating to the legal profession any further areas of practice beyond what currently obtains.

A unified profession: The draft Bill recognises the need for a single, unified and rationalised legal profession. It continues to spell out the setting up of a National Legal Council in respect of all legal practitioners. This, according to the LSSA, closes off any fusion debate. Those who oppose unification should not be permitted to create confusion by propagating that the Bill brings about fusion – which it does not.

A national body: The principle of a national body was agreed on during the negotiations which recognised the setting up of a national body to regulate the profession, determine norms and standards for the profession, implement the Legal Services Sector Charter, promote and protect the public interest and access to civil and criminal justice.

However, the LSSA indicates that the starting point for the national body must be a National Legal Practice Society of which all practitioners are members, and its elected council which is the National Legal Practice Council. The issue of the gravest possible concern to the LSSA, however, is the summary abolition of the attorneys' profession as a coherent, organised profession of some 20 000 attorneys and 4 000 candidate attorneys in South Africa. The abolition of the provincial law societies would leave attorneys in a total vacuum as isolated individuals with no interconnection and no corporate existence as a profession. This seems to assume that attorneys, or those of them who may wish to do so, being stripped of assets and staff, will begin from nothing to form voluntary associations purely by way of contributions or subscriptions out of their own pockets, which – according to the LSSA – will not happen. The abolition of the corporate existence of the profession

Law Society of South Africa
Co-Chairpersons,
Thoba Poyo-Dlwati and
Henri van Rooyen.



will negate its ability to fulfill its role to uphold the Constitution and the administration of justice.

The LSSA Council has called on its constituent members – and in fact on all attorneys – to comment on the Bill. The LSSA welcomes all these comments.

(The full comments by the LSSA can be accessed on the LSSA website at www.lssa.org.za.)

LEGAL SERVICES SECTOR CHARTER AND SCORECARDS

Although the Charter was finalised and handed to the then Minister at the end of 2007, the LSSA has not sat on its hands in this regard. Most of 2008 and 2009 were spent on discussions around the scorecards. These were settled and the LSSA has produced electronic compliance forms in consultation with the provincial law societies. The latter will be responsible for implementing the scorecards and attorneys will soon be able to utilize the scorecards to self-certify their transformational scores.

We are arranging to hand the scorecards to the Justice Department, and call on the Department to set up a structure to monitor progress and compliance with the Charter.

ATTORNEYS DEVELOPMENT FUND

In response to increasing challenges being faced by newly admitted attorneys to establish and sustain viable practices, the LSSA proposed to the provincial law societies and the Attorneys Fidelity Fund (AFF) the establishment of the Attorneys Development Fund to address practice constraints. An initial amount of R30 million has been ring-fenced, a section 21 company has been established and a board of directors, comprising attorney members representing the provincial law societies, BLA, Nadel, the LSSA and the AFF, has been nominated.

The establishment of the Attorneys Development Fund is a noble and long-due initiative to develop a strong and viable new pool of practitioners. The Fund will work closely with the LSSA's Practice Development Committee that will devise the training to be provided by the LSSA's Legal Education and Development department (LEAD) to provide a solid skills foundation for the infrastructural support rendered by the Fund.

We planned to launch the Attorneys Development Fund in March, at this year's annual general meeting.

MANDATORY PRACTICE MANAGEMENT

The LSSA made submissions some years ago to the Justice Department to implement mandatory practice management for all attorneys

based on the realisation that not all new attorneys are geared to administer and run their practices efficiently and effectively. In August 2009 legislation was passed making it mandatory for all attorneys applying for Fidelity Fund certificates for the first time to complete a practice management course.

LEAD responded immediately by making its practice management training programme – which had been running already for several years – known to potential candidates. A committee has been set up to consider requests for exemption.

MANDATORY CONTINUING LEGAL EDUCATION

The attorneys' profession in South Africa is one of the few professions both locally and on an international basis, which does not require its members to update their skills on a regular basis. At the close of 2009, the Council of the LSSA elected in principle to support the introduction of mandatory continuing education for attorneys. LEAD is in the process of developing a framework for this.

We are confident that developments such as those outlined above will make great strides in strengthening the skills base of the attorneys' profession, in turn ensuring quality legal services to the public.

LSSA PROJECTS

To fulfill its commitments made in the Legal Services Sector Charter as regards promoting access to justice and to legal services, the LSSA appointed a National Project Coordinator in 2009 to implement various outreach projects initiated by the specialist committees of the LSSA. Other stakeholders are also included in the roll-out of the projects, where relevant.

Some examples of the projects that were initiated in 2009 included:

Maintenance workshops held in cooperation with the Tshwaranang Legal Advocacy Centre and the Justice Department canvassed the challenges in the maintenance system. A report was prepared and was due to be delivered to the Justice Department with joint recommendations arising from the workshops.

Discussions have taken place with the Department of Education to create a forum for attorneys to interact with learners, parents, teachers and governing bodies to provide training and capacity-building in schools on legal issues. The Department of Education has signaled its willingness to cooperate with the profession in this project.

Initiatives such as these also provide opportunities for attorneys to fulfill their *pro bono* obligations. The National Project Coordinator, Petunia Ramela, is also tasked with creating uniformity in the definition of *pro bono* and the implementation of *pro bono* on a national basis.

Another vehicle for attorneys to give back to the public – while at the same time promoting the image of the profession – is the National Attorneys Week, held during September. Almost a thousand firms throughout the country participated in this initiative, which is being alternated with the National Wills Week. This is an initiative of the LSSA's Communication Committee.

The LSSA would like to thank all attorneys who make themselves available to participate in these projects.

PARLIAMENTARY LIAISON OFFICER

The LSSA identified a need to have a presence at Parliament, not simply for the profession to have early access and make timeous input into draft Bills, but also to create the necessary opportunities for the attorneys' profession to interact with parliamentary portfolio committees and MPs, where relevant. The Parliamentary Liaison Officer, Zelna Jansen, was appointed in May 2009. She has set up useful and valuable contacts and relationships within the parliamentary structures on behalf of the LSSA.

An example of this was the meeting facilitated between an LSSA delegation and the Chairperson of the Portfolio Committee on Transport in order for the LSSA to contextualise and clarify some of the derogatory statements of the profession made to the Portfolio Committee by the Chief Executive Officer of the Road Accident Fund in his briefing to the committee on the RAF's annual report and financial statement.

UNIFORM RULES

In preparation for the unified profession envisaged in the Legal Practice Bill, the Directors' Committee of the LSSA – which comprises the directors of the provincial law societies and the LSSA – was mandated to unify the four separate sets of provincial law societies' rules. This was a daunting task, but a draft set of uniform rules was produced and presented to the councils of the provincial law societies for consideration and input. It was envisaged that special general members' meetings would be convened this year to debate and adopt the uniform rules. This may not be feasible, due to the complexity of the rules. However, we trust that the uniform rules will be adopted by the constituent members at their annual general meetings at the end of this year.

COURT MATTERS

The LSSA has been particularly active in protecting the interests of both the profession and the public as evidenced by its involvement in various court matters:

- The Road Accident Fund's attempt to introduce a direct payment system without proper consultation with the profession, and which we believe would deprive many road accident victims of access to proper legal representation – was challenged and successfully interdicted by the Western Cape High Court: Cape Town in June 2009.
- The LSSA's challenge to the unconstitutional aspects of the Road Accident Fund Amendment Act and Regulations was set down for hearing on 1 to 3 March 2010 in the North Gauteng High Court: Pretoria. In September 2009, this court granted permission to seven road accident victims to join the LSSA in the

matter. At the time of writing this report we are confident that the outcome of the matter will be in the best public interest.

- The LSSA joined as a party in the Constitutional Court application in the *Nyathi* matter and a successful judgment was handed down by the Constitutional Court in October 2009 which outlined procedures for the execution of judgment orders against the State.

NEW BUILDING FOR THE LSSA

In order to consolidate the operations of the LSSA into one building, as well as to address the imperatives of the new regulatory structures of the Legal Practice Council envisaged in the Legal Practice Bill, the LSSA applied to the AFF for funding to construct a new building. The AFF has undertaken to construct the new offices, which it will lease to the LSSA.

INTERNATIONAL LIAISON

Throughout our term of office, the LSSA continued to take prominent leadership positions in the international bodies that it is a member of such as the SADC Lawyers Association, the International Bar Association and the Commonwealth Lawyers Association.

As Co-Chairpersons, we attended the Commonwealth Lawyers Association conference in Hong Kong in April 2009 and we were particularly elated with the appointment of LSSA councillor, Mohamed Husain, as President of the Commonwealth Lawyers Association. The LSSA has undertaken to support Mr Husain during his two-year term.

In August a strong contingent of South African delegates attended the SADCLA conference and annual general meeting in Livingstone, Zambia. The conference was well-organised – with the assistance of the Law Association of Zambia – and well-attended. We were also pleased to note renewed involvement by the Angolan profession after an absence of a number of years and we welcomed the profession from the Democratic Republic of Congo as the newest member of the SADCLA.

Although it has been encouraging for us to note the increased prominence of this regional body, it is concerning that the SADCLA continues to struggle under financial pressure. A number of the law societies and bar associations in the region have very small numbers of practitioners and find it prohibitive to pay the required membership fees. We are grateful that the LSSA is able to subvent these in some way by paying a higher than necessary membership fee.

The LSSA has offered to assist the SADCLA with its communication initiatives and has also offered to house the SADCLA Secretariat, should this become necessary.

As regards the International Bar Association (IBA), we attended its conference in Madrid in October. During the conference, a successful networking function was arranged for all South African delegates at the South African Embassy in Madrid, hosted by Ambassador VB Koloane.

We also continue to work closely with a number of IBA initiatives when called on to do so. In April 2009, the LSSA, together with the

IBA's International Criminal Court outreach project and the General Council of the Bar, hosted two workshops on the International Criminal Court in Johannesburg and Cape Town. We were pleased to host the Deputy Prosecutor of the ICC, Ms Fatou Bensouda, as a keynote speaker.

Immediately preceding the AGM of the LSSA, on 25 to 26 March 2010, the African Regional Forum of the IBA was to hold its regional conference in Cape Town. This would be the first time the regional body holds a conference in Southern Africa. The LSSA has played a prominent role in the organising committee, and, at the time of writing this report, encouraging number of delegates from throughout sub-Saharan Africa had already registered. Our sincere appreciation goes to Tony Pillay and Barbara Whittle for their prominent role in the conference organising committee.

LSSA ACTIVITIES

Space constraints do not allow us to list all the positive initiatives of the various divisions of the LSSA throughout the year. However, we will highlight a few:

The Council of the LSSA mandated the LSSA management to produce a comprehensive strategic plan in preparation for the changes that the Legal Practice Bill will bring. The draft plan is being interrogated by management and Manco.

The 35 or so specialist committees that function under the Professional Affairs division have been more active and have met regularly this year. Numerous submissions were made by the relevant committees to Parliament on draft Bills and amendment legislation. Often legislation must be considered and comments drafted within very short timeframes allowed for response and taking into account the fact that the committee members perusing the legislation and finalising comments are all full-time practitioners who take time from their practices and families to do so. We acknowledge their dedication and thank them for this.

The LSSA has spoken out publicly on numerous occasions this year through press releases, which are often followed up by media interviews by the Co-Chairpersons. We have been particularly vocal in supporting the independence of the judiciary, the profession and the protection and promotion of the Rule of Law.

The LSSA Legal Education and Development department, LEAD, has continued to provide excellent training to the attorneys' profession exceeding all expectations. LEAD was launching its e-learning platform earlier this year. Its many achievements are summarised in the report of the Standing Committee on Legal Education. The profession must be justly proud of its education, training, skills development and mentoring initiatives. We have invested in these heavily to good effect in the interests of the profession, but also to provide better and more efficient service to the public.

LEAD was awarded some R16 million in grants to be allocated to skills development by the Safety and Security Seta (SASSETA) last year. This was apportioned to various critical skills areas, and courses and workshops have been rolled out by LEAD for attorneys as well as for support staff in attorneys' offices; the latter being an integral but often-neglected part of service delivery to clients.

R4 million of this figure was allocated by the Sassetta for the subvention of candidate attorneys' salaries. This speaks to our commitment to access to justice and access to the profession in the Legal Services Sector Charter. We trust that, as a result of this initiative, there will be no aspirant attorney who is not able to find and complete articles of clerkship.

As one of the most valuable resources for attorneys, *De Rebus* made great strides this year, the foremost among these has been the introduction of an easily navigable digital edition which reached readers two weeks prior to the printed version.

These initiatives – the digital *De Rebus*, e-learning by LEAD and a new website for the LSSA – all bring the LSSA closer and render its services more accessible to many attorneys. We look forward to the introduction of the long-awaited national database which will allow the LSSA to communicate its activities and service to the profession timeously, efficiently and more cost-effectively

In closing our report, we thank the management and staff of the LSSA – and the Chief Executive Officer, Raj Daya, in particular – for the support they have rendered to us as Co-Chairpersons throughout our term. We also pay special tribute to our fellow councilors in general, but to the members of the Management Committee (Manco) in particular – Max Boqwana, CP Fourie, Peter Horn, Sheila Mphahlele, Henry Msimang and Praveen Sham – for their continuing support and hard work not just during the monthly Manco meetings, but throughout the year.

We thank our constituencies for affording us the opportunity to serve the profession as Co-Chairpersons of the LSSA.

Thoba Poyo-Dlwati and Henri van Rooyen

Co-Chairpersons, Law Society of South Africa

3 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].’

COUNCILLOR	CONSTITUENCY	MEETING ATTENDED
Thoba Poyo-Dlwati	Co-Chairperson	05, 07, 09, 11, 02
Henri van Rooyen	Co-Chairperson	05, 07, 09, 11, 02
Koos Alberts	CLS	05, 07, 09, 11, 02
Eric Barry	KZNLS	07, 09
David Bekker	LSFS	05, 07, 09, 11, 02
Dave Bennett	LSNP	05, 07, 09, 11, 02
Ronald Bobroff	LSNP	07, 09
William Booth	CLS	05, 09, 11
Max Boqwana	Nadel	05, 09, 11
CP Fourie	LSNP	05, 09, 11, 02
Peter Horn	CLS	07, 09, 11, 02
Mohamed Husain	Nadel	05, 11
Jan Janse van Rensburg	LSNP	05, 07, 09, 11, 02
Maake Kganyago	Nadel	05, 07, 09, 11, 02
Lulama Lobi	BLA	07, 09, 11, 02
David Macdonald ¹	CLS	07
Pumzile Majeke	CLS	05, 07, 09, 11, 02
Nano Matlala	BLA	11, 02
Percival Maseti	BLA	07, 09, 11, 02
Davies Mculu	BLA	05, 07, 09, 11, 02
Joseph Mhlambi	LSFS	11, 02
President Charlie Mnisi	LSNP	05, 07
Sheila Mphahlele	Nadel	05, 07, 09, 11, 02
Henry Msimang	BLA	05, 07, 09, 11, 02
Silas Nkanunu	Nadel	11
Xolile Ntshulana	KZNLS	11, 02
Praveen Sham	KZNLS	05, 07, 09, 11, 02
Jan Stemmett	LSNP	05, 11

KEY:

- 05 – May 2009
- 07 – July 2009
- 09 – September 2009
- 11 – November 2009
- 02 – February 2010
- BLA – Black Lawyers Association
- CLS – Cape Law Society
- KZNLS – KwaZulu-Natal Law Society
- LSFS – Law Society of the Free State
- LSNP – Law Society of the Northern Provinces
- Nadel – National Association of Democratic Lawyers

1. Alternate for Mr Booth

4 REPORT BY THE CEO



*Law Society of South Africa Management:
Seated: Nic Swart (Director of Legal Education and Development), Anthony Pillay (Finance Director), Raj Daya (Chief Executive Officer) and Lizette Burger (Manager of Professional Affairs), and standing, Barbara Whittle (Communication Manager), Ogilvie Ramoshaba (Senior Manager, Legal Education and Development) and Philip van der Merwe (Editor: De Rebus).*

The report by the Chief Executive Officer must, by its very nature, reflect whether the mandate of the Council has been realised during the period under review. The issue of governance should be understood and I intend to analyze the above in the context of my yearly report

What is the mandate of the Council? Have we interrogated where the LSSA is, where we want to position it in the context of the Legal Practice Bill? Council has delegated this responsibility to the Management Committee (Manco), who in turn instructed the management of the LSSA to prepare and develop a strategic plan to meet the challenges of the Legal Practice Bill. The management includes the CEO and the directorate that supports the office of the CEO. A draft strategic plan has been produced and is being interrogated by Manco. The LSSA Council will have to set aside time early this year to consider the implications of the Legal Practice Bill and the effect it will have on the governance of the profession.

WHAT DOES THE LSSA DO?

In the main, the LSSA does four things:

- 1 Legal education and development (LEAD);
- 2 Communications (De Rebus and Communications);
- 3 Professional affairs; and
- 4 acts as official voice for the attorneys' profession.

Legal education

Legal education entails the rendering of legal education through nine attendance and one distance School for Legal Practice. These schools for legal practice are centres of excellence and the flagship activity of the LSSA. Perhaps not nearly enough credit is given to what is achieved by the schools. Consider that the universities produce more graduates than the profession can absorb. Consider also the quality of the LLB degree that is varied across all tertiary institutions. Graduates – many of them unable to secure articles of clerkship – find restitution in the schools for legal practice. Here they undergo intensive training at the hands of expert attorneys. The areas of law covered are vast and attendance is compulsory. Time spent training at a school equates to articles of clerkship. The Black Lawyers Association's trial advocacy programme is incorporated into the programme that ensures that candidate attorneys are exposed to the art, craft and fundamentals on how to appear in court, prepare pleadings and argue cases. Having it on good authority, we understand that graduates from the schools for legal practice are able to secure articles more easily because of the all-round exposure they have received at the schools. The LSSA trains almost a thousand candidate attorneys yearly.

The legal education system is supported by the Standing Committee on Legal Education (SCLE). This committee acts as the conduit between the LSSA Council and LEAD. A dedicated team of attorneys with a passion for legal education guides the legal education division of the LSSA. All of this cannot exist in a vacuum.

The staff employed at LEAD is committed to professional care and integrity. Their passion, nurtured by Nic Swart, is evident and their ability to run the schools efficiently and coordinate seminars to empower the attorneys' profession, must be acknowledged.

LEAD offers seminars and courses for attorneys. The costs of seminars are subsidised, and updates on a range of specialist areas are provided throughout the year. The noticeable increase in seminar attendance, which was at an all-time high in 2009, is positive proof that attorneys need to be updated and educated continuously. LEAD communicates by fax, e-mail and SMS with the profession. The synergy between the provincial law societies and LEAD in producing seminars for the profession has always been a tough area to manage. Communication Committee meetings have certainly helped to coordinate seminar identification and management of same on a better level.

Communication

Communication is vital. How does the LSSA communicate? Who does the LSSA communicate with? What mode of communication do we use?

Internal communications

Every single attorney with a Fidelity Fund certificate receives a copy of *De Rebus*, the profession's official journal and mouthpiece. The extent to which we use *De Rebus* to challenge our views is debatable. *De Rebus*'s letters page certainly stimulates interesting debate and discussions. Articles by specialist attorneys, experts in their chosen fields of law, assist to educate the general attorney population.

Consider that for R215 a year, each attorney and candidate attorney receives a copy of the journal that is produced monthly, on time, like clockwork. Consider also that the Editorial Committee meets monthly to review and approve all contributions that find their way into the journal. The honorarium we pay committee members cannot be justified in terms of time and knowledge, yet these members give an entire day of their schedules to ensure that the publication is produced on time every month.

The above sentiments extend to all specialist committees. In making these comments acknowledgement is made of each and every committee member for giving of his or her time to make it possible for the LSSA to discuss issues of national importance that confront us on an ongoing basis.

Attorneys that have no library resources patiently await their copy of *De Rebus* to get updates on the law and educate themselves on current challenges and discussions.

The communication department produces an internal electronic newsletter called *LSSA Ditaba*. Aimed at monthly communication between all employees of the LSSA and the schools for legal practice. The newsletter acts as a medium to inspire, inform, educate and share thoughts between co-workers.

External communication

The LSSA is actively involved in a number of organisations, including the SADC Lawyers Association, the International Bar Association (IBA) and the Commonwealth Lawyers Association. In addition we interact with a range of national stakeholders including the Justice Department, Parliamentary portfolio committees, Legal Aid South Africa, government departments, SARS and private institutions.

The LSSA is undoubtedly the officially recognised voice of the legal profession. The positioning of the LSSA in its leadership role is not coincidental and credit must go to Manco, the provincial law societies, Professional Affairs and the Communication departments. I have no doubt that the advent of the Legal Practice Bill will increase the profile of the LSSA and that the LSSA will embrace and meet all challenges.

The LSSA has jointly managed public seminars with the Justice Department and, most recently, a conference with the IBA's African Regional Forum.

There is increasing interest from international bodies seeking meetings with and guidance from the LSSA with ever-increasing requests for international cooperation. These are managed in the context of our GATS obligations.

Professional Affairs

The Professional Affairs Department manages about 32 specialist committees. The increased participation of attorneys in the committees is evident from the increased number of meetings and a full complement of reports in this *Annual Report*. National understanding is becoming the norm as the unification of rules must see us talking as one united profession. The era of provincial patriarchy must end. 2010 will see uniform rules codified and the profession will be more informed.

The challenge for Professional Affairs is always the difficult issue of whether the most informed attorneys are actually nominated to serve on the various committees. I am of the view that the manner in which attorneys are nominated to these committees must be seriously challenged and interrogated. Participation — and effective participation — can be achieved only where there is a passion for the subject matter. This must be the minimum criteria which must be aspired to.

The LSSA speaks for the profession and is the official voice of the profession. The increased press releases and commentaries are positive proof that the LSSA has positioned itself effectively. Committee members are also often called upon to share their expert knowledge and to act as commentators on radio and

television. The LSSA is increasingly being asked to comment on a range of draft legislation.

The involvement of the LSSA as *amicus* in legal matters is increasing and we must be proud of the leadership of the LSSA for taking a proactive stand, even in delicate matters.

2010 WILL BE A DEFINING YEAR

It is expected that the Legal Practice Bill will be finalised in 2010. The encouragement of law firms to comply with the Legal Services Sector Charter will be ongoing. The roles of the LSSA and the provincial law societies will be clearly defined. The rendering of legal education more effectively because of the national database will be achieved. Video-conferencing will assist attorneys to communicate smartly. The Attorneys Development Fund will be launched and the benefits of the products and assistance available to emerging law practices will be noticeable.

The new premises housing all employees of the LSSA will become a reality and increased efficiency in the operations of the LSSA will be noticeable.

Professional ethics will continue to challenge all lawyers in an endeavour to be involved in international transactions and modes of practice.

The detailed report of the Co-Chairpersons bears testimony to the extent to which the LSSA is involved in all areas.

My special thanks goes to Thoba Poyo-Dlwati and Henri van Rooyen for being there outside and beyond normal offices hours as my support system and sounding board on a range of challenges that confront management in the nature of its activities.

The Directors' Committee that includes the directors of the provincial law societies must be acknowledged: Thinus Grobler, Nalini Gangen, Gavin John and Almé Stanton. My colleagues are tireless in their efforts to be effective leaders and manage all challenges that are entrusted to them.

CONCLUSION

The LSSA is the organisation that all attorneys must identify with. This will be achieved in 2010. The staff at the LSSA is fully committed to the direction and challenge that the LSSA must meet. The annual general meeting and law conference will be extremely successful and positive resolutions will emerge.

A clear strategy by the LSSA is needed. This will be achieved in 2010. I am excited and embrace all directives issued. 2010 will be a defining year in the history of the legal profession.

Raj Daya

Chief Executive Officer, LSSA

COMMUNICATION

Communication Committee members: Barbara Whittle (Chairperson), David Bekker, Hester Bezuidenhout, Max Boqwana, Nalini

Gangen, Gavin John, Faathima Mahomed; Sithembele Mgxaji, Petunia Ramela, Almé Stanton, Nic Swart and Philip van der Merwe

The Communication Committee of the LSSA undertook several initiatives during 2009, the primary among these being the National Attorneys Week held from 7 to 11 September 2009. Some 1 000 attorneys' firms throughout the country participated in the project in terms of which they provided free consultations to members of the public on various legal problems. Attorneys' firms were supplied with posters and flyers in various languages. Extensive media publicity was generated publicising the project, particularly in the community media, and the Co-Chairpersons, Thoba Poyo-Dlwati and Henri van Rooyen, as well as the CEO, Raj Daya, conducted radio interviews to advertise the project.

It is intended that the National Attorneys Week should alternate with National Wills Week, however, there have been initial discussions in the committee that the ideal situation would be to present several initiatives throughout the year, focusing on various areas of the law.

The committee has also begun discussions on a public campaign to publicise the attorneys' profession. Models utilised by other law societies are being considered, particularly in the light of budgetary constraints.

Another initiative completed by the committee in 2009, has been the revising and production of two brochures: 'Buying or Selling a House' and 'Deceased Estates'. These were revised with the assistance of the LSSA's specialist committees, and the Communication Committee is particularly indebted to Hussan Goga and David Bekker for the assistance with the 'Deceased Estates' brochure.

The two brochures were translated into Afrikaans, seSotho, isiZulu and isiXhosa – the first time such translations have been undertaken. They have been made available electronically to attorneys' firms for marketing and information purposes, and numerous firms have already utilised the brochures.

The committee has begun work on two new brochures: one on the Consumer Protection Act – which will be available in good time before the Act comes into effect in October 2010, and another brochure on the Children's Act, which will be finalised as soon as the outstanding sections of the Act are brought into effect.

The purpose of the brochures is not only to serve as marketing tools for firms and to provide information to the public, but also to encourage members of the public to utilize the services of attorneys, thus the slogan on the brochures "Your attorney, your trusted adviser".

The Communication Committee, with the assistance of the National Project Coordinator, has been liaising with the Department of Education on an 'Attorneys Adopt a School Project'. The aim of the project is for attorneys to provide basic legal information and *pro bono* assistance to learners, teachers, school governing bodies and parents in disadvantaged schools. The Department of Education has welcomed the project in principle.

Further meetings and a memorandum of understanding must be settled between the Department and the LSSA prior to the project being piloted at some schools and then rolled out nationally.

Going forward into a new dispensation, the committee faces the challenge of considering various separate initiatives undertaken by the constituents and to try to coordinate these into an ongoing, national initiative for the entire profession so as to publicise the profession and inform members of the public on a continuing basis, throughout the year.

Barbara Whittle

Communication Manager, LSSA

DE REBUS THE SA ATTORNEYS' JOURNAL

Editorial Committee members: Krish Govender (Chairperson), Peter Horn, Sithembele Mgxaji and Danie Olivier

De Rebus celebrated the 53rd year of its existence in 2009 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 and students, to provide a forum for their thoughts and to disseminate to them information on developments in the law and the profession.

A new regular column on cyberlaw – chaired by Pretoria attorney Sizwe Snail – was started in 2009, while a short series of articles on the profound influence of the Constitution on other, 'non-constitutional' fields of law was contributed by Johannesburg attorney Mervyn Dendy. The year 2009 also saw the introduction of a new, regular column on Consumer Law, whose importance in practice has increased markedly. It is written by Sybrandt Stadler, a Krugersdorp attorney.

We have been negotiating with expert company law practitioners to write a new regular column on the profound changes to be wrought by the new Companies Act 71 of 2008 when it comes into operation in 2010.

The LexisNexis Prize for the Best Article in *De Rebus* by a Legal Practitioner in 2008 was awarded to Shanta Reddy, an attorney from Durban, the first woman to win this annual prize. In '*CWU v Latex: Stretched too far?*' she discussed compensation and reinstatement in employment law in the light of recent LAC and SCA judgments.

We were also pleased to announce the introduction in 2009 of the matching Juta Law Prize for the Best Article in *De Rebus* by a Candi-date Attorney. The Editorial Committee will be making the award of that prize and the Lexis Nexis Prize for 2009 early in the 2010.

An exciting development in 2009 was the introduction in December of *De Rebus Digital* which complements the print and web (*De Rebus Online*) versions but is not intended to replace them. A link to a complete and exact replica of the print version is delivered to practitioners' e-mail addresses some two weeks before the print version reaches them by post. It also contains the regular supplements such as the monthly 'yellow pages' classified advertising section and the bi-annual admissions supplement. Of significant advantage to advertisers is that digital readers can link directly to web site and e-mail addresses given in their adverts simply by clicking on them.

This development is part of the new Integrated Communications Strategy for the LSSA during the period under review and which was unanimously accepted by the Editorial Committee after in-depth discussions which further underlined the editorial independence of *De Rebus*. This strategy brings *De Rebus* as a communication medium of the LSSA closer to the different directorates and the management of the LSSA for the purposes of further promoting and advancing their activities and programmes.

The pilot December issue of *De Rebus Digital* received uniformly positive comment from volunteer recipients and the Editorial Committee resolved to continue distribution of DRD from the beginning of 2010, pending the coming online of the profession's national database which will enable it to be sent to all practitioners with registered e-mail addresses.

The growth of *De Rebus* is also 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 21 747 as at December 2009, to members of the profession;
- Paying subscriptions of non members which stood at 1 324;
- The overall circulation which topped 24 000 for the first time in December;
- Our very active *De Rebus Online web site* www.derebus.org.za, with its powerful search engine which enables browsers and researchers swiftly to access any item in any edition since 1998.
- The awarding of the *De Rebus/LexisNexis* bursaries for post-graduate studies by promising attorneys from disadvantaged backgrounds to Pretoria-based Kennedy Gihana and Somerset West-based Michelle Heswick (see 2009 (July) DR 9).

Given the global economic downturn, there was an inevitable decline in advertising income in the year under review. Net income for 2009 was just more than R3 million, some R1,3 million below budget. Fortunately this was offset by savings of more than R1,3 million on the printing budget. Within this context, *De Rebus* has performed well.

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 2009 three new members of staff were appointed: Nomfundo Manyathi as News Editor, Mapula Sedutla as Production Editor and Kathleen Kriel as Sub-editor. All have already made significant contributions to the editorial teamwork. We congratulate Ms Sedutla who was named the LSSA's Achiever of the Year for 2009.

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 Communication of the LSSA, Barbara Whittle, who contributes a regular monthly column on 'LSSA News and Views'.

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. The existing service provider, Ince (Pty) Ltd, was awarded the tender in 2009 after reducing its printing prices. In conclusion one may say that the journal 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. 2010 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

REPORT FOR THE YEAR ENDED 31 DECEMBER 2009 FINANCE COMMITTEE (FINCOM)

Finance Committee members: Ashwin Trikamjee (Chairperson), Etienne Horn (Deputy Chairperson), Koos Alberts, Vincent Faris (independent consultant member), CP Fourie, Mohamed Husain, Nano Matlala, and current LSSA Co-Chairpersons Thoba Poyo-Dlwati and Henri van Rooyen

The LSSA's Finance Committee effectively performs the functions of two committees namely audit and remuneration, as well as general financial advice, and is referred to as Fincom.

The audited financial statements are enclosed as a separate annexure.

Total number of meetings for 2009: 5

- excludes Fincom Remuneration Sub-Committee meetings 2
- excludes Fincom Budget Sub-Committee meetings 3
- excludes AFF/LSSA Joint s 46(b) Committee meeting 1
- excludes joint AFF/LSSA Fincom meeting 1
- Teleconferences 2

The terms of reference of Fincom (Audit and Remuneration Committee) include the following key elements:

Review of

- the reliability and accuracy of the financial information provided;
- any accounting or auditing concerns identified as a result of internal audits;
- the LSSA's compliance with legal and regulatory provisions;
- procurement policies;
- safe-keeping of all assets including fixed assets;

- debtors' policy and control;
- insurance cover;
- long-term financial sustainability; and
- business continuity plans (in conjunction with the Internal Audit Committee).

Responsibility for the development of an adequate remuneration policy

Consideration of matters related to

- the financial statements of the LSSA; and
- other official financial information provided to members or the public.

Overseeing

- compliance by management with applicable policies and procedures;
- the preparation of the annual budget and financial statements; and
- the administration, collection and disbursement of the financial resources of the LSSA.

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

- The implementation and approval of the printing tender for the printing of *De Rebus*.
- The recommendation and approval of a formal cost containment policy.
- The review of capitation levies within a three-year forecast, including budget capping in conjunction with the Attorneys Fidelity Fund (AFF).
- Held a joint meeting and discussions with the Fincom of the AFF on the application by the LSSA for the funding of a new building

to house the entire LSSA operating divisions. This was approved in principle on the basis that the AFF develop the proposed building and enter into a long-term lease with the LSSA.

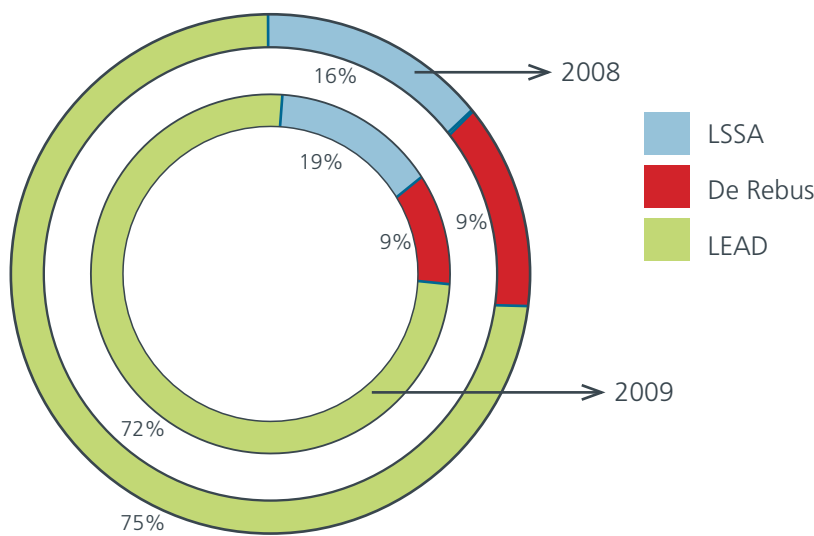
- Reviewed the nature and allocation of funding of s 46(b) activities as proposed by the joint AFF/LSSA Section 46(b) Committee.
- Approved the expanded role of the Budget Sub-Committee to deal with variances reports at least twice a year, and nominated an additional member (Etienne Horn) to the sub-committee.
- Considered and enhanced the LSSA fraud prevention plan as commissioned by the Internal Audit Committee.
- Considered the report on the staffing structure of LEAD and approved recommendations of two LSSA appointments and two additional appointments on limited duration employment funded by the SASSETA.

KEY FUNDING STREAMS

The majority of the LSSA's activities are funded by the Attorneys Fidelity Fund in terms of s 46(b) of the Attorneys Act. The funding is determined by a process of identifying and funding only those activities that are deemed to be within the relevant section. The budgeted subvention for 2009 was R 55.8 million (2008: R 44.12 million)

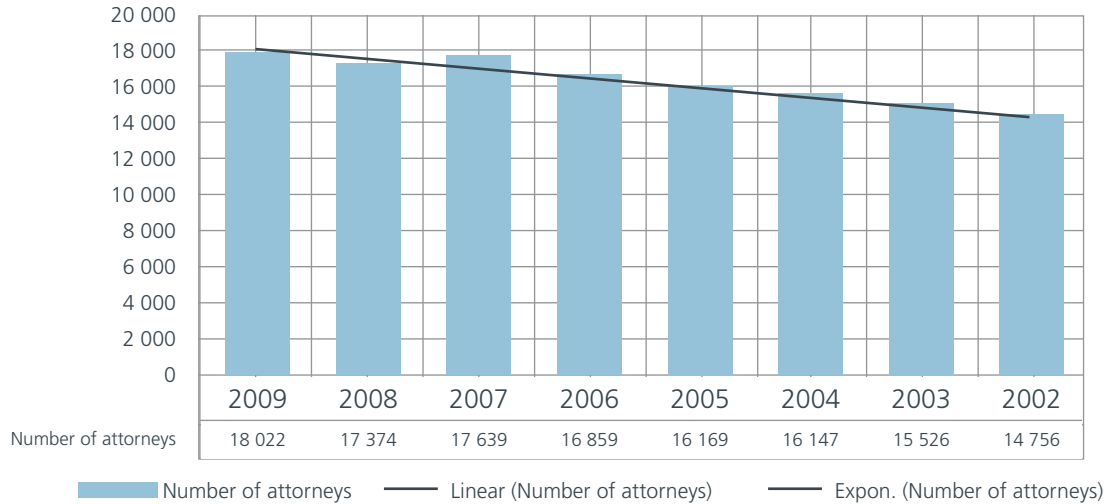
Provincial law societies pay a capitation levy to the LSSA based on the number of practising attorneys within their jurisdiction. For 2009 this was a total of R 6.3 million at R350 per member (2008 R 6.08 million).

AFF SUBVENTION R 000'S



R 000'S	LSSA	DE REBUS	LEAD	TOTAL
Budget 2009	10 674	4 925	40 190	55 789
Budget 2008	7 060	3 810	33 265	44 135

NUMBER OF ATTORNEYS



Ashwin Trikamjee
 Chairperson, Finance Committee

Anthony Pillay
 Finance Director, LSSA

INTERNAL AUDIT (IA) COMMITTEE

Internal Audit Committee members: Paul Ranamane (Chairperson), Igna Klynsmith and Tembile Mtati

Total number of meetings for 2009: 3

The key role of the IA committee is to assist the LSSA to accomplish its business objectives by ensuring a systemic and disciplined approach to review, evaluate and improve

- effective risk management;
- internal control processes; and
- governance processes.

The above is achieved as follows:

The IA committee will review and make recommendations to the Audit and Remuneration Committee on

- the external audit plan and
- the report of external auditors.

Ensuring that a business risk register is established and such register is revised annually.

Ensuring that the broad concept of corporate governance is tabled at least annually to the LSSA Council and this is to include

- risk management (both business risk and internal controls) as the responsibility of Council and
- corporate governance as responsibility of the Council.

Facilitating the process of appraising the effectiveness of Council members

Some of the strategic items dealt with by the committee in 2009 included the following:

- The LSSA Council approved the appointment of an independent consultant member to the IA Committee.
- The committee commissioned and approved a fraud prevention plan for the LSSA, which is applicable to all staff and members of the LSSA.
- The committee appointed an investigation into the finance controls of the LSSA after the misappropriation of cash by an LSSA cashier based at the Sunnyside office. The recommendations were approved and implemented.

Paul Ranamane
 Chairperson, Internal Audit Committee

Anthony Pillay
 Finance Director

HUMAN RESOURCES

REPORT FOR THE YEAR ENDED 31 DECEMBER 2009

Internal Human Resources (HR) Committee members: Raj Daya (CEO), Nic Swart (Director of LEAD), Anthony Pillay (Finance Director) and the HR Officer

External HR Committee members: CP Fourie, Nano Matlala and Sheila Mphahlele

The LSSA set up an Internal HR Committee which meets weekly and has a formal term of reference.

The first formal induction training was done in the LSSA in January 2009, with presentations and training by senior management and the CEO.

A number of new policies were developed during the course of the year. HR continuously reviews and revises existing policies and in 2009 a number were revised and implemented.

The Employment Equity Committee was reconstituted, and a Staff Forum established.

Two new contract posts in LEAD were approved to deal with the SASSETA projects. These posts are funded by the SASSETA.

The LSSA purchased the "Genesis" HR software from VIP (LSSA payroll system) which will computerise and integrate with payroll, thereby increasing effectiveness of the management of staff and policies.

The termination rate for the LSSA is 17% for the year. (2008: 17%), mainly influenced by LEAD (2009: 20 %; 2008: 19 %) and the LSSA directorate (2009: 19%; 2008:13%).

The LSSA has continued with an aggressive training schedule for staff and for 2009 50 employees were trained at an approximate cost of R330 000 for the year. This included group training, employment equity training and MS Office and skills development planning.

HR PLAN FOR 2010

Key priorities include

- the implementation of formal job grading and scales;
- the implementation of the Genesis HR system;
- formal training of managers and supervisors to perform the staff and policy management functions inherent in their posts; and
- training on objectives and goal setting for all sections in the LSSA; and
- the implementation of the revised performance management system, including the automation thereof as included in the Genesis system.
- The revised performance management system will be implemented in the first quarter of 2010 and staff will have performance contracting arrangements. These benefits include
- delegating authority for day-to-day input decision making;
- performance in terms of results that can be control (outputs and financial performance not outcomes);
- assigning accountability for those results;
- increasing the transparency of the accountability relationship;
- promoting communication between the parties; and
- establishing clear reporting and monitoring processes.

STAFF NUMBERS

CONSOLIDATED LSSA STAFF NUMBERS	TOTAL AS AT 31/12/2008	BUDGET 31/12/2008	NEW POSTS	ADD TRANSFERS IN	LESS TRANSFERS OUT	LESS RESIGNATIONS	ADD APPOINTMENTS	TOTAL AS AT 31/12/2009	BUDGET 31/12/2009
LSSA	24	27	1	3	0	-5	3	25	31
De Rebus	5	6	0	0	0	-2	3	6	6
LEAD	48	51	4		-3	-5	10	50	52
Total: actual	77	84	5	3	-3	-12	16	81	89

The LSSA has centralised the finance section of LEAD into the Finance Department. The LEAD finance officer; data capturer (learners) and the registration officer report to the Finance Director for operational reasons.

Two new LEAD posts are SASSETA limited duration contract posts

VACANT POSTS AS AT 31 DECEMBER 2009	SECTION
1 Manager: Courses	Courses – LEAD
2 Projects Administrator (Contract post – SASSETA funded)	Projects – LEAD
3 HR Manager	Directorate
4 IT Officer	Directorate
5 Committee Secretary	Professional Affairs
6 Senior Creditors Clerk	Finance
7 Document Sales Officer (ex LEAD)	Finance

STAFF MOVEMENT

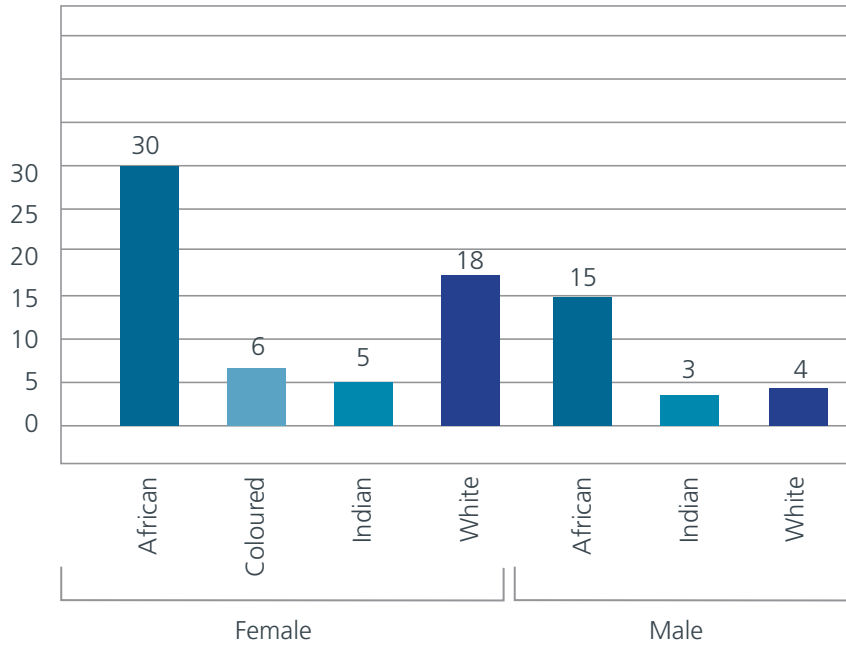
Appointments

TITLE	NAME	SECTION	POST	DATE	EQUITY	
1	Ms	M Sedutla	De Rebus	Production Editor	01/05/2009	B
2	Ms	NC Manyathi	De Rebus	News Editor	13/07/2009	B
3	Ms	K Kriel	De Rebus	Sub-Editor	16/02/2009	W
4	Ms	DJ Ramaripa	LEAD	Administrative Assistant	02/11/2009	B
5	Ms	G Mukuru	LEAD	E-learning Developer	01/06/2009	B
6	Mr	J Ndlovu	LEAD - Courses	Course Administrator	01/07/2009	B
7	Mr	Am Modiba	LEAD - Courses	Course Coordinator	01/12/2009	B
8	Ms	SJ Mosito	LEAD – Data/admin	Data Admin Clerk	01/02/2009	B
9	Ms	AS Pauls	LEAD - Finance	Registration Officer	01/04/2009	W
10	Mr	MW Vinger	LEAD - Projects	Skills Development Officer	01/01/2009	B
11	Ms	AM Josephs	LEAD - Projects	Projects Coordinator	23/09/2009	C
12	Mr	A Haji	LEAD - Pretoria School	Night School Coordinator	01/08/2009	B
13	Ms	CT Msiza	LEAD - Unisa School	Administrative Assistant	01/10/2009	B
14	Mr	RG Pitt	LEAD JHB School	School Coordinator	04/11/2009	C
15	Ms	ZM Jansen	LSSA - Directorate	Parliamentary Liaison Officer	01/05/2009	C
16	Ms	MP Ramela	LSSA - Prof Affairs	National Projects Coordinator	01/02/2009	B
17	Ms	E Burger	LSSA - Prof Affairs	Manager: Professional Affairs	01/03/2009	W

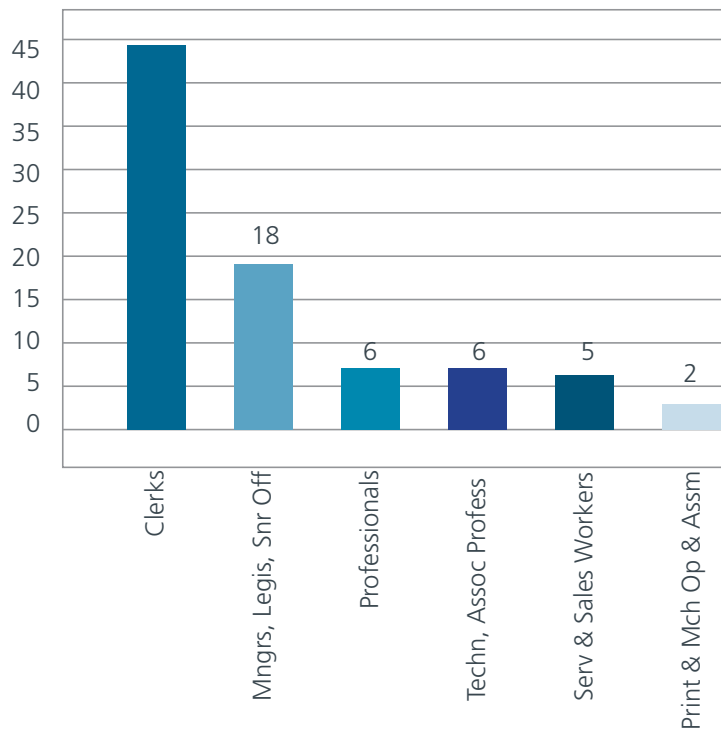
Terminations

TITLE	NAME	SECTION	POST	DATE	REASON FOR TERMINATION	
1	Ms	M Ballakistan	LEAD	Pretoria School Coordinator	19/01/2009	Unpleasant working conditions
2	Mr	J van Niekerk	IT	IT	31/01/2009	Career change - better opportunities
3	Mr	B Mndebele	De Rebus	News Editor	11/02/2009	Absconded
4	Ms	A Chetty	De Rebus	Production Editor	28/02/2009	Better opportunity
5	Mr	G Baloyi	Finance	Accounts Clerk / Cashier	05/05/2009	Absconded
6	Ms	L Malungana	LEAD	JHB School Administrator	26/06/2009	Better offer
7	Ms	H Meyer	Professional Affairs	Committee Secretary	31/07/2009	Environment not conducive
8	Ms	G Moseletho	LEAD	General Admin Assistant	30/09/2009	Better offer
9	Ms	D Khukhama	LEAD	Senior Training Coordinator	30/09/2009	Salary
10	Mr	D Mphahlele	Finance	Cashier	31/12/2009	Retrenched
11	Ms	P Ngesi	HR	HR Officer	31/12/2009	Resigned: In dispute

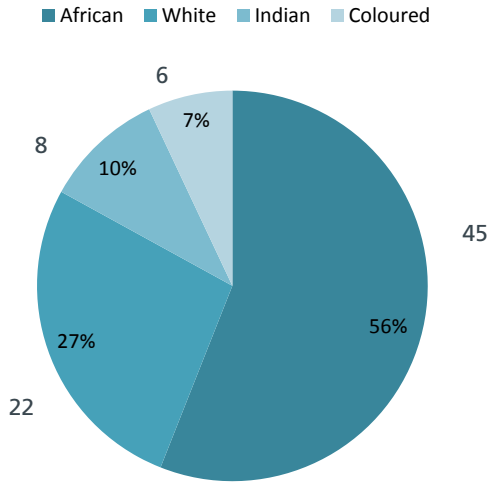
EQUITY REPORT BY OCCUPATIONAL CATEGORY



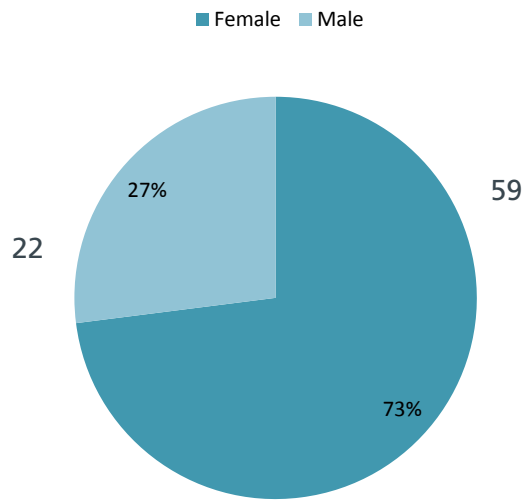
EQUITY REPORT BY OCCUPATIONAL CATEGORY



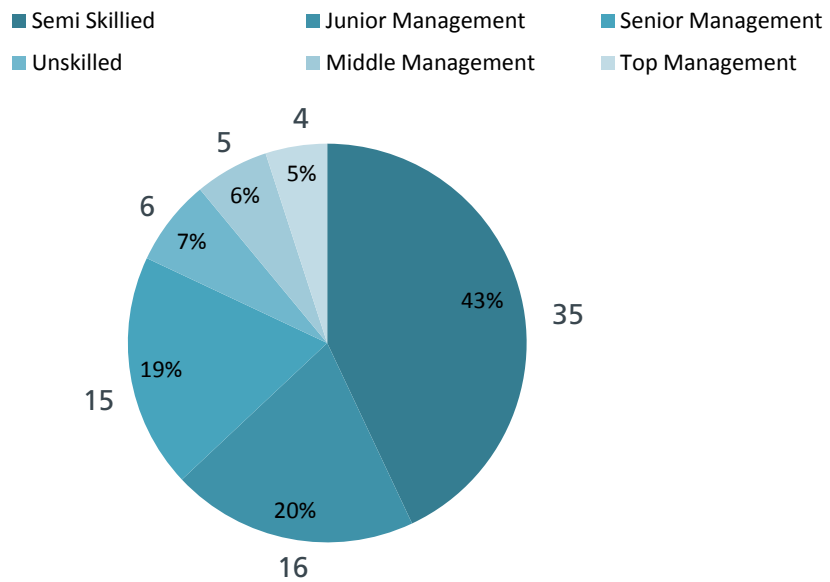
EQUITY REPORT BY RACE



EQUITY REPORT BY GENDER



EQUITY REPORT BY OCCUPATIONAL LEVEL



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

Standing Committee on Legal Education members: Abe Mathebula (Chairperson), Raj Badal, Dave Bennett, Buyiswa Majiki, Emil Boshoff, Peter Horn, Motsamai Makume Jan Maree, Lalit Metha, Xoliswa Nakani, Norman Moabi, Bulelwa Ndzondo, Zubeda Seedat, Ashwin Trikamjee and the late Chris Petty

The L.E.A.D division continued with its training and development activities for the profession at both pre and post-admission level, with an attendance of more than 8 000 persons in 2009.

LOCATION

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

FINANCE

It appears that there has been a substantial saving on the 2009 budget without curtailing delivery of services. The savings resulted mainly from the fact that the Practice Management course did not become mandatory until August 2009, certain income increased and various savings were achieved.

Savings are the result of a disciplined spending approach at L.E.A.D, discounts negotiated in respect of books purchased from the publishers and grants received from the SASSETA. Additional income came from increased attendance and the offering of a course for the Financial Services Boards. Schools also obtained sponsorships in terms of prizes and books.

STAFF

Employment equity and quality of service:

The division has made a significant input to complying with the LSSA 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 Khukhama (until 30 September 2009), Diane Angelopulo, Gail Mason, Imtiaz Mohammed (until 14 April 2009, transferred to Menlo Park office), Lolita Pieterse, Maria Mokwape, Martha Baloyi, Nic Swart, Ogilvie Ramoshaba, Ria Mahlangu, Selina Ramano, Tasha Roestoff, William Khunou, Beverly Chueu, Portia Kadi, Amanda Kibido, Ntokozo Manzi, Grizelda Moseitho (until 30 September 2009), Sharon Lee, Belinda Povey, Stephne Pieterse, Martha Lubasi, Modi Vinger (from 4 January 2009), Jonathan Maseko (from 1 February 2009), Anthea Josephs (from 23 September 2009), Claudia Thandeka Msiza (from 1 October 2009), Jowie Dina Ramaripa (from 4 November 2009), Grace Mukuru (from 13 May 2009), Jackson Ndhlovu (from 1 August 2009), Elmarie Bester (from 1 April 2009) and Andries Modiba (from 1 December 2009).

Ogilvie Ramoshaba was promoted to Senior Manager: L.E.A.D.

Three interns, Thembi Mkhabela, William Mashao and Rose Maoto were placed at L.E.A.D by the SASSETA.

Bloemfontein: Willem Spangenberg and Marietjie van der Westhuizen.

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

Durban: Vaneetha Dhanjee, Nadira Sewnarain and Ntokozo Ndlou.

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

Johannesburg: Chandika Singh, Titus Mbatha, Connie Malinga, Louisa Madikoe, Lario Malungana (until 26 June 2009) and Robert Pitt (from 5 November 2009)

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

Pretoria: Ursula Hartzenberg, Zuki Kala and Ali Haji (from 1 August 2009)

Potchefstroom: Andrew Morathi and Kedibone Mello (from 5 January 2009).

Port Elizabeth: Anita Strydom and Lionel Lindoor.

LSSA-Unisa distance learning school: Simla Budhu, Parma Govender and Thandeka Msiza (from 1 October 2009).

GENERAL DEVELOPMENTS IN 2009

Commercial law training:

62 attorneys received training in commercial law at courses in Pretoria and East London from Irish and South African Lawyers. Ireland Aid provides the funding for the training (R2 million over 3 years).

Client care:

The L.E.A.D Director offered training to Legal Aid South Africa staff in the Eastern Cape region and in Bloemfontein.

Training in judicial skills (SASSETA funded):

31 attorneys attended five-day courses at George and Pretoria. Judges and regional magistrates provided the training, which was evaluated as extremely successful.

Practice development activity:

Michelle Beatson acted as coordinator. The establishment of an Attorneys Development Fund was submitted to and approved by the LSSA Council. A proposal for practice support was submitted and approved in principle.

Mandatory practice management training:

Mandatory practice management training (MPMT) came into effect on 14 August 2009. The design of the programme and recruitment of instructors received special assistance.

Foreign liaison:

The Law Society of Ireland provides commercial law training.

The chairperson of the SCLE, Abe Mathebula, and the Director attended the SADC Lawyers Association conference in Zambia.

A delegation from Uganda visited L.E.A.D

The legal education officer of the Law Society of Zimbabwe visited L.E.A.D for internship.

Papers delivered:

The L.E.A.D director delivered the following papers:

- 'Language and Transformation' at the Commonwealth Law Conference in Hong Kong in April 2009.
- 'The challenges for education in the SADC region' at the SADC Lawyers Association conference in Zambia in August 2009.
- 'The trends in the 21st Century' at the Law Society of Kenya conference in Mombasa in September 2009.
- 'The profession's language experience' at the Legal Writing Conference at the University of Pretoria in July 2009.

SASSETA grants:

The SASSETA made R18 million available for training in 2010.

Support staff training:

304 persons received training in conveyancing and bookkeeping.

EDUCATION AND DEVELOPMENT ACTIVITIES

Conveyancing and notarial training: 439 persons participated in 2009.

Seminars: 3 702 persons attended seminars in 2009. The following topics were offered:

- Administration of Estates
- Bookkeeping Update
- Child Law Seminar
- Company Law Update
- Consumer Protection Bill
- Conveyancing Update: New Developments
- Cyber Law
- Divorce and Pension
- Environmental Law
- Ethics in 2009
- Evictions and Rental Claims
- High Court Litigation
- Law of Contracts General Update and Exclusionary Clauses
- Powerful Legal Writing Workshop
- Promotion of Administrative Justice
- Research in 2009

- Sectional Title Workshop
- Techniques in Criminal Litigation

Course for candidate attorneys:

25 days: This course was offered at 10 centres throughout the country. Except for one, all programmes are offered on university campuses. The course is offered part-time, full-time and in one centre, after hours. 1 907 candidate attorneys attended in 2009.

Instructors and presenters involved in L.E.A.D activities:

More than 700 practitioners and other experts were involved in the activities of L.E.A.D in 2009.

School for Legal Practice (5 months full-time uninterrupted):

The School centres are situated at Bloemfontein, Cape Town, Durban, East London, Johannesburg, Polokwane, Pretoria, Potchefstroom and Port Elizabeth. The administration of the LSSA-Unisa distance-based centre is situated in Pretoria. 1 189 persons attended the day, night and distance programmes in 2009.

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 graduates with an LLB 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.

Selling of documentation: L.E.A.D has sold a substantial quantity of its publications in hard copy and electronic format in 2009. These publications included 'PLT manuals', conveyancing and notarial manuals, Consulta and e-PLT (CD-Rom).

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

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

	2009	2008
School for Legal Practice	1 189	1 088
Conveyancing and notarial training	439	638
25-day courses for candidate attorneys	1 907	1 912
Diplomas and certificates (distance)	153	192
Practice management training	114	61
Seminars	3 702	3 098
Other training: Trial advocacy; Supports staff; Client care; Judicial skills; Trade marks; Skills transfer courses, Conveyancing ABC, Irish commercial law course	646	1 272
Total	8150	8261

Abe Mathebula

Chairperson, Standing Committee on Legal Education

Nic Swart

Director: L.E.A.D

5 SPECIALIST COMMITTEE REPORTS

ALTERNATIVE DISPUTE RESOLUTION COMMITTEE

Members: Daryl Burman (Chairperson), Charles Cohen, Richard Haslop, John O'Leary, Bonge Masote, Jerome Mthembu and Solomon Rangoanasha

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

IMPORTANT SPECIFIC DEVELOPMENTS

Representations were made on behalf of the committee to the chairpersons of the LSSA committees, as a result of which it was resolved to call a conference of interested attorneys in an endeavour to make them more aware of the benefits of ADR, as well as the imperative to advise clients to pursue the ADR route in appropriate circumstances.

In addition, it was resolved that the question of standards for training and accreditation need to be dealt with.

The King III Report on Corporate Governance published in February 2009 emphasised the importance of mediation in resolving corporate conflicts. The new Companies Act, as well as many other statutes, contains ADR provisions.

The seminal judgment in the matter of *Brownlee v Brownlee* (South Gauteng High Court, unreported case 2008/25274; 25-8-2009), emphasised the absolute need for attorneys to advise their clients in appropriate circumstances to pursue the mediation route or else incur the court's displeasure for not doing so.

During the year, a number of articles dealing with ADR authored by a member of the committee were published in *De Rebus*.

ONGOING

Once legislation is in place, the committee will attempt to ensure and oversee that, after receiving training by LEAD, attorneys become accredited by the LSSA and/or provincial law societies as mediators, arbitrators and, generally, ADR practitioners capable of appearing in or before all legal forums.

The committee will try to arrange 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 should be lists of attorneys trained and accredited by the LSSA and/or the provincial law societies as described above, to which lists the public and commerce would have access.

The committee aims to sell 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.

The committee will investigate how and where an infrastructure can be created (possibly through the law societies) where training, accreditation and the availability of information can be controlled.

The committee will engage with the court structures, the Department of Justice and Constitutional Development and with other applicable committees of the LSSA, with any other 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.

The committee will deal 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, follow up and pursue the outcome of, and the objectives debated at the LEAD 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 will continue to do all such things and take all 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 or disputes.

Daryl Burman

Chairperson, Alternative Dispute Resolution Committee

COMPANY LAW COMMITTEE

Members: Miranda Feinstein (Chairperson), Barry Cloete, Paul Hay, Davies Mculu, John Simon and the late Patrick Maybin

Two members of the committee, Mr Mculu and I, are also members of the Company Law Sub Committee of the Law Society of the Northern Provinces (LSNP Committee).

The LSSA committee meets only on an ad hoc basis as and when circumstances dictate. The committee met once during the period covered by this report and made certain recommendations regarding the Protocol for the Company Law Committee which had been drafted by the LSSA.

The committee felt that it would be appropriate for a representative from each provincial law society to be invited to serve on the committee. As a result, Mr Hay joined the committee during the year.

The committee sought the assistance of the LSSA to implement a secondment programme for candidate attorneys to the Johannesburg Stock Exchange, the Securities Regulation Panel and other regulators, which would be counted towards articles. After discussion, the LSSA indicated that the time was not appropriate to seek the necessary legislative amendments to accommodate this.

Through Mr Mculu and me, the committee participated in various workshops with the Department of Trade and Industry (DTI) and with the LSNP Committee, as well as in other workshops with other interested participants regarding the regulations which the DTI is drafting under the Companies Act, 2008. The committee, in conjunction with the LSNP Committee, and a small number of other interested lawyers, made written submissions to the DTI regarding the drafting of the regulations and, in particular, the conversion of par value to no par value shares and business rescue practitioners.

Patrick Maybin, until his untimely death earlier this year, also served as an enthusiastic member of the committee.

Miranda Feinstein

Chairperson, Committee on Company Law

COMPETITION COMMITTEE

Members: Paul Coetser (Chairperson), David Bekker, Michael Katz, Petra Krusche, Ashraf Mahomed and Eric Mbhele

During the year under review, the committee considered the following issues:

The Competition Amendment Act 1 of 2009 – which has been assented to by the President but of which the commencement date has not yet been promulgated – contains far-reaching provision relating to the prohibition of parallel conscious conduct and criminalisation of individuals who engage in cartel conduct. The committee considered whether the Amendment Act could be challenged on constitutional grounds and a final decision in this regard is still to be made. It also noted that the practical implementation of the Amendment Act would require new regulations as well as a cooperation agreement with the National Prosecuting Authority, which the committee should comment on.

The LSSA's exemption application was lodged in 2004 but has not yet been dealt with by the Competition Commission. The committee considered whether the application would be impacted by the Legal Practice Bill and whether it should be amended or withdrawn in view of the intended adoption of the proposed uniform professional rules being collated by the LSSA. The impact of the exemption application on disciplinary proceedings of the statutory law societies was also debated at length.

The committee noted that the Consumer Protection Act may have implications for the legal profession and considered whether this should form part of its mandate.

The committee noted the need for professional training on the Competition Amendment Act, as it would have significant implications for competition practitioners.

It was noted that competition enforcement is becoming a priority in the SADC region and a regional competition authority has been set up. In 2010 the committee will consider if and how approaches should be made to this authority.

Paul Coetser

Chairperson, Competition Committee

CONSTITUTIONAL AFFAIRS AND HUMAN RIGHTS COMMITTEE

Members: Vincent Matsepe (Chairperson), Daryl Burman, Chrystal Cambanis, Mohamed Husain, Saber Jazbhay, Pritzman Mabunda, Dr Nalini Maharaj and Xolile Ntshulana

The committee considered a number of minor amendments to the Constitution that did not necessitate comment.

The Green Paper on National Strategic Planning was published during 2009 and comments were submitted by the committee. The committee was to recommend to the LSSA Council that the LSSA nominate a representative to the National Planning Commission.

As regards the State Liability Bill as it related to the *Nyathi* matter, see the report by the Co-Chairpersons.

Vincent Matsepe

Chairperson, Constitutional Affairs and Human Rights Committee

CONTINGENCY FEES COMMITTEE

Members: Clem Druker (Chairperson), Ronald Bobroff, Poobie Govindasamy, Henry Msimang, Taswell Papier, Henri van Rooyen and George van Niekerk

The Contingency Fees Committee did not meet this year. The reasons are no different from those set out in my report submitted for the previous Annual Report (April 2008 to March 2009).

However, circumstances changed a few months ago after two to three years of impasse in the Cape Law Society Council. The CLS is now prepared to consider a regime different to the one set out in the Act. This has enabled me to call a meeting of the committee which was due to take place early in 2010.

It is hoped that at that meeting some form of agreement will be reached as to the way forward and this will be submitted for comment and approval to the constituent members of the LSSA.

Clem Druker

Chairperson, Contingency Fees Committee

COSTS COMMITTEE

Members: Graham Bellairs, Mohamed Essa, Jan Janse van Rensburg, Bennie Makola, Danie Olivier and Silas Reyneke SC

Although the committee did not meet formally during 2009, issues relating to costs were attended to through the Magistrate's and High Courts Committees, as members of this committee also serve on those committees (see the reports of these committees).

CRIMINAL PROCEDURE COMMITTEE

Members: William Booth (Chairperson), Dr Llewelyn Curlewis (Deputy Chairperson), Ronnie Bokwa, Johan Kramer, Strike Madiba, Xolani Mpeto and Eric Zaca

The Criminal Procedure Committee of the LSSA met on two occasions during 2009: on 24 June and 11 November. As with most LSSA specialist committees it was difficult to meet more regularly because committee members are spread throughout South Africa and all have busy schedules.

MEETINGS FOR 2010

The plan with regard to 2010 is that the committee should meet on at least three to four occasions. It has been suggested that a teleconference be held if there are logistical problems with meetings. This is not ideal and the committee should endeavour to try to meet as a group on at least two or three occasions in Johannesburg.

MATTERS DISCUSSED FOR REVIEW IN 2010

The committee dealt with numerous very important matters during the course of the year and some of these issues need to be taken forward into 2010.

PRISON VISITS

It was decided that more regular prison visits be conducted and that this be arranged through the provincial law societies. In the past there was usually one visit a year to the various prisons. It was felt by the committee that this was not sufficient to deal with the many problems that affect prisons.

Attorneys need to engage more effectively with prisoners and with the Department of Correctional Services.

It is also felt that attorneys, in their visits to prisons, can engage with prisoners with regard to legal issues and prisoners' rights. One aspect that could be discussed with prisoners is the utilisation of the plea bargain system to try to expedite cases.

PAROLE SYSTEMS AT PRISONS

Concerns were expressed during the meetings about the parole system at prisons. Members of the committee indicated that, at certain prisons, attorneys are excluded by the Department of Correctional Services from representing their clients at parole hearings. This is

an issue that needs to be addressed urgently by the Department of Correctional Services.

POLICY OF SAPS WITH REGARD TO ARREST OF SUSPECTS

The policy of the South African Police Service (SAPS) with regard to the arrest of suspects, was debated and it was felt that the police often arrest suspects when it is not necessary to do so. Particularly for minor offences and when the suspect is not a flight risk, it is felt that the SAPS should use other means of dealing with such suspects, for example by summoning them to court.

The committee was referred to various cases where the courts have dealt with this issue and where they have stressed the fact that the system of arrests should be used only by police officers as a last resort.

This issue needs to be discussed with the SAPS as a matter of urgency. There seem to be no clear guidelines at many police stations as to the manner in which police officers deal with the arrest of suspects.

Reference was made to an old 2005 policy guideline of the National Commissioner of Police. In this document it was stated that police should not arrest suspects too easily and that they should apply their minds more effectively to the use of summoning or warning people for court.

NICRO'S NON-CUSTODIAL SENTENCING PROJECT

At the committee's last meeting, representatives of Nicro addressed the committee on the issue of its non-custodial sentencing project and stated a willingness to speak to attorneys in general about this project. Nicro indicated that it would be prepared to assist accused persons in presenting reports to court for the purposes of sentencing. Any attorney that is interested should contact the LSSA for details of the Nicro personnel if they wish to engage the services of this organisation.

IBA SEMINAR

As committee chairperson, I attended a seminar in Maputo in June 2009 on the International Criminal Court and International Justice. Earlier in the year the International Bar Association also conducted various seminars in South Africa dealing with the International Criminal Court.

Attorneys who are interested in becoming actively involved in the workings of the International Criminal Court should contact the LSSA for the necessary information and contact details.

LEGISLATION

The committee dealt with various pieces of legislation, including amendments to the Criminal Procedure Act 51 of 1977. In particular a proposed amendment to s 49 of the Act was discussed, which dealt with the issue of the police using lethal force in effecting an arrest.

The Criminal Law (Forensics Procedure) Amendments Bill, 2009 was discussed and written comment was submitted to Parliament by the committee. As chairperson, I engaged Mr J Michaels, the Committee Secretary of the Parliamentary Portfolio Committee, on this issue. It is sometimes extremely difficult for the Committee to deal with each prospective piece of legislation that is promulgated and it was decided that if comments should be made in respect of important legislation, that a specialist in that particular field be engaged to draft a detailed and thorough response on behalf of the LSSA.

LEAD SEMINARS

The committee discussed topics for Legal Education and Development (LEAD) seminars for 2010 and one proposal was that seminars be conducted dealing with ballistic and forensic evidence. The holding of such a seminar would be suggested to LEAD.

WORD OF THANKS

The committee wishes to thank the LSSA's Professional Affairs Manager, Lizette Burger, and National Project Coordinator Petunia Ramela, for all their hard work in arranging committee meetings.

William Booth

Chairperson, Criminal Procedure Committee

There seem to be no clear guidelines at many police stations as to the manner in which police officers deal with the arrest of suspects.

DECEASED ESTATES, TRUSTS AND PLANNING COMMITTEE

Members: Hussan Goga (Chairperson), Motsamai Makume (Deputy Chairperson), David Bekker, Ceris Field, Iqbal Ganie, Paul Hay, Mervyn Messias and Prof Willie van der Westhuizen

The following meetings were held:

19 March 2009: As chairperson, I attended a meeting between the Minister of Justice and Constitutional Development, the Acting Chief Master, representatives from the Portfolio Committee on Justice and Constitutional Development and various other stakeholders.

10 June 2009: Mr Makume, Professional Affairs Manager Lizette Burger and I met with Mr L Bassett, the then Acting Chief Master of the High Court.

17 July 2009: Ms Burger and I met with the Senior General Manager of the Banking Association of South Africa.

3 August 2009: I met with Mr A Roup and Mr J Louw, respectively Secretary and Chairperson of the Fiduciary Institute of South Africa.

4 August 2009: A committee meeting was held.

22 October 2009: A committee meeting was held. Ms K Mbeki, Mr Bassett, Mr T Cronjé, Ms P Venter and Mr A Slingers attended the meeting on behalf of the Chief Master and Mr A Omar attended the meeting on behalf of the South African Institute of Chartered Accountants.

The key objectives of the Deceased Estates, Trusts and Planning Committee are to

- improve competency levels and professional standards of attorneys practising fiduciary law;
- make submissions to the South African Law Reform Commission and the Department of Justice and Constitutional Development for the refinement of the Administration of Estates Act 66 of 1965, the Trust Property Control Act 57 of 1988, the Intestate Succession Act 81 of 1987, the Wills Act 7 of 1953, the Estate Duty Act 45 of 1955 and other applicable legislation;
- improve the quality of service delivery to attorneys and the public by the various offices of the Master;
- build relationships with the Office of the Chief Master and stakeholders with a view to addressing and resolving chronic problems at various Master's offices; and
- improve the administration of the Guardian's Fund.

CHIEF MASTER'S DIRECTIVES

The Office of the Chief Master issued various directives during the year under review. These directives dealt with the following:

	SUBJECT MATTER	EFFECTIVE DATE
1 of 2009	Amendment of trust name	30 March 2009
2 of 2009	Access to information on trusts	30 March 2009
3 of 2009	VAT on executor's fee	30 March 2009
4 of 2009	Sale of immovable property in a s 18(3) estate	30 March 2009
5 of 2009	Request or suggestions for bribes	18 June 2009
6 of 2009	Remuneration of trustees, liquidators, judicial managers and similar functionaries	27 July 2009
7 of 2009	Bond substitution	8 December 2009

OFFICE OF THE CHIEF MASTER OF THE HIGH COURT

Ms K Mbeki was re-appointed as Acting Chief Master with effect from 15 October 2009. Ms N Msomi was appointed as Director-General of the Department of Justice and Constitutional Development with effect from 1 January 2010.

There was minimal interaction between the Office of the Chief Master of the High Court and the LSSA. The Office of the Chief Master does not appear to be sufficiently capacitated to meet current transformational challenges. This adversely affects service delivery and access to justice.

The much anticipated issue of a Chief Master's Directive prescribing streamlined procedures to deal with the examination of accounts in deceased estates, follow up of requirements after a final account has been advertised, removal of executors and requirements in s 18(3) estates, did not materialise. This was a great disappointment as the directive would have improved productivity in the various Master's offices significantly. It is imperative for such a directive to be issued as soon as possible.

Intestate Succession Act 81 of 1987

A submission was made by the LSSA that the amount fixed by the Minister for the purposes of s 1(1)(c)(i) of the Intestate Succession Act be increased from R125 000 to R250 000. The Department of Justice and Constitutional Development did not support this submission. There are, however, compelling reasons why the submission should be supported and the matter will again be taken up with the Department.

Administration of Estates Act 66 of 1965

A submission was made by the LSSA that the amount determined by the Minister for the purposes of s 18(3) of the Administration of Estates Act be increased from R125 000 to R500 000. This submission was made as an interim measure for the purposes of increasing productivity in the Master's offices pending the amendment of the Administration of Estates Act. The submission was not supported by the Department of Justice and Constitutional Development. There is consensus among stakeholders (including the LSSA) that, in view of endemic fraud and other practical administration problems, s 18(3) should be repealed and an executor should be appointed in every estate.

A submission was made by the LSSA that the amount determined by the Minister for the purposes of s 80(2)(a) of the Administration of Estates Act be increased from R100 000 to R1 000 000 (s 80(2)(a) refers to any alienation of property belonging to a minor). The Department of Justice and Constitutional Development supported the submission, but considered an increase between R350 000 – R600 000 to be appropriate. The submission will be referred to the Minister for further consideration.

A submission was made by the LSSA that the amount determined by the Minister for the purposes of s 80(2)(b) of the Administration of Estates Act be increased from R100 000 to R265 000 for the purposes of the section (s 80(2)(b) refers to any mortgage of any such immovable property of a minor). The submission was not supported by the Department of Justice and Constitutional Development.

A submission was made by the LSSA that the amount determined by the Minister for the purposes of s 90 of the Administration of Estates Act be increased from R100 000 to R265 000 for the purposes of the section. The Department of Justice and Constitutional Development supported the submission and the matter will now be referred to the Minister for further consideration.

Master's Office: Functionality

There has been a marginal improvement in the quality of service delivery at many of the Master's offices. This, however, does not detract from the fact that the law societies continue to be still inundated with complaints regarding poor service levels at the Master's offices. There are still many chronic problems that require resolution. The most profound constraint to the improvement of productivity and functionality at the Master's Office is the failure of the Department of Justice and Constitutional Development to make appropriate amendments to the Administration of Estates Act in order to meet enormous transformational challenges. The Department must stop procrastinating and take immediate steps to make appropriate amendments to the Act. Chief Master's Directives are useful for clarification, but are limited in scope and application. It is not a proper substitute for legislative reform.

Estate current account for low-value estates

An estate late current banking account is sometimes opened merely to facilitate a single transaction; thereafter it is closed. This is uneconomical and impractical. The Banking Association has been approached to develop a simplified estate late current account for low-value estates.

CONCLUSION

I wish to express my sincere appreciation to all members of the committee for their assistance, commitment and guidance.

Hussan Goga

Chairperson, Deceased Estates, Trusts and Planning Committee

E-COMMERCE COMMITTEE

Members: Gavin McLachlan (Chairperson), Sandile Beauchamp, Clem Druker, Peppy Kekana, Nick Livesey, Ian McLaren, Cassim Sardiwalla, Pumzile Shembe and Alf Witz

The committee had three physical meetings during the period under review.

The committee has continued to work with the Deceased Estates, Trusts and Planning Committee to interact with the Office of the Chief Master with regard to forthcoming electronic services that practitioners can access. The committee had the Chief Master's team do a presentation to the committee members and others on progress to date. The progress appears to be very significant and it is imperative to know what practitioners must be able to do, so that they can be advised in good time and arrange with LEAD in the event of any training support that may be required,

Pieter du Randt, who is in charge of the Justice Department's Integrated Justice Project, address the committee and others,

including the chairperson of the LSSA's Magistrate's Court Committee, about online access to courts.

This process is relatively advanced and the Justice Department has recognised that it must liaise with the profession somewhat more effectively than it has done to date. It is necessary to set up a sub-committee to interact with the Justice Department.

It appears that, among other things, a secured communication system between the profession and the Justice Department will be necessary. The committee will deal with that issue and report to Manco once further information is available.

As chairperson, I attended various e-law related conferences with national and international participants during 2009. At some I was invited to chair sessions. It is important that attorneys are seen to be involved more often with the South African and African ICT community.

It is even more important than ever before to arrange assistance on electronic law and practical issues for practitioners throughout the country, as there is a very clear need for such assistance at present. LEAD arranged a series of seminars on e-law during 2009 that were very well received and the committee will continue to work with LEAD in this regard.

The committee is in the process of drafting a code of conduct for the profession that can become part of reasonably imminent privacy legislation, which should reach finality at last during 2019. The code will be submitted to the LSSA Manco. The profession should lead in the adoption of personal data privacy principles and protection of rights as this will, we believe, become a very 'hot' topic this year, together with consumer rights generally.

It is imperative 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. LEAD will be very important in this regard. Proper use of social networking tools and much wider use, especially mobile use, of Internet-based ('cloud') services will be very important. The committee will work with LEAD to include some information about these issues in its seminars, workshops and practical training sessions. It is also necessary to try and keep practitioners up to date and to help interpret the jargon that surrounds e-tools and services, and LEAD's training services will be imported for that as well.

Connectivity is now an absolutely vital part of a practitioner's business and the log jam in South Africa is finally showing signs of breaking up. The committee will engage service providers such as Neotel and Google South Africa to investigate if there are any benefits that can be arranged for practitioners in the telecommunications 'liberalisation' process.

The LSSA has been contacted by the Department of Land Affairs which requires input on the e-conveyancing process. However, this is currently being managed very well by the LSSA's Property Law Committee, so our committee will deal with the Department and provide input if and when requested by the Property Law Committee.

THE COMMITTEE 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, as chairperson, I am currently involved with the Attorneys Fidelity Fund, the LSSA and the directors of the various provincial law societies in order to finalise the choice of a video-conferencing system that will be as interoperable as possible and will save quite considerable time and money for the organised profession if implemented;
- work with business development and practice support managers of the provincial law societies to spread ideas and provide assistance as widely as possible. As chairperson, I am a member of the LSSA's Practice Development Committee, and have been able to communicate effectively with the various business development and practice development managers;
- provide reports or comments on behalf of the 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 modern information technology-based society.

Gavin McLachlan

Chairperson: E-Commerce Committee

ENVIRONMENTAL AFFAIRS COMMITTEE

Members: Terry Winstanley (Chairperson), Norman Brauteseth, Karmini Krishna, Ilan Lax, Bongwiwe Mpitso, Jerome Mthembu, Bulelwa Ndamase, Steven Raney and Catherine Warburton

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 practitioners regarding environmental law.

During the reporting period, the committee considered aspects of land use law and made representations regarding land use law and in particular, which professionals are entitled to do that work.

We intend to have a workshop for committee members and possibly other practitioners, if that is considered appropriate. We will aim to have that and one other meeting in 2010.

Terry Winstanley

Chairperson, Environmental Affairs Committee

ETHICS COMMITTEE

Members: Krish Govender (Chairperson), Johan Fourie, Bedver Irving, Danie Olivier, Percival Maseti, Deirdré Milton, Tshepo Shabangu and Butch van Blerk

Various issues were considered by the committee during the year under review, inter alia the following:

Ethical questions relating to the contingency fees issue. The profession has not provided clarity in this regard. A decision needs to be taken to reconcile differences in approach. Should the ethics committee make its own recommendation?

Touting and advertising: Three cases have been heard in the Cape and the KwaZulu-Natal High Courts where the relevant provincial law societies applied for the removal of the names of attorneys from the roll and/or their suspension from practice pursuant to complaints relating to the transgression of the rules governing touting and/or advertising. Any conflict among these judgments must be ironed out. The profession has a duty to ensure uniform practices within the profession.

The need for a national conference where topical and controversial matters relating to ethics could be debated has long been identified. Whether a national conference to deal with these matters will be held is still to be determined. This is outside the mandate of the committee and is a matter for the Attorneys Fidelity Fund and the LSSA to decide jointly.

The relationship among the constituents of the SADC Lawyers Association has grown and strengthened. Is there a need for a common code of ethics to be drawn and adopted for all the members of the association?

The accessibility to the provincial law societies by litigants to raise ethical and related professional complaints or questions needs to be encouraged and improved. The LSSA needs to address this concern by way of a public campaign involving all attorneys.

In conclusion, we must record that we have a Code of Conduct that has been adopted by the LSSA and all its constituents. The question that arises is whether it is proper for our law societies to adopt codes of conduct of international bodies (in the name of such body) and thereby reverse the principle of a simplified code that has been adopted by the LSSA and its constituents? The principle of uniformity needs to be addressed.

Krish Govender
Chairperson, Ethics Committee

EXAMINATIONS COMMITTEE

Members: Motsamai Makume (Chairperson), Emil Boshoff, Abdul Majeed Carrim, Peter Cooke, Ilan Lax, Jan Maree, Leslie Masterson, Abe Mathebula, Ashwin Trikamjee, Matshego Ramagaga and the late Chris Petty.

Chris Petty who had been the chairperson of this committee for many years, sadly passed away during the year under review. His valuable contributions are sorely missed.

Motsamai Makume has been appointed as the new chairperson.

The practical examinations in attorneys' practice, notarial practice and conveyancing practice as prescribed by the Attorneys Act were conducted as normal.

The overall pass rate, except in the conveyancing examination, was generally acceptable. The low pass rate in respect of the conveyancing examination continues to be a matter of concern. After lengthy debate, the Examinations Committee decided to recommend to the LSSA Council that a partly open-book examination be conducted for the conveyancing examination. This recommendation was accepted and as from 2010 the conveyancing examination will be partly open-book.

LEAD has also implemented basic conveyancing training at Schools for candidate attorneys and short courses for attorneys.

EXCHANGE CONTROL AND TAX MATTERS COMMITTEE

Members: Henry Vorster (Chairperson), Danie Erasmus, Johan Fouché, Robert Gad, Iqbal Ganie, Rafiqamod Khan and Thihe Mothuloe

This committee continues to act as an ad hoc committee on tax and exchange control issues of interest to the profession generally.

During the year under review the committee was represented at various closed workshops arranged to consider proposed tax legislation. A regrettable trend noted by the committee is the increasing efforts of State officials to seek wide powers inconsistent with the values enshrined in the Constitution. The objections of the LSSA to some of the legislation have been ignored and the relevant Acts have now been amended to incorporate some of the amendments sought by SARS management. It is anticipated that most of the other amendments sought will be enacted in the course of 2010.

The effort of SARS to regulate tax practitioners continues. The extent to which practising attorneys will be affected by the proposed legislation remains uncertain. The LSSA has adopted the view that all practising attorneys should be exempt from regulation under that Act. A new draft of this legislation is expected during the course of 2010.

Henry Vorster
Chairperson: Exchange Control and Tax Matters Committee

FAMILY LAW COMMITTEE

Members: Susan Abro (Chairperson), Zenobia du Toit, Jeff Fobb, Billy Gundelfinger, Lillian Jegeh, Deirdré Milton, Thalin Murray and Brian Segal

The Family Law Committee did not meet during the course of 2009, the reason being that there was no need for such a meeting in view of the fact that no new legislation was required to be addressed.

The members of the Family Law Committee, however, in large parts, did manage to convene during the course of the year at various events, inter alia the Miller du Toit Conference in March 2009 and other relevant and similar gatherings.

As always, the provincial law societies' family law committees remain extremely active and continue to communicate with each other. We thank them for their hard work on this basis.

We are also proud to advise that members of our Family Law Committee sit on the Family Law Committee of the International Bar Association (IBA), which is one of the more active committees of the IBA.

Susan Abro

Chairperson, Family Law Committee

FINANCIAL INTELLIGENCE CENTRE ACT (FICA) COMMITTEE

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

The LSSA (mainly represented by the Directors Committee) spent most of 2009 engaging the Financial Intelligence Centre (FIC) on a range of issues affecting the profession. These issues included, inter alia, the following:

- Discussions around the proposed Financial Intelligence Centre Amendment Bill. The Bill deals with several important aspects. The submission of the LSSA to the Parliamentary Portfolio Committee highlighted a number of issues, including that legal professional privilege is not extended to sharing of information that is covered by legal professional privilege, and that the LSSA, as a voluntary body, cannot be a supervisory body.
- The LSSA manual for attorneys was updated by committee member Angela Itzikowitz, and the FIC has made a number of recommendations on the manual, some of which have been incorporated into the manual.
- The FIC has been engaged in understanding the nature of the legal profession, and has accepted that the statutory provincial law societies will act as supervisory bodies (SB). The Amendment Act will, therefore, substitute the LSSA with the provincial law societies.
- Assisting the provincial law societies to understand best practices and regulations with regards to the role of supervisory bodies based on voluntary onsite reviews of law firms by the FIC. These onsite reviews were confidential and the FIC has been requested to provide trends and areas of concern that the profession may focus on. The FIC also shared its experience with supervisory functions of other sections of the economy.
- The LSSA has established a good working relationship with the FIC based on mutual respect, and the function of the FIC to ensure the implementation and compliance of the Financial Intelligence Centre Act (FICA) by gathering and collating the information. The profession has a duty to obey all laws, but at the same time has to ensure the independence of the profession and the ability of attorneys to implement regulations within the scope of their practice, which remained the guiding principle in all discussions and negotiations.

- Technical issues considered included what constitutes suspicious transactions, how they should be reported; discussions on impending promulgation of the Amendment act which would see the accountable institutions register become operational and what the registration process entails.
- Guidance notes specific to the attorneys' profession (interpretation only considered once these notes were issued).
- Cash threshold reporting is currently under discussion.
- Compliance by attorneys: While the Act and regulations gave powers to SBs to sanction in cases of non-compliance, the primary duty of the SB is to ensure that policies were in place to ensure compliance and not to do in-depth investigations into files etc. Suspicious transactions were to be reported directly to the FIC by accountable institutions (firms) and were outside the ambit of the SB.

The LSSA received the summary of the international Financial Action Task Force (FATF) mutual evaluation report of South Africa at the end of February 2009, and the submission made by the LSSA to the evaluation team was accepted in the report, including the list of exemptions in terms of the FICA. The primary objectives of the FATF's recommendations are to stop money laundering and the financing of terrorism.

David Bekker

Chairperson, Financial Intelligence Centre Act Committee

FOREIGN QUALIFICATIONS COMMITTEE

Members: Anita Arendse, Caron Jeaven, Thinus Grobler, Henry Msimang, Thoba Poyo-Dlwati and the late Chris Petty

No formal committee meetings were held during the year, although representatives from the committee attended meetings of the LSSA's GATS Committee.

The committee will become more relevant when the issues of cross-border practice and the recognition of foreign qualification are considered in terms of the Legal Practice Bill.

GENDER EQUALITY COMMITTEE

Members: Nobulawo Martha Mbhele (Chairperson), Amanda Catto, Dr Nalini Maharaj, Kathleen Matolo, Deirdré Milton, Thoba Poyo-Dlwati and Jowie Teffo

The Gender Equality Committee had two contact meetings and two teleconferences for the year under review. The committee succeeded in carrying out programmes that could not be finalised in the previous financial year due to financial constraints

The committee entered into partnership with the Tshwaranang Legal Advocacy Centre and co-hosted maintenance workshops in Pretoria, Cape Town and Durban. The workshops were aimed for all nine Provinces, but because of budgetary constraints, they were held only in three provinces. The aim of the workshops was to address challenges in the maintenance system. This created

a platform for all stakeholders involved in the adjudication of maintenance matters to discuss issues and challenges they come across every day when trying to secure maintenance for children.

The attendees included officials in the Justice Department, magistrates, attorneys, members of the NGO community and the Office of the Master. The workshops produced a report that will influence the drafting of the amendments to the Maintenance Act and regulations. What was more remarkable was that the official from the Justice Department who is directly involved in the drafting of these amendments and regulations was part of the Pretoria workshop and personally heard the frustrations of all parties involved in maintenance adjudication.

The workshop also addressed the impact of HIV/Aids in maintenance courts and how it affects the litigants in maintenance matters and children in families affected by HIV/Aids. It also addressed the impact of the Pensions Act on maintenance and how it relates to the Children's Act. It became apparent at these workshops that the maintenance courts have been put at the bottom of the pile and are not a priority for the Department of Justice and Constitutional Development.

The workshops were planned to run simultaneously with the 16 Days of Activism on No Violence against Women and Children; a high-level contribution by the LSSA to the campaign.

The committee plans to have further workshops in the remaining six provinces during 2010.

The committee has on its agenda the empowerment of women lawyers and understands that complete empowerment can be realised only when women are given an opportunity to participate in lucrative work that will help them sustain their practices. The Gender Committee has already identified those areas of law that women lawyers will need more training on and is developing a strategy on how to deal with this issue.

During the year under review the committee sent its comments on new legislation as and when such Bills were brought to the attention of the committee.

The committee will have failed in its duty if it omits to express the dissatisfaction and discomfort it has when it considers the level of women representation in all governance structures of the LSSA. We are over 15 years into democracy, but most constituent members of the LSSA are still not convinced that women can make a difference and contribute to the growth and governance of the profession. Most constituent members of the LSSA have, to date, not been able to meet at least 40% women representation in their governance structures.

The committee pleads with all the constituent members of the LSSA to give this matter some thought and start acknowledging women practitioners.

As chairperson, I would like to thank the members of the committee for their commitment and hard work, and appreciate the sacrifice they made to make sure that all the plans we had for 2009 became a reality.

Nobulawo Martha Mbhele

Chairperson, Gender Equality Committee.

GENERAL AGREEMENT ON TRADE IN SERVICES (GATS) COMMITTEE

Members: Esmé du Plessis (chairperson), Max Boqwana, Iqbal Ganie, Krish Govender, John Moorhouse, Mvuseeni Ngubane, Silas Nkanunu, Wilfred Phalatsi, Thoba Poyo-Dlwati (ex officio as LSSA Co-Chairperson), Peter Levenberg (representing the General Council of the Bar).

As and when required, meetings of the GATS Committee take the form of joint meetings with the LSSA Committee on Foreign Qualifications comprised of the following members: Emil Boshoff, Thinus Grobler, Chris Petty (now deceased) and Nic Swart.

In addition, both the Department of Trade and Industry and the Department of Justice and Constitutional Development have, in the past, been represented at committee meetings, inasmuch as World Trade Organisation/GATS matters fall within the areas of government responsibility of both these departments.

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 Department of Trade and Industry (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 the 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 2009 convened for the LSSA Directorate to address committee chairpersons to discuss protocol, policy and strategy matters. The committee was then identified 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 at its meetings by the Co-Chairpersons. This position endured during 2009, for the reason set out below.

EXTENDED MANDATE

As Chairperson of the GATS Committee, I was invited to address the annual general meeting of the LSSA in Cape Town in March 2009 on Cross-border Practice Rights in the SADC region, and specifically the applicable principles of the GATS Agreement. The issue of

cross-border practice rights within SADC was identified, in the 2008 report of the committee, as future work to be addressed.

As a consequence of a decision of the LSSA Council after this meeting, the committee's mandate was extended to require it to investigate the feasibility of introducing cross-border practising rights in the SADC region, and to propose an outline of the steps to be taken and the legal structures to be created in order to achieve this.

RECONSTITUTION OF THE COMMITTEE

On the basis of extensive discussions by the Board of Control of the Attorneys Fidelity Fund (AFF) at its meeting on 8 June 2009, and the recognition by the Board of the importance of cross-border practice rights to the AFF, and taking into account a proposal in this regard by the LSSA Council, it was decided that the GATS Committee should become a joint committee of the LSSA and the AFF.

ACTIVITIES OF THE COMMITTEE

The task assigned to the committee in regard to cross-border practice rights is in fact a daunting one, requiring not only an assessment of the principles of GATS and the applicable legal principles and professional structures in South Africa, but requiring also an investigation of the applicable principles in all 14 other member countries of SADC. In this regard, deliberations within the SADC Lawyers Association (SADCLA) are to be taken into account, eg the outcomes of the SADCLA annual general meetings of 2008 and of 2009.

An initial meeting of the committee was held on 16 April 2009 and on the basis of the deliberations, a draft Summary Report and Broad Workplan was prepared.

A further meeting took place on 28 September 2009, when feedback on the discussions at the 2009 SADCLA AGM was presented and discussed. The ambit and extent of the work to be done by the committee became evident.

Committee members were requested to consider and amplify or amend (as deemed necessary) the draft Summary Report and Broad Workplan for submission to Manco as the proposed framework proposal for a plan of action. The implementation of the workplan and the necessary fact-finding work are to proceed in 2010.

FUTURE WORK

The committee was primarily established to monitor GATS-related developments in the international arena. Once the WTO negotiations are resumed for 2010 (conclusion is expected during 2010), GATS issues will be high on the WTO agenda and the GATS Committee will have to monitor developments closely.

The second matter which will require the full effort of the committee is the issue of cross-border practice rights for lawyers within the SADC region as outlined above.

Finally, once progress is made with the Legal Practice Bill, the Committee will have to meet again jointly with the Foreign Qualifications Committee to ensure that the issue of the recognition

of foreign qualifications and the access to local practice of foreign practitioners, and other aspects impacting on domestic practice (such as Fidelity Fund cover), are dealt with adequately and appropriately.

Esmé du Plessis

Chairperson: GATS Committee

HIGH COURT COMMITTEE

Members: Cassim Sardiwalla (Chairperson), Andre Bloem, Mohamed Essa, Themba Gura, Peter Horn, Neil Joubert, Charlie Mnisi, Danie Olivier, Adam Pitman, John Wills and Eric Zaca

The High Court Committee met on two occasions during the period under review. A meeting was also held with the General Council of the Bar (GCB). Furthermore, LSSA Co-chairperson Henri van Rooyen, the Manager: Professional Affairs, Lizette Burger, and I as chairperson, attended a meeting in Cape Town between the Heads of Courts, the Magistracy and the organised legal profession.

PROPOSED AMENDMENTS TO THE HIGH COURT RULES

Various issues were considered by the committee and in many instances the Rules Board for Courts of Law referred proposed amendments to rules to the committee for comment, *inter alia*, amendments to Rule 46(b) and Rule 68(5)(c)(xiv) of the High Court Rules. The committee was of the view that the proposals required further consideration and was in the process of drafting a recommended rule to replace these rules.

Counsels' fees

During the meeting with the GCB, matters of mutual interest and operational issues were discussed. During the past few years, changes have taken place with regard to the basis on which advocates charge fees and it was felt that there should be interaction between the attorneys' profession and the Bar regarding trends in respect of counsels' fees. The professional rules of the GCB provide that fees should be reasonable. If an attorney is of the opinion that the advocate's fees are unreasonable, a request for assessment of the fees can be lodged with the GCB Cost Committee.

The issue of collapse fees was also discussed. The committee was informed that collapse fees may be charged only if agreed in advance between the advocate and the attorney. The GCB suggested that, in all instances, fees be agreed in advance between the attorney and advocate.

Taxing masters

The committee raised concern that taxing masters are not consistent, in particular with regard to the difference between the attorney-and-client component of the fees and the advocates' fees. The discrepancy between the attorney-and-client scale and the attorney-and-own-client scale is also a matter of concern. It was resolved that the LSSA Cost Committee would draft proposals with regard the alignment and harmonisation of the party-and-party tariff, the attorney-and-client tariff and the attorney-and-own-client tariff. A possible simplification of the tariffs was also to be considered.

Conventions of the Bar

Various other issues, such as the conventions of the Bar and the functioning of the courts affect the attorneys' profession's relationship with advocates, and these were also considered.

Clogging of court rolls

The clogging of court rolls, predominantly by Road Accident Fund matters, is of great concern. At the meeting with the Heads of Courts, the Magistracy and the organised legal profession, Chief Justice Ngcobo requested the LSSA and the GCB to make innovative proposals to alleviate this problem, and submissions are being prepared.

Reserved/outstanding judgments

The Chief Justice also raised the problem of reserved/outstanding judgments. He was assured that there was unanimity in the profession that acting judges should be disciplined by the profession should they fail to finalise a judgment.

National survey

A national survey was conducted in respect of magistrates' courts and high civil courts in South Africa. The results were disappointing as the difficulties that practitioners experience in court were much worse than portrayed in the survey. The committee was concerned that the survey was not conducted properly and the questions had not been appropriately framed. As a result, Manco resolved that the profession should conduct its own survey in respect of all services rendered by the Department of Justice and Constitutional Development. This process, in which the provincial law societies, attorneys' associations and circles will be participating, has already commenced.

Increase in tariffs

The increase in the tariffs came into effect in June 2009. Although the profession requested a 100% increase, the Rules Board proposed an increase of only 70% staggered over two years, which proposal was accepted by the Minister. The committee resolved that applications for increases should be made more frequently. The Costs Committee of the LSSA was to attend to this, as well as give consideration to the possibility of simplifying the tariff, so that a detailed Bill of Cost would not be necessary, making taxation easier.

GENERAL

The committee made representations regarding various other issues, including the Jurisdiction of Regional Courts Amendment Act, 2008. In addition, the committee considered general queries raised by attorneys.

Cassim Sardiwalla

Chairperson, High Court Committee

IMMIGRATION AND REFUGEE LAW COMMITTEE

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

During the 2009 year under review the Immigration and Refugee Law Committee was particularly active in various spheres of immigration, nationality and refugee law.

The committee met physically on one occasion and via teleconference on two further occasions. In addition, regular circulation of e-mails between the committee members to keep them informed of developments in our sphere of specialist practice has become the norm.

During the year under review our colleague Chris Watters, who represents the Nadel constituency on our committee, was elected as Vice Chairperson of the committee. We are honored to have him in this capacity as he is one of the leading lights in our industry in his area of expertise.

Early in 2009 the committee concluded an arrangement with Lawyers for Human Rights (LHR), who had secured funding for the purpose, to run a series of joint LSSA/LHR seminars, to be held in Johannesburg, on various topics involving refugee law, immigration law and human rights law insofar as it impacts into the areas of immigration and refugee law. All of these sessions, and there were three in all, were without any financial implications for the LSSA and it has been a privilege to have been involved in these. All were well attended not only by attorneys practising in this field, but by immigration officials and refugee status determination offices, and also included the chairperson of the Refugee Appeal Board and of the Standing Committee on Refugee Affairs. Our colleague Chris Watters presented and was a panelist in each of these seminars.

During November 2009 we were invited to participate in a full-day workshop which was a joint venture between the LHR and the Nelson Mandela Foundation in co-operation with the University of the Witwatersrand Faculty of Law. This was a great success.

Again our colleague Chris Watters was one of the panelists, with the main speaker being Supreme Court of Appeal Justice Azar Cachalia. Much value and much exposure for the organised legal profession were gained on the day.

In fact, the LSSA Immigration and Refugee Law Committee has been invited to participate in further workshops and seminars on the above basis and we look forward to doing so in 2010.

Various attempts were made by our committee to meet with the Director-General of Home Affairs and/or the Minister of Home Affairs. The latter has, unfortunately, been unable to slot us into her diary at this time but we anticipate meeting with her during early 2010.

Our efforts to meet with the Director-General of Home Affairs have, however, met with no success. Although we had scheduled a meeting with him, he became unavailable and we met with Chief

Director Modiri Matthews in his stead. Present at the meeting were heads of the National Immigration Branch and Refugee section the Department's head office.

This constitutes part of our ongoing mission to interface with the Department of Home Affairs at all levels on a constructive and proactive basis.

Meetings were held with the various regional directors of Home Affairs either by the LSSA or in collaboration with the LSNP Immigration Nationality and Refugee Law Committee. The purpose of these meetings was to engage with officials at regional and local level in order to ensure a better interface between practitioners and the Department.

The past year has been characterised by falling service delivery levels within the Department of Home Affairs and it has been particularly difficult for attorneys. The committee continues to pursue a solid and good working relationship with the Department and to cope with the stumbling blocks that are continually placed before practitioners.

During the year under review attorneys have continued to be exposed prominently in the print and broadcast media, Mr Watters and I having appeared on various television programmes as panelists and regularly contributing to numerous radio stations either as panelists or being interviewed on those radio stations. The committee has continued to be prominent in contributing articles to publications, both in the media, on internet and other printed media, on a regular and continuing basis.

The committee has been ably assisted by Kris Devan from a secretarial perspective and, on behalf of the committee, I would specifically like to extend a word of special thanks to her. This does not detract from the professional manner in which we have been assisted by other staff at the LSSA and for the support received from the CEO, Raj Daya.

In the coming year the committee will endeavour to continue to hold the name of the LSSA and the Immigration and Refugee Law Committee as high as possible and to gain as much exposure for our area of expertise and for the organised legal profession.

I would like to express my gratitude to my fellow committee members for their continued support, input and hard work.

Julian Pokroy

Chairperson, Immigration and Refugee Law Committee

INSOLVENCY AND LIQUIDATION MATTERS COMMITTEE

Members: Yvonne Mbatha (Chairperson), Roland Meyer (Deputy Chairperson), Vincent Matsepe, Ebi Moolla and Peter Whelan

The committee held two meetings during 2009. There was no specific mandate given to the committee save for the general mandate given to committees.

MATTERS DISCUSSED BY THE COMMITTEE

Among other things, the provisions of the Companies Act were discussed in so far as they would have an impact on insolvency matters. Mr Moolla prepared a discussion document in this regard.

The LSSA was requested to obtain the paper delivered by Michael Katz at its 2009 annual general meeting on the limitation of liability for attorney, and the paper formed a subject of discussion by the committee.

The transfer of skills programme to newly appointed insolvency practitioners was discussed at length. The committee's aim was that the LSSA should provide practical training courses for emerging insolvency law practitioners, as most of them are appointed by the Master of the High Court to act as liquidators or trustees in insolvent estates. The committee was keen that the project must go forward as it would benefit the entire profession, particularly the emerging class of insolvency law practitioners.

The committee noted that previously disadvantaged attorneys who get appointments through the Office of the Master of the High Court are not receiving the necessary skills to carry out their mandate. This is due to a number of reasons, for instance, they are geographically far apart from their experienced co-liquidators or the administration is done in the office of the senior liquidator where he cannot fully participate in the administration of the estate. It was felt that they should be provided with a course that will give them practical knowledge of what is expected to be done by them upon appointment. It would also give them confidence to engage fully with their senior co-liquidators where they can actively participate in the administration of the estate. Most of the newly appointed insolvency practitioners shy away from the administration of the estates because of their lack of practical skills.

The matter was referred to Nic Swart, the Director of Legal Education and Development, for assistance with the project. The chairperson was mandated to work together with Mr Swart to take the project forward. This was followed by a meeting on 9 November 2009 at LEAD's offices in Pretoria for a briefing session with Mr Swart and his team to co-ordinate the course.

The proposals regarding the structure of the course were as follows:

The skills transfer programme is to be designed to give 30 attorneys from historically disadvantaged background the opportunity to undergo further training in this field.

The law faculty of the University of Pretoria and members of the profession were to cooperate.

Attorneys undergoing training would complete

- an advanced postgraduate certificate course in insolvency litigation and administration;
- five days of intensive practical training;
- 20 hours of mentorship; and
- business leadership training.

A request was also made for the nomination of one of the committee members to participate in the setting of the course outcomes.

Vaneetha Dhanjee, the Director of the LSSA's School for Legal Practice in Durban, has drawn a work plan on how the course should be structured. In presenting the views of the committee, I as chairperson, requested that the committee members should be involved in the structuring of the programme, to avoid that it becomes another purely theoretical course.

Other matters which were of academic interest, such as the Chief Master's report, the Legal Practice Bill and other relevant issues relating to insolvency law practitioners, were also discussed at the committee meetings

CONCLUSION

Two new members joined the committee in 2009, Peter Whelan and Ebi Moolla. The meetings were very constructive and I am grateful for the support and cooperation of the members. The committee extends its gratitude to the staff at the LSSA for all the support it provided to the committee.

Yvonne Mbatha

Chairperson, Committee on Insolvency and Liquidation Matters

COMMITTEE ON INTELLECTUAL PROPERTY

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

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

BROAD MANDATE

A broad mandate was initially given to the committee. Since the Committee was satisfied that its mandate adequately covered all contingencies in the area of IP law, or relevant to IP, the committee conducted its affairs also during 2009 in accordance with this mandate, namely to

- monitor developments (legislative as well as other trends, locally as well as abroad) in the area of IP, with a view to assessing the effect thereof on the legal position and the legal regime in South Africa, on attorneys in South Africa and on the structures within the organised profession;
- participate, as far as this is necessary or appropriate, on behalf of the LSSA in initiatives and projects having a bearing on IP, such as the meetings of the Joint Liaison Committee 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 IP law, to draft comments on legal developments as and when deemed necessary and to submit these to the LSSA Council for further action, 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, but divergent area of law. Although legislative changes do not occur regularly, such changes could apply to different specific areas of law, eg the different laws on patents, trade marks, copyright, anti-counterfeiting measures, etc. Statutory changes could also impact on the structures and procedures for the registration of different IP rights. Moreover, IP law is a highly globalised and internationalised area of law, so that international developments and agreements would likewise have a far-reaching impact on national legal regimes.

Developments on international level

After the suspension during 2008 of the Doha Round of negotiations of the World Trade Organisation (WTO), the meetings of the WTO and WIPO (World Intellectual Property Organisation) continued during 2009 in order to define positions to be put forward for further negotiation. These negotiations could have, and in the past did have, a bearing on IP rights in national jurisdictions. Some IP-related issues were included in the matters discussed at the WTO and WIPO meetings:

- The contentious issue of providing (in patent laws) for a requirement to disclose in a patent application the use of a biological/genetic resource, the use of traditional knowledge/use, and the existence of benefit-sharing arrangements (as required by the Convention on Biological Diversity).
- The introduction of a recognised registration system for Geographical Indications, and the extension of GI protection to goods and services other than wine and spirits.
- The power of seizure and detention of counterfeit and/or infringing goods, particularly generic drugs, at ports of importation.
- The need for an international instrument to harmonise the protection of traditional/indigenous knowledge in national laws.

Since no agreement could be achieved on any of the above issues on international level, there were no finalised positions on international level which obliged South Africa to effect national legislative changes.

Developments on national level

A number of significant developments in the IP field occupied the attention of the committee during 2009:

The draft IP Amendment Bill

The draft IP Amendment Bill, with a supporting Policy Framework, was previously (2008) made available to the IP profession and was published for comment. (The Bill and Policy Framework were published by way of General Notice 552 of 2008 in GG 31026 of 5 May 2008, for public comment.) The Bill sought to amend four existing IP statutes to introduce provisions for the protection of certain manifestations of traditional knowledge. The draft Bill was submitted to the Committee and initially considered during 2008. However, the Bill did not proceed through Parliament during 2008 and was again put on the parliamentary programme for 2009.

In view of the contentious nature of the Bill, both as regards the principle of its approach and its many drafting defects, the committee decided to reconsider the Bill with a view to formulating comments for submission by the LSSA.

Publication of prohibited marks and designation of protected event

A General Notice 1791 was published in terms of the Merchandise Marks Act 17 of 1941 in GG 30595 of 14 December 2007, declaring a number of different words, phrases and emblems of FIFA as prohibited marks for purposes of the 2010 FIFA Football World Cup event.

As subsequent General Notice 683, also in terms of the Merchandise Marks Act, 1941, was published in GG 28877 of 25 May 2008, to designate the 2010 FIFA World Cup as a 'protected event'.

Although both these publications were faits accomplis (so that there was no further opportunity for comment), the content of the publications as well as the ambit thereof were issues that the committee decided to address with a view to legislative reform.

Act on Intellectual Property Rights from Publicly Financed Research and Development

Although the Act was passed in December 2008, the draft Regulations were published for public comment.

New Companies Act 71 of 2008

This Act, which contains provisions to convert CIPRO (the Companies and IP Registration Office) to an independent commission, will have an effect on the delivery of services in regard to IP registration, and on the constitution of so-called expert committees and the institution of law review procedures, also in the area of IP.

MEETINGS OF THE COMMITTEE

During 2009 three meetings of the committee were held on 18 May 2009, 17 August 2009 and 16 November 2009. The major part of the meetings was devoted to the IP Amendment Bill, which was found to be totally unacceptable from a legal perspective.

The committee, in principle, supported the need for the protection of traditional/indigenous knowledge. However, the committee resolved that the policy approach of the Bill in its current format (ie to protect different manifestations of traditional/indigenous knowledge by way of the different 'conventional' IP statutes) could not be supported since this would be in conflict with the well-established and basic principles of IP law. The committee believed that such a piece of legislation might also undermine South Africa's international IP relations.

Protection for aspects of traditional/indigenous knowledge should be provided for in a different format, eg in sui generis legislation. It was recommended that independent professionals/consultants, with expertise in IP law, should be appointed to draft such sui generis legislation.

It was accordingly resolved that a recommendation be made to the LSSA Council that

- comments on the draft IP Bill be compiled, pointing out the

many drafting defects of, and the basic jurisprudential concerns regarding the Bill, such comments to be submitted to the Department of Trade and Industry;

- a meeting with the Minister of Trade and Industry be requested, to inform him of the committee's concerns and to urge him to withdraw the draft legislation; and
- a recommendation be made to the Minister for appropriate sui generis legislation be drafted, preferably by a recognised, independent expert or team of experts.

Time at the meetings was also devoted to the concerns regarding the legislative provisions in the Merchandise Marks Act, 1941 empowering the Minister to issue notices of very wide ambit in designating an event as a protected event and in prohibiting the use of certain marks. It was recommended to the LSSA that this issue also be raised with the Minister at the time of the meeting with him.

FUTURE WORK

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

A number of draft Bills on IP are expected to move forward in the course of 2010; the committee will keep track of these. The anticipated Bills include

- the IP Amendment Bill (on Traditional Knowledge) (referred to above);
- the Trade Marks Amendment Bill (to introduce the Madrid Protocol system); and
- the Designs Amendment Bill (to introduce The Hague Agreement system).

The work of the IP Committee will, therefore, continue to entail a monitoring and assessment function, and recommendations will be submitted to the LSSA Council as and when required.

Esmé du Plessis

Chairperson, Intellectual Property Committee

JOINT COMMITTEE OF ATTORNEYS AND ACCOUNTANTS

Members: Iqbal Ganie (Chairperson), Frank Dorey, Mahomed Essa, Glenn Flatwell, Etienne Horn, Gavin John, Nano Matlala, Pearl Mfusi, Zama Msomi, Andrew Stansfield, Jan van Rensburg and Johan van Staden

The annual meeting with the accountants' profession took place in June 2009 in Johannesburg

At that stage, there appeared to have still been certain outstanding items to finalise the process of setting up a national uniform set of rules. It was anticipated that the rules are likely to be approved at the end of 2009 before a possible implementation in July 2010.

The numbering of the rules will be uniform and will impact on the bookkeeping and accounting function of the statutory law societies.

The attorneys' profession was requested to engage with the Independent Regulatory Board of Auditors (IRBA) in its formulation of the accreditation criteria in respect of auditors performing audits of attorneys' trust accounts. The criteria are to include the following:

- auditor to be in good standing; and
- appropriate continued professional development.

The attorneys' profession would have regard to the process that was followed by the Financial Services Board (FSB) as regards the registration and monitoring of auditors.

A set of guidelines for the audit of attorneys' trust accounts is currently being drafted by IRBA which will incorporate the responsibilities of the auditor as regards the auditing of attorneys' trust accounts as well as their reporting responsibilities relating to fraud and theft.

At the request of the attorneys' profession, the accountant members of the joint committee agreed that their draft guide to auditors will include guidance for forensic investigations, the issue of uniform rules as well as the treatment of electronic (funds transfer) transactions.

The amendments to the guide would, in all probability, run in conjunction with the proposed uniform changes to the rules.

The Reform Audit Support System (RASS) in KwaZulu-Natal is functioning appropriately and is being improved on an ongoing basis to ensure the efficient functioning of the project. The programme is still voluntary.

The Law Society of the Free State is in the process of running the RASS.

The Cape Law Society was investigating the possibility of using a hybrid format (between external auditors and in-house inspectors) in the implementation of the RASS project, largely because of the spread of its members.

Iqbal Ganie

Chairperson, Joint Committee of Attorneys and Accountants

A set of guidelines for the audit of attorneys' trust accounts is currently being drafted by IRBA which will incorporate the responsibilities of the auditor as regards the auditing of attorneys' trust accounts as well as their reporting responsibilities relating to fraud and theft.

COMMITTEE ON LABOUR LAW

Members: Peter Hobden (Chairperson), Lloyd Fortuin (Deputy Chairperson), Philani Jafta, Lepono Lekale and Jerome Mthembu, Xolile Ntshulana, Jan Stemmett and Jason Whyte

There have been no significant amendments to the labour legislation in the last year which the committee has had to be involved in. The committee's focus has been on trying to establish a relationship with the Labour Court and Labour Appeal Court. The Judge President of the Court has encouraged this. Further, the committee strives to build relationships with the national Commission for Conciliation Mediation and Arbitration and bargaining councils.

The uneasy situation, in terms of which attorneys are not granted automatic right of appearance, still persists.

Peter Hobden

Chairperson, Committee on Labour Law

LEGAL AID COMMITTEE

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

The committee held four meetings during the 2009 year.

During the meeting held in May 2009 it was proposed by the committee members that, as there were many issues that seemed to be held over from previous meetings which the committee needed to have responses to from Legal Aid South Africa (LASA), the committee resolved that it would issue a standing invitation to LASA to send one of its executive managers who deals with the legal issues at operational level to participate in the committee.

In July 2009 I, as chairperson, attended the launch of the new Legal Aid Guide 2009. The new Legal Aid Guide has been distributed to all the provincial law societies and is available to attorneys.

In August, Patrick Hundermark and Dick Hlashane from LASA attended the meeting of the LSSA Legal Aid Committee where the following issues were discussed comprehensively:

- the issuing of judicare instructions to private attorneys;
- making the application for accreditation of private attorneys less complicated and the documents required to be submitted for accreditation fewer;
- the quality interventions which LASA has in place to improve the quality of the services rendered by its attorneys; and
- the new Legal Aid Guide and a brief synopsis of what changes it contains as compared to the old one.

The outcome of the discussions was that at the next meeting of the committee, LASA executives would present a two-page document comprising the application form that attorneys who wished to be accredited would need to complete and submit. The committee was advised that the form has been posted to the LASA website and was also available in hard copy from all the Justice Centres in the country.

The committee requested an explanation regarding how instructions were issued once members were accredited, to ensure that instructions to accredited members are distributed in a fair and equitable manner. LASA reported that it has an IT system through which instructions are issued to the attorneys on a rotational basis. Instructions are sent via SMS to four attorneys simultaneously and the response time determines who receives the instructions.

The committee enquired from the LASA representatives what percentage of the entire legal aid budget is allocated to judicare instructions to private attorneys. It was indicated that 20% of the budget was allocated to judicare. When concern was raised as this being a low percentage, we were advised that, due to budgetary constraints within the Department of Justice and Constitutional Development, this was what LASA could work with in the current budget.

The committee was presented with comprehensive documentation setting out the quality interventions which LASA has set in place to monitor and improve the quality of services rendered by the attorneys in its employ.

The last committee meeting for the year on 25 November was a joint meeting held between the members of the committee, Mr Hundermark and Brian Nair, representatives of LASA senior management. The committee was privileged to have one of the LSSA Co-Chairpersons, Henri Van Rooyen, present at the meeting. The issues discussed at this meeting included the judicare tariff and the proposed increase of the tariff which would come into effect on 1 March 2010, a response from the LSSA on the proposed *pro Deo* policy submitted by LASA and the LSSA's LEAD department.

Nontuthuzelo Mimie Memka
Chairperson, Legal Aid Committee

LEGAL PROVIDENT FUND

Board of Trustees: Andrew Stansfield (Chairperson), David Bekker, Raj Daya, Vincent Faris, Thinus Grobler, Gavin John, Edwin Letty, Jacques Malan, Michael Pinnock and Tony Thobane

The Legal Provident Fund (LPF) is managed by a Board appointed by the Law Society of South Africa (LSSA), the General Council of the Bar and the trustees themselves. In 2009, the Board met quarterly to deal with the management of the LPF in terms of its rules and in accordance with legislation. The LPF's Executive Committee met more regularly to discuss matters where more immediate action was required. Particular attention is paid to training in order to ensure that trustees remain abreast of legislative changes and other developments within this specialist area. Governance has been further enhanced following the appointment of a specialist Principal Officer in 2008.

There are over 500 employers participating in the LPF. These include many prominent attorneys' firms, advocates' groups and other legal organisations such as the four statutory, provincial law societies and the Attorneys Fidelity Fund. There are more than 4 000 members.

2009 proved to be a year of recovery for members' investments following the financial meltdown of 2008. Members generally remained invested for the long term.

As mentioned in last year's report, the trustees decided to promote an inclusive approach whereby marketing would be undertaken under the auspices of the LSSA. Ros Elphick was appointed as marketing consultant to the LPF with effect from December 2008.

The trustees have been delighted by the response from attorneys' firms. During the course of the 2009 year 25 new participating employers joined. The LPF does have a competitive advantage over other retirement funds; administration fees are low and the LPF does not pay commission. As a result, members' investment growth is not diluted. A 2009 retirement fund survey showed that the fee charged by the LPF was less than half the fee charged by other fund administrators.

As the LPF grows in size, further economies of scale will be passed on to members. The trustees are confident that membership will continue to grow in 2010, in line with the trustees' objective of making the LPF the retirement fund of choice for the legal profession.

In the past only employees and directors could join the LPF. Late in 2008, however, the Taxation Laws Amendment Act amended the definition of 'pension fund' to allow partners to join. An appropriate LPF Rule amendment was approved by the Financial Services Board in 2009.

I am grateful to my fellow trustees and the administration team for their support during the course of 2009.

Andrew Stansfield
Chairperson of the Board of Trustees, Legal Provident Fund

LIQUOR MATTERS COMMITTEE

Members: Solly Epstein (Chairperson), Jacobus Burger, Chris Bodlani, Guy Dakin, Muke Khanyile and Barry Kruger

It was evident from the committee meeting in August that most liquor licencing authorities are seriously hampered by the lack of suitably qualified staff.

In the Western Cape it takes six months from lodgment before an application is considered, but what is particularly troublesome is that, from the date of grant of an application, it can take up to two months before the licence is issued. There is no doubt that the Western Cape Liquor Board is seriously understaffed.

As chairperson, I attended a seminar hosted by the new MEC when this was brought to his attention. The long awaited new Liquor Act, though signed into law in 2008, has yet to be implemented. An amendment Bill, which was circulated to members, has been published for comment and will go to Parliament for consideration. Thereafter regulations will be drafted and published for comment. The committee will continue to interact with the Western Cape legislature in this regard.

Mr Dakin reported from the Eastern Cape that the Liquor Board had implemented a system whereby applicants for licences are assisted by staff members of the board, acting as consultants, to prepare applications. These applications seem to be granted without difficulty, whereas the authorities tend to have a negative attitude towards applications lodged by attorneys. During the latter part of 2009 the Eastern Cape Liquor Board published notices in the press 'promulgating' licence conditions and trading hours. When it was brought to their attention that these notices were *ultra vires* the Act, further notices were published in an attempt to rectify this, causing great confusion in the industry.

Mr Burger reported that the Free State Liquor Board was also understaffed and Mr Kruger indicated that in KwaZulu-Natal, applications could take up to two years.

Applying for liquor licences in Gauteng has become a minefield and attorneys have been forced to make numerous High Court applications to force the Liquor Board to carry out its duties.

The National Liquor Authority, dealing with registrations for manufacturing and distribution, has a similar staffing problem. Telephone calls inevitably result in a voice message and correspondence goes unanswered. When a staff member is contacted, the experience has been that the staff member is not able to deal with the query and is not able to transfer the call to someone able to assist.

At the time of writing, the committee was in the process of preparing letters to be sent to the various provincial MECs to volunteer to assist the Liquor Boards in ensuring that they function efficiently.

Solly Epstein

Chairperson, Committee on Liquor Matters

MAGISTRATE'S COURT COMMITTEE

Members: Graham Bellairs (Chairperson), Johan Fourie, Vanessa Graham, Jeff Mathabatha, Charlie Mnisi, Siphwe Moloj, Danie Olivier, Praveen Sham, Thami Tembe, Praveen Thejpal and Jan van Rensburg

Etienne Horn resigned from the committee during the course of last year. His contributions to the committee were significant and his fellow committee members were sorry to note his resignation. His place was filled by Vanessa Graham from the Free State. Legodi Phatudi was appointed as a Judge of the Gauteng High Court and his place was filled by Jeff Mathabatha. Danie Olivier and Charlie Mnisi also joined the committee. The committee has representatives from all constituents and thus communication with all interested parties in magistrate's court practice throughout the country is strong.

The committee held two teleconferences and four meetings at OR Tambo International Airport during the course of 2009. The issues considered by the committee were many and varied and included

general queries raised by attorneys. However, the main focus of the committee's activities fell in three areas namely,

- the questionnaire dealing with the competence of the magistrates' courts throughout South Africa;
- the National Credit Act and its implementation; and
- the amendment to the Rules of Court.

NATIONAL SURVEY ON MAGISTRATES' COURTS

The results of the national survey on magistrates' courts were analysed by an independent consultant and the results were disappointing in the sense that they did not emphasise the problems which practitioners appear to experience regularly and on which they had reported. The manner of completion of the survey in different parts of the country had been inconsistent and thus the data obtained was not sufficiently reliable. As a result the LSSA Manco resolved to redo the survey to cover all aspects of the service rendered by the Department of Justice and Constitutional Development including the High Courts, magistrates' courts and other justice departments.

NATIONAL CREDIT ACT

The implementation of the National Credit Act has proved to be problematic and the decisions emanating from the various courts have been considered closely. In particular the declarator sought by the Department of Trade and Industry in relation to the conduct of debt-review proceedings, was carefully considered. The committee also gave consideration to the requirements of various magistrates' courts in relation to their proceedings, and the pleading of claims subject to the Act. A consensus document relating to debt-rescheduling applications prepared by the Gauteng Civil Court Forum was also considered.

The committee has expressed concern that the Rules and Regulations for the conduct of court applications were being drafted by the Department of Trade and Industry. The committee is strongly of the view that these should be prepared by the Rules Board and representations were being made in this regard.

PROPOSED AMENDMENTS TO THE MAGISTRATE'S COURT RULES

A large amount of time and effort has been expended by the committee in considering and commenting on the proposed amendments to the Magistrate's Court Rules which have been occasioned by the fact that civil court jurisdiction is being extended to the regional magistrates' courts which will also have jurisdiction to hear divorce matters. The entire set of Rules was divided up among the committee members for comment and consideration at our meetings. Comments from the provincial law societies' magistrate court committees were also considered and representations have been conveyed to the Rules Board.

The committee considered it necessary that the existing High and Magistrate's Court Rules should be replaced with a uniform set of rules for applications in the High and Magistrates' Courts. A proposal that Mr Van Loggerenberg SC be appointed to draft these rules has been approved by Manco.

Furthermore, Messrs Olivier and Mnisi have been co-opted to the Magistrate's Court Committee and they have also been appointed to the Rules Board where they sit on the Board's Magistrate's Court Rules and the Costs sub-committees. Their appointment allows our committee to communicate effectively and directly with the Rules Board.

GENERAL

The execution of judgments against the State and the Constitutional Court's decision in the *Nyathi* case received the attention of the committee and representations were made to the Justice Department in this regard.

Members of the committee participated in the submission of a motivation for an increase in the magistrate's court tariff in 2008. Despite the Rules Board having recognised that the increase was long overdue and, therefore, that it was urgent, the increase came into effect only in June 2009. The profession was initially informed that the increase would be what had been asked for, namely 100%, but it turned out that the increase proposed by the Rules Board to the Justice Minister was only a 75% increase spread over two years – 45% in 2009 and 30% in 2010. The cost committee was to convene in February 2010 to start formulating an application for a further increase in the tariff.

The repeal of the Stamp Duties Act without provision having been made for the payment of court fees also received the attention of the committee and representations were made to the Justice Department in this regard. The Law Society of the Northern Provinces launched an urgent High Court application to do away with the need for payment of court fees. The application was duly granted and as a result, it is now unnecessary for court fees for the issue of summonses and applications to be paid. The decision is retrospective to the date of the repeal of the Stamp Duties Act.

The committee welcomes the input and queries of a general nature from all attorneys.

Graham Bellairs

Chairperson, Magistrate's Court Committee

PRACTICE DEVELOPMENT COMMITTEE

Members: David Gush (Chairperson), Koos Alberts, David Bekker, Dr Llewelyn Curlewis, Leon Els, Glenn Flatwell, Jeff Mathabatha, Abe Mathebula, Gavin McLachlan, William Mokoena, John Moorhouse, Praveen Sham, Nic Swart and Johan van Staden

The committee met four times in 2009. It considered and approved

- a proposal for a practice development fund;
- a proposal for a practice support model;
- principles and procedures for mandatory practice management training;
- a support staff training project; and
- a proposal for a business literacy course at university.

The committee met and consulted with management software providers for the purpose of identifying the most appropriate products for firms.

In 2009, the Practice Development Committee concerned itself successfully with the crucial aspect of management training and development in the profession.

David Gush

Chairperson, Practice Development Committee

PRO BONO COMMITTEE

Members: Taswell Papier (Chairperson), Norman Moabi (Deputy Chairperson), Poobie Govindasamy, Themba Gura, David Gush, Hannelie Lombaard, Gerry Maritz, Vincent Matsepe, Arnold Mohobo and Tumelo Musi

The committee met three times during the period under review. At its meeting on 7 May 2009 Norman Moabi was elected as the Deputy Chairperson of the committee. Mr Moabi has been a pillar of strength to all, and the committee continues to benefit from his guidance and leadership.

PROGRESS TO DATE

The committee is pleased to report that significant progress has been made towards the development and acceptance of a national *pro bono* rule, consolidating the norms and standards for *pro bono* nationally. The relevant *pro bono* rules of all the provincial law societies have been collated with the view to consolidating them into one rule. There are no material differences, and the committee is convinced that consensus will be reached soon in this regard.

The *pro bono* initiative has enhanced the credibility of the profession, and has contributed significantly towards facilitating access to justice for the poor. We are grateful to each and every practitioner who has participated in the *pro bono* initiative. You have contributed towards creating access to justice, building the rule of law, as well as enhancing the integrity of the profession. This is our collective responsibility and a task that cannot and should not be left to a few lawyers to execute on behalf of the profession. It remains the imperative of each and every member of our profession to contribute towards the continued development of the legal profession that we are privileged to serve.

In South Africa, the call to *pro bono* is a nation-building opportunity particularly in a country where millions are unemployed and where there are significant poverty and literacy challenges. The scourge of HIV/Aids and the desperate need for education, healthcare, food and other social and economic rights calls for the commitment, vision and leadership of lawyers who have the skills and ability to make a difference in their spheres of influence. It is the little we do that impacts significantly and affects the lives of so many.

As a profession we can be a material agent of change. With the necessary national, provincial and local coordination, the profession will achieve its objective of building the rule of law and facilitating

access to justice for the poor – a profession with a social conscience, rooted in the context and historical perspective of South Africa, served by women and men with expertise in every aspect of the law.

We are encouraged by the commitment of the provincial law societies to participate collectively in the *pro bono* initiative. They have promulgated rules in this regard, appointed provincial coordinators to facilitate and coordinate *pro bono initiatives* and programmes together with the national *pro bono* coordinator at the LSSA to manage the national database. We have now developed the thinking around *pro bono*, inculcated a national *pro bono* culture and facilitated a national *pro bono* structure. At this point we urgently need the intervention, commitment, active participation and meaningful support of the LSSA directorate, LSSA Manco, the directors of the provincial law societies and their respective councils, and last but not least, the Attorneys Fidelity Fund.

THE NEXT PHASE

The next phase must be the establishment of an efficient, well-resourced clearing house to facilitate and coordinate the *pro bono* initiative in the interest of the public, and also in the interest of the profession. Without effectively coordinated support the *pro bono* initiative will be unable to make the requisite impact in a sustainable way.

The committee prepared budgets over the years; repeatedly motivated that the activity complies with the provisions of s 46(b) of the Attorneys Act; developed a business plan for the establishment of the clearing house structure and taken all reasonable steps to procure the desperately needed support for implementing the *pro bono* initiative professionally and sustainably. This will not be possible without the urgent commitment and financial support which is now required. We, therefore, appeal to all the relevant structures within the profession to support the *pro bono* initiative actively, and approve the funding for the establishment of the national clearing house and the requisite provincial structures. We propose that steps be taken as a matter of urgency, should it become necessary, to amend the legislation in order to enable the profession to fund this initiative.

CONCLUSION

I would like to thank all the committee members, the LSSA directorate and those who have contributed so much to achieve the gains we have made. In line with the LSSA's governance and rotation policy, and as I have served as chairperson of the committee for four years, I have reached the end of my term of office, and have overstayed my welcome. Thank you for affording me the opportunity to serve. I have absolutely no doubt that Norman Moabi together with the committee and the LSSA directorate, and actively supported by all the relevant structures within our profession, will take this initiative to its rightful place and develop the profession into one that will continue to do us and the country proud.

Taswell Papier

Chairperson, Pro Bono Committee

PROPERTY LAW COMMITTEE

Members: Selemeng Mokose (Chairperson), John Anderson, Dave Bennett, John Christie, John Gomes, Hussan Goga, Ken Mustard, Wilfred Phalatsi, Thoba Poyo-Dlwati and Gustav Radloff

Three meetings of the committee were held during 2009.

In addition to the normal meetings, several meetings were held with role players during the course of the year, notably, SARS, the Banking Council, Standard Bank and the office of the Chief Registrar of Deeds.

Follow up meetings were held with the Banking Council in July 2009 at which several matters were discussed, including the issue of the fees charged by attorneys for FICA compliance. Again it was agreed by the Banking Council that, where the attorneys act as agents of the banks, they are entitled to charge a fee. This should, however, not be reflected as a separate FICA charge on the account. Further attempts would also be made by the Banking Council to secure a meeting with the Financial Intelligence Centre.

Meetings were also held with different departments of SARS. The Transfer Duty Department held a meeting with the profession as well as the office of the Chief Registrar of Deeds to agree the procedure with regard to amendments on transfer duty receipts.

A meeting was also held with SARS to discuss undertakings by conveyancers in respect of VAT as well as the procedure relating to exemption in terms of s 9(20) of the Transfer Duty Act. The role of the conveyancer has been recognised by SARS and every effort will be made to continue to meet regularly on matters of mutual concern.

Throughout the year meetings have also been held with the office of the Chief Registrar of Deeds. An invitation was extended to the profession to attend the Registrar's Conference at which decisions were made pertaining to conveyancing practice. It was also suggested that meetings be held with the committee every two to three months to discuss matters of mutual interest. This is an indication of the important role that we, as conveyancers, play in South Africa.

Following on the repeated requests by conveyancers, the conveyancing guideline was increased this year with effect from 1 July 2009. This was welcomed by most in the profession. It was decided by the committee that a review of the guideline must be undertaken on a biennial basis.

Selemeng Mokose

Chairperson, Property Law Committee

ROAD ACCIDENT FUND COMMITTEE

Members: Jacqui Sohn (Chairperson), Susan Abro, Ronald Bobroff, Michael de Broglio, Poobie Govindasamy, Aurrit Levin, Jan Maree, Raymond Mashazi, Vincent Matsepe, Mxolisi Nxasana and Bennock Shabangu.

2009 saw the successful finalisation of the litigation initiated by LSSA in the Western Cape High Court: Cape Town aimed at preventing the introduction of the direct payment system (DPS) by the Road Accident Fund (RAF) and the launch of an application out of the North Gauteng High Court: Pretoria attacking the legitimacy of certain provisions of the Road Accident Fund Amendment Act, 2005 and the new Regulations which took effect on 1 August 2008.

The public assault on the integrity of the profession by the RAF continued, unabated and will, no doubt, increase as the current litigation attacking the Amendment Act progressed towards a hearing. Press reports emanating from the presentation of the RAF's 'strategic' plan (on 1 September 2009) and financial statements (on 16 November 2009) to the Portfolio Committee on Transport.

Members of this committee attended the 1 September 2009 presentation (as observers) and following the extremely disparaging remarks made by the chairperson (which were widely reported in the press) and the further adverse publicity reporting allegations of exploitation by attorneys made by the RAF Chief Executive Officer during the November presentation, the LSSA requested an audience with the Chairperson of the Portfolio Committee on Transport and has made a written submission.

DIRECT PAYMENT SYSTEM (DPS)

Following on the interim interdict granted in August 2008 and the production of the 'record' relative to the decision to impose a DPS, a supplementary affidavit was filed by the LSSA. The RAF failed to file any further papers and they were invited on several occasions to consent to a final order, thus obviating the necessity for the matter to be argued, and the concomitant costs.

The RAF eventually responded to the effect that they declined to consent to an order and proceeded to argue that no order was, in fact, necessary (as they had published a press statement advising that the decision to proceed with the DPS had been 'withdrawn') and they had tendered to pay the attorney and client costs of all applicants. The necessity for an order (declaring the decision of October 2007 invalid and permanently interdicting its implementation) having regard to the circumstances and the history was argued before Judge Van Heerden on 11 June 2009 and a final order was granted with attorney and client costs, including the costs of two counsel.

Copies of the papers and the final order can be found on the LSSA website by following the link to the RAF section.

THE AMENDMENT ACT AND THE NEW REGULATIONS

In February 2009 an application was launched by the LSSA in conjunction with the South African Association of Personal Injury

Lawyers, the QuadPara Association of South Africa and the National Council for Persons with Physical Disabilities in South Africa out of the North Gauteng High Court: Pretoria challenging the constitutionality and/or validity of certain sections of the Amendment Act and new Regulations. In particular

- the removal of the common law right to sue for any damages not covered by the Act, introduced by the amendment to s 21 of the RAF Act has been challenged as unconstitutional; and in the alternative
- the limitation of general damages to those who are seriously injured, only, as well as the caps on loss of income and the restriction of compensation for medical and hospital treatment to provincial hospital tariffs has been challenged on the same basis;
- the 'definition' of a 'serious' injury as 30% whole person impairment in the Regulations has been attacked as unauthorised by the enabling Act;
- the prescription of the AMA Guides 6th Edition as an assessment method has been challenged, inter alia, on the basis that it fails to take into account the personal circumstances of claimants, as is specifically required by the Act;
- that the prescribed procedures and forms for the lodgement of claims for pecuniary and non-pecuniary loss in the new Regulations are in conflict with the Act and/or unreasonably impede the lodgement of claims; and
- the dispute procedure relative to assessing a 'serious' injury has been attacked as inconsistent with the Constitution and invalid in that claimants are denied access to the courts and the right to a fair trial.

The application also seeks to review the Regulations and the respondents were called on to produce the record relating to the decisions to make the impugned Regulations. This aspect, unfortunately, resulted in some delay in the proceedings as the records initially produced (although voluminous) were incomplete. (The record eventually produced by both respondents currently consists of more than 3 500 pages).

After various notices in terms of r 30A were served and the records originally produced were duly supplemented by both respondents, the LSSA filed its supplementary affidavit and its amended Notice of Motion on 21 August 2009.

At the same time, seven co-applicants injured after 31 July 2008, applied to intervene in the proceedings. Copies of their applications were served on the respondents. The RAF served a notice stating that it would 'abide' by the decision of the court but at the same time briefed counsel to appear at the applications to draw the court's attention to certain case law and to make submissions against leave to intervene being granted. All applications were granted by the North Gauteng High Court: Pretoria on 30 September 2009.

Thereafter, as it was not possible to reach agreement on a time schedule for the filing of further affidavits and Heads of Argument, approaches were made to the Judge President and the Deputy Judge President of the North Gauteng High Court to give directions in this regard.

A hearing was held on 30 November 2009 before Acting Judge Sapire and on 1 December 2009 he directed that the respondents and all parties who wished to oppose or intervene file their affidavits by 15 January 2010 and that the LSSA and other co-applicants were to file their answering affidavits by 29 January 2010. The matter was set down for hearing on 1 to 3 March 2010 and was to be heard by Judge President Bernard Ngoepe.

The Treasury and the Minister of Health were both represented at the 30 November 2009 hearing and indicated their intention to apply to intervene. Their applications were also covered by the directives issued.

A NO-FAULT SYSTEM

According to statements made at the Portfolio Committee on Transport meeting in November 2009, Cabinet had approved a no-fault compensation system for victims of road accidents. It is assumed that this system would draw on the recommendations made by the Satchwell Commission. Apart from the aforesaid remarks, no other detail was available at the time of writing this report.

Any no-fault system, however laudable that principle might be, of economic necessity can provide only limited compensation. Satchwell envisaged State pensions, provincial-hospital treatment and some general damages ('sorry money') for those catastrophically injured. There will need to be a public participation process with publication of a draft Bill or White Paper for comment and thereafter public hearings.

Jacqui Sohn

Chairperson, Road Accident Fund Committee

SASSETA COMMITTEE

Members: David Gush (Chairperson), Emil Boshoff, Raj Daya, Patrick Jaji, Caron Jeaven, Ursula Hartzenberg, Dr Nalini Maharaj, Letuba Mampuru, Raymond Mashazi, William Mokoena, Refilwe Mthethwa, Cynthia Naidoo, Wilfred Phalatsi, Jack Segal, Almé Stanton, Nic Swart, Fazoe Sydow and Modi Vinger

The Safety and Security Seta (SASSETA) Committee met four times in 2009. It concerned itself extensively with matters relating to skills development legislation.

The committee approved a grant application in excess of R18 million. It has commenced with an investigation into the relationship between the LSSA and the SASSETA and whether the LSSA should not rather consider membership of another SETA

'Workplace training plan and report' workshops were held for attorneys at five locations in the country. Effort was made to promote assessor training for practitioners and 215 persons were trained. In addition, the committee promoted an internship programmes in terms of which LLB graduates are placed at law firms.

A skills transfer project involving 100 attorneys was completed focusing on the areas of corporate law, tax law and conveyancing.

Although some participants have not completed all elements, valuable experience was gained, as well as experience in the running of transfer projects.

Management toolkits were distributed to small firms.

David Gush

Chairperson, SASSETA Committee

SMALL CLAIMS COURT COMMITTEE

Members: Johann Gresse (Chairperson), Etienne Barnard, Siva Chetty, Stembiso Kunene, Joseph Mhlambi, Tar Omar and Butch van Blerk

During the course of the past year, the committee was mainly engaged in assisting the Department of Justice and Constitutional Development to redraft the manual for the Small Claims Court Commissioners and Clerks. Several meetings were held with the Deputy Minister of Justice and officials of the newly established Small Claims Court sector of the Justice Department.

Towards the end of 2009, the redrafted manual was approved by the Department and the amended manual was to be launched by the Department this year.

It was also decided that the manual will be updated regularly in the light of inputs made by practitioners who are actively engaged in the management of the small claims courts.

The vexing issue of labour matters that are brought before the small claims courts was extensively dealt with and it was eventually decided that small claims courts would not be precluded from dealing with basic labour-related matters where the dispute was of a purely contractual nature, rather than a labour dispute.

The current system whereby clerks of the small claims courts are rotated on a regular basis by their office managers to give them exposure to different spheres of work often results in the clerks not gaining sufficient experience in their duties as clerks of the small claims courts and the Justice Department has undertaken to circulate a directive to the regional offices of the Department requesting them to limit the rotation of clerks of the small claims court.

The Justice Department has also drafted a Blueprint for Small Claims Courts and this document will shortly be made available to the profession for comment.

The Deputy Minister of Justice is of the view that the Roll of Commissioners of the Small Claims Courts was not properly acknowledged and the Justice Department was investigating ways and means to improve this situation, with the result that a court administration agency will be established under the direct control of the Deputy Minister to address all matters relating to the small claims courts.

The Justice Department expressly requested that the Department's appreciation be conveyed to all members of the profession who were actively engaged in the running of the small claims courts.

During the course of the year, members of the Small Claims Court Committee acted as hosts for several foreign delegations who were interested in obtaining information as to the running of the small claims courts system in South Africa.

On reviewing the current situation regarding the small claims court system, it can be said without fear of contradiction, that the small claims courts are fulfilling a vital role in the administration of justice, particularly as far as disadvantaged persons are concerned. Members of the profession are requested to make themselves available to act as commissioners of the courts, particularly in view of the fact that such service is regarded as *pro bono* work.

Johann Gresse

Chairperson, Small Claims Courts Committee

Excellence is an art won
by training and habituation.
We do not act rightly because
we have virtue or excellence,
but we rather have those
because we have acted rightly.
We are what we repeatedly do.
Excellence, then,
is not an act but a habit.

Aristotle



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