



LAW SOCIETY
OF SOUTH AFRICA

ANNUAL REPORT 2010/11



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





ANNUAL REPORT

April 2010 to March 2011



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THE LAW SOCIETY OF SOUTH AFRICA

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

MISSION

The Law Society 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

Black Lawyers Association

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E-mail: communication@lsnp.org.za

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National Association of Democratic Lawyers

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

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E-mail: fazoe@nadel.co.za

REPORT BY THE CO-CHAIRPERSONS

We took office as Co-Chairpersons of the LSSA at the start of April 2010 at a time when the country was expectantly euphoric on the eve of the FIFA World Cup. This allowed both South Africans in general, as well as legal practitioners, to put aside the gloomy outlook arising from economic recession, increasing unemployment, lack of service delivery and all-consuming public service strikes for the first six months of 2010. The weeks leading up to and during the World Cup saw a memorable outpouring of patriotism that will be reminisced on fondly for years to come.

However, the removal of the world-wide attention from our country as that greatest of sporting spectacles came to a close, again focused our attention on the major challenges being faced by the attorneys' profession in South Africa. The resolution of these challenges will fundamentally affect the governance of the profession on the one hand, and the way attorneys practise on the other.

- The ongoing Legal Practice Bill discussions brought with them the challenge of guaranteeing the independence of the profession within a new regulatory framework for legal practitioners. The Bill will change the governance and regulatory structure of the profession.
- The rejection by the Competition Commission of the LSSA's 2004 application for the exemption of the professional rules of attorneys from the competition legislation, appears to threaten the very fabric of our *raison d'être* as a profession.
- The ongoing problems being experienced by attorneys seeking to assert the rights of their clients in the courts of our country, where in many courts the infrastructure and court services leave much to be desired.
- The need to unify the hearts and minds of the attorneys' profession to ensure that the profession stands united and speaks with one voice to deal with all of these major challenges.

As we write this report we anticipate two crucial documents: the Legal Practice Bill as submitted by Minister of Justice and Constitutional Development, Jeff Radebe, to Cabinet, and as approved by Cabinet, in December 2010; and the gazetting of the Competition Commission's ruling on the LSSA's 2004 application for exemption of the profession's rules of professional conduct.

The Legal Practice Bill

In December 2010, Cabinet approved the Legal Practice Bill for submission to Parliament during this year's parliamentary programme. This was after the LSSA had made its comments on the April 2010 draft of the Bill to the Department of Justice and Constitutional Development (DoJ&CD) early in November 2010. At the time of writing in early February 2011, the LSSA had yet to have sight of the Bill that was to be submitted to Parliament.

Engagement on the Bill with the DoJ&CD started as we took office in April 2010, when the LSSA's representatives met with the Department's representatives to discuss the LSSA's comments on the first draft of the Bill, which had been published in 2009. From these discussions, it became clear that it would be crucial for the DoJ&CD to understand the functioning of the attorneys' profession thoroughly before effecting amendments to the Bill. Much time was spent in discussions and a site visit was arranged for the Department's officials to the Law Society of the Northern Provinces for them to gain grassroots insight into the practical regulatory workings of the profession. However, when the second draft of the Bill was published, not all the LSSA's recommendations had been taken into account.

Minister of Justice and Constitutional Development Jeff Radebe took the Bill to Cabinet for approval of the legislation that will govern the regulatory framework of the legal profession in future. In his budget debate address on 5 May, the Minister announced that Cabinet had approved the draft Legal Practice Bill in principle.



Peter Horn and Max Boqwana

At a special strategic planning session of the LSSA Council at the end of May, the attorneys' profession set out its principled position on the second draft of the Bill and outlined a strategy for engagement with the DoJ&CD. Paramount to the LSSA's strategy has been the need to ensure the independence and self-regulation of the legal profession in the new dispensation, which go hand-in-hand with the independence of the judiciary.

The LSSA appointed two consultants to translate the strategic views of the LSSA and its constituents into legislative format for inclusion into the draft Bill. At the same time, close contact was maintained with the DoJ&CD to ensure active participation in the legislative process.

Although attempts were made to engage with the General Council of the Bar and the other voluntary bodies representing the advocates' profession, these were unsatisfactory.

The LSSA made its final submissions to the Justice Department on 5 November 2010. We await the Department's response. In brief, the LSSA's amendments have been made in the light and spirit of the Bill which has the objectives of

- facilitating access to legal services;
- transforming and uniting the legal profession;
- regulating the legal profession, in the public interest, by means of a single statute;
- removing any unnecessary barriers for entry into the legal profession;
- ensuring that the legal profession is representative of the demographics of South Africa;
- strengthening the independence of the legal profession; and
- ensuring the accountability of the legal profession to the public.

The LSSA Bill envisages a National Legal Practice Society (NLPS) of which all legal practitioners, attorneys and advocates (including those advocates currently referred to as 'independent advocates') will be members. The LSSA sees the objects of the NLPS to be to

- promote and protect the public interest;
- regulate legal practitioners;
- preserve and uphold the independence of the legal profession;
- to present the views of the legal profession; [this object added by the LSSA to DoJ&CD Bill]
- enhance and maintain the integrity and status of the legal profession;
- determine, enhance and maintain appropriate standards of professional practice and ethical conduct of all legal practitioners;
- promote high standards of legal education and training;

- promote access to the legal profession by ensuring accessible and sustainable training measures for legal graduates aspiring to be admitted and enrolled as legal practitioners;
- promote access to legal services;
- uphold and advance the rule of law, the administration of justice, and the Constitution of the Republic; and
- implement the Legal Services Sector Charter.

The LSSA has recommended that the NLPS should have a Council of 24 legal practitioners appointed by an electoral panel from nominees elected by the members of the NLPS (attorneys and advocates) by secret ballot. The electoral panel shall consist of the Chief Justice, or a judge of the Constitutional Court delegated by him or her, the President of the Supreme Court of Appeal, or a judge of that Court delegated by him or her, and the Legal Services Ombud.

The Council will be composed as follows:

- 50% attorneys. 50% advocates;
- at least one appointee, whether an advocate or an attorney, from each region;
- not less than 60% of the appointees are black persons as defined in the Employment Equity Act 55 of 1998;
- 40% of the appointees are women; and
- 5% of the appointees are disabled persons.

The LSSA has included a 'sunset clause' in its version of the Bill, which stipulates that the composition of the Council as indicated above will apply for a period of 10 years from the fixed date, whereafter the Council will consist of 24 practitioners elected by members of the NLPS by secret ballot conducted in accordance with the procedure prescribed by the Council.

The LSSA does not make allowance for any outside representation on the Council to ensure the independence of the profession.

The number of years that councillors can serve on the Council is limited in the LSSA's Bill to not more than three consecutive two-year terms in office. On the expiry of the third such term, councillors shall not be eligible for reappointment until after the elapse of not less than two years from the termination of their last preceding term of office.

The NLPS will delegate powers to regional councils to carry out the administration and regulation of the profession at regional level, such as admissions, disciplinary matters etc.

The regional split has yet to be determined. All policy, rules and regulations will be determined at national level to ensure uniformity within the profession. Regional councils will not have original powers.

The NLPS will be funded by membership levies from legal practitioners and from an allocation from the Fidelity Fund. It will, in turn, allocate the necessary funding to regional councils.

The NLPS will report to the Minister, Parliament and the Legal Services Ombud on an annual basis.

The LSSA has all along supported the establishment of the Office of the Legal Services Ombud. This Ombud should, however, according to the LSSA not be funded by the Fidelity Fund, but should be funded independently from the profession.

The LSSA has removed any reference to voluntary associations as freedom of association is guaranteed in the Constitution.

As regards advocates, the LSSA is of the view that the title 'Advocate' should be used only by advocates who are practising as such, and that the designations of Senior Counsel and Senior Attorney should be removed from the Department's Bill as the criteria for designating senior status to practitioners are unclear and, in any event, this designation is based on British tradition.

The LSSA's amendments to the Bill take into account what the attorneys' profession would consider appropriate according to the objects of the Bill and the parameters for engagement set out by the Department, including the object of uniting the legal profession, transforming the profession and regulating the profession by means of a single statute.

Certain statutory councillors and the Black Lawyers Association (BLA) made representations of their own to the DoJ&CD. These representations were considered by the LSSA's consultants and taken into account in the final version of the LSSA's Bill sent to the Department. That notwithstanding, the submissions of the statutory councillors and the BLA were also submitted to the Department.

The Competition Commission

Similarly, as we write this report, we await the gazetting of the Competition Commission's ruling on the LSSA 2004 application – on behalf of the four statutory law societies – for exemption of the rules of professional conduct of the attorneys' profession. It is understood that the Commission may refuse the application even after a period of discussion and engagement between the LSSA and the Commission. The LSSA will note an appeal to the Competition Tribunal on the unresolved issues; and if needs be, further appeals.

In the meantime, the statutory provincial law societies continue to carry out their regulatory functions rigorously in terms of the Attorneys Act, 1979.

When the Commission gave its first indication that it planned to refuse the application in mid-2010, we as Co-Chairpersons, met with the Commission immediately and recommended an engagement process to discuss its findings. The Commission agreed to a period of engagement until the end of 2010.

The Commission made its reasoning for its initial findings and research on other international jurisdictions available to the LSSA. Included in the discussions were the new, uniform rules which have been drafted for the profession. The process of creating a uniform set of rules from the four disparate sets of rules was embarked on some time ago by the LSSA in cooperation with the directors of the four statutory law societies. The process was completed in 2009 and the uniform rules were being considered by the councils of the four law societies with a view to adopting a uniform set of rules at special general meetings. The unification process in itself identified a number of rules that were outdated and anticompetitive.

The constitutional challenge to the Road Accident Fund Act and Regulations

Towards the end of November 2010, the Constitutional Court handed down judgment in the LSSA's appeal against the findings of the North Gauteng High Court which had dismissed the LSSA's entire application attacking aspects of the Road Accident Fund (RAF) Amendment Act, 2005 and Regulations. The Constitutional Court dismissed two of the grounds challenged by the LSSA, but upheld the constitutional challenge to reg 5(1). This means that claimants are entitled to be compensated in full for all medical, hospital and related expenses in any matters not yet settled. The fact that full compensation for medical and hospital costs has been restored to accident victims is a victory for accident victims, particularly for impoverished victims and those without medical aid.

The LSSA's constitutional appeal is outlined more fully in the report by the Chairperson of the RAF Committee later in this Annual Report.

Although we welcome the Court's agreeing with the LSSA that the amendments to the RAF Act deprived seriously injured victims of road accidents of any or decent, first-world medical care, we are, naturally, disappointed that the abolition of the common-law right to sue the negligent driver or owner for damages not covered in terms of the Amendment Act, and the limitation of the amount of compensation that the RAF is obliged to pay for claims for loss of income or a dependant's loss of support arising from the injury or death of a road accident, were not struck down by the Court.

The problems in the courts

We welcome the initiative by Chief Justice Sandile Ngcobo in setting up the Office of the Chief Justice to deal with issues affecting the courts direct, rather than through the Justice Department. We are committed to working closely with the Chief Justice's office by bringing issues to his attention and by offering the services of the profession wherever appropriate to do so.



Some of the members of the LSSA's Management Committee (Manco), met with Chief Justice Sandile Ngcobo at the Constitutional Court in July. Photographed at a meeting with the Chief Justice are: (seated) David Bekker; Co-Chairperson Peter Horn; Chief Justice Ngcobo; and Co-Chairperson Max Boqwana, and standing, Alistair Slingers and Simon Jiyane, respectively Office Manager and then Acting Director in the Office of the Chief Justice; LSSA CEO Raj Daya; CP Fourie, Praveen Sham and Lulama Lobi.

The LSSA is aware of the many problems being experienced by attorneys in asserting the rights of their clients in the various courts in the country. Various forums are used by the LSSA to ameliorate the conditions in court for both practitioners and their clients. Besides the interaction with the Chief Justice, the LSSA participates in the Heads of Courts meetings and briefs the Justice Department and various Parliamentary portfolio committees.

The LSSA's Manco met with Chief Justice Ngcobo in 2010. He outlined his own investigations into the dysfunction of various courts.

He particularly voiced his concern at the culture of postponements that appeared to be endemic in the lower courts and the effect that these postponements have on claimants and victims. Regular meetings between the LSSA and the Chief Justice have been agreed to and the state of the courts, as well as possible, solutions to the problems being experienced, will remain top of the agenda.

Moving towards a unified profession

- In preparation for the new, uniform dispensation envisaged in the LPB, the LSSA – with the support of the Attorneys Fidelity Fund – has been coordinating initiatives to ensure uniformity of processes and procedures as between the four provincial law societies.
- The national database is virtually complete. This project, which has taken some time, has placed the four law societies on the same software system for their processes and procedures. The LSSA and AFF will, for the first time, have access to a national database for all attorneys.
- A national library service is envisaged to which all attorneys will have access.
- The unification of the law society rules has been discussed above.
- The LSSA continues to speak nationally on behalf of the attorneys' profession through press releases issued and broadcast interviews arranged by the LSSA Communication Department.
- *De Rebus* continues to be the premier journal for the profession. The digital edition is gaining popularity and allows for quicker dissemination of the publication and information. The scope of *De Rebus* will be broadened, particularly as regards its role in a CPD system.
- *Pro bono* has been adopted as mandatory for all attorneys.

Other developments

Parliament: The LSSA has heightened its profile in Parliament this year, particularly through the role of the Parliamentary Liaison Officer. The LSSA briefed both the Portfolio Committees on Justice and Constitutional Development on developments in the profession generally, and the Portfolio Committee on Home Affairs on issues around citizenship, immigration and refugee matters.

Professional Affairs: The LSSA's specialist committees working under the able direction of the Manager of Professional Affairs, Lizette Burger, have increased their meeting schedules and workload markedly, and the LSSA has submitted a substantial number of comments on legislation and other policy documents on behalf of the profession.

The main focus of the Professional Affairs department this year has been to improve relationships and networks with other important stakeholders in the profession, including the Justice Department, Rules Board, Legal Aid SA, the Master's Office, the Departments of Home Affairs, Environmental Affairs and Rural Development and Land Affairs. This has been achieved, and the LSSA is now being approached consistently by numerous stakeholders seeking its input on behalf of the attorneys' profession.

Legal Education and Development (LEAD): The training being provided by LEAD to practitioners is expanding in scope and attendance. As pointed out by the Director of Legal Education and Development, Nic Swart in his report, more than 12 000 persons enrolled for LEAD programmes in 2010, an increase of 38%. The ten centres of the School for Legal Practice continue to provide vocational training for more than 1 000 candidate attorneys every year. LEAD's e-learning initiative 'E-Leader' was launched at the end of 2010. This platform brings learning to the practitioner's own environment, allowing practitioners to do training modules in the comfort of their own office or home and at their own pace. This initiative holds great potential also for expanding training outside the borders of South Africa as there are numerous courses, such as bookkeeping and legal writing, which are not limited to specific jurisdictions.

The LSSA Council approved continuing professional development for attorneys at its November 2010 meeting. LEAD completed substantial research into CPD and has canvassed the concept with attorneys throughout the country.

Through LEAD, the LSSA has also made input into the review of the LLB degree which was carried out by the Council on Higher Education. The research report has not been made public and the LSSA has again raised its concerns on the preparedness of LLB graduates for practice.

Communication and *De Rebus*: The LSSA has spoken publicly regularly throughout the year on issues affecting the public and the profession, and its views are increasingly sought by the media on numerous issues. As we mentioned above, *De Rebus* continues to be the premier mouthpiece of the profession and plays a pivotal information and educational role for practitioners. The popularity of *De Rebus Digital* continues to grow, as highlighted in the report later in this Annual Report.

At the end of January this year Philip van der Merwe retired as Editor after more than two decades at the helm of the magazine. The profession owes an enormous debt of gratitude to Mr Van der Merwe for maintaining *De Rebus*'s prestige and professionalism within the profession and beyond. We welcome the new Editor, Kim Hawkey, to the LSSA and look forward to her contribution to *De Rebus* and to the major debates in the profession.

LSSA role on other bodies: Besides its seminal role on the Judicial Service Commission which interviews and recommends judges, the LSSA has strengthened its representation of various bodies and boards, where its representatives are able to influence policy and developments. Attorneys are nominated to represent the profession on these bodies and they are expected to influence policy and to report back to the profession on developments in various fields.

International: The LSSA continues to interact at international level with various organisations.

At regional level, we were delighted to celebrate the election of Pietermaritzburg attorney and former LSSA Co-Chairperson Thoba Poyo-Dlwati as the first woman President of the SADC Lawyers Association at its AGM in Lubumbashi in the DRC in August. The LSSA continues to support the work of the SADCLA and, through its role in the Directors Forum, plans to offer assistance where it can to other law societies in the region. Observer missions by practitioners to SADC member states can serve as a powerful support for the independence of the judiciary and the legal profession and to promote democratic values in neighbouring states when the situation calls for intervention. The LSSA will also, from this year, host the SADCLA office at its offices in Menlo Park so as to render administrative and other support to the Association.

As regards our role in the international legal community, the LSSA continues its involvement with the International Bar Association (IBA) and the Commonwealth Lawyers Association (CLA). The LSSA played a leading role in the organisation and hosting of the very successful conference of the IBA African Regional Forum in Cape Town in March last year. As Co-Chairpersons we attended the IBA conference in Vancouver in October 2010. Co-Chairperson Max Boqwana joined our CLA council member Mohamed Husain at the CLA conference in Hyderabad in February where the LSSA promoted its hosting of the 2013 Commonwealth Law Conference in Cape Town and also celebrated the end of Mr Husain's two-year term as president of the CLA.

The LSSA also supports the interaction of the Black Lawyers

Association with its counterpart in the USA, the National Bar Association, and also Nadel's role in the International Democratic Lawyers Association through Max Boqwana, who serves on the council of that body.

Towards the end of 2010, Co-Chairperson Peter Horn led a delegation of South African attorneys in the first Legal Services Trade Mission to the United Kingdom. The four-day trade mission was arranged jointly by the LSSA and the Law Society of England and Wales to provide a forum for local attorneys to network with their counterparts in London. Mr Horn was also able to take the opportunity to discuss issues such as reserved work and others with officials from the Law Society of England and Wales.

He has made a number of recommendations for the way forward, which are being followed up by the LSSA management. These include reciprocal and other similar trade missions, investigating how South Africa can be marketed as an ideal destination for international arbitrations and cross-border practice and legal process outsourcing to South African attorneys.

Pro bono, participation by attorneys and cooperation with stakeholders

The LSSA has amplified its cooperation with others stakeholders in the profession on various initiatives. We greatly appreciate the increasing role that attorneys are playing in the initiatives of the LSSA and its constituent members. Many attorneys made themselves available to serve on the successful Special FIFA World Cup Courts; attorneys have been prepared to assist schools to participate in the first National School Moot Court Competition; some 700 firms participated in the National Wills Week held in September 2010; others have participated in the maintenance and prison projects, and more and more attorneys are volunteering to serve as commissioners in the small claims courts.

This brings us to the growing focus on *pro bono* work by the profession and the fact that all attorneys are now obliged to render *pro bono* services in one form or another to indigent members of the public. In addition to the public service aspect, this will enable the provincial law societies to monitor, but more importantly, to quantify this significant social-responsibility contribution to society by the attorneys' profession. It has become vital for the profession to report on this and to publicise it widely.

The participation of attorneys in various initiatives not only creates *esprit de corps* among members of the profession, but it also improves the image of the profession in the eyes of the public.

From the side of the LSSA, we strive to improve our communication and interaction with attorneys not just to inform them of developments, but also to hear direct from them about challenges that affect them specifically. Meetings were held with the large firms in Gauteng as well as with the Johannesburg Attorneys Association.



The new LSSA website launched in October 2010 is highly interactive and invites comments and views of practitioners on various issues affecting the profession and the public. All the LSSA comments on legislation, press releases and policy documents are available on the website for easy access. An electronic newsletter has been developed and will be sent regularly to all attorneys through the LSSA's access to the national database, once this becomes available.

Infrastructural developments

Last year the Attorneys Fidelity Fund (AFF) invested in new premises for the LSSA so that all the LSSA's departments can be brought under one roof. This will not only improve the operations of the LSSA and the service it renders to the profession, but it will also provide a space for attorneys to visit and make use of the infrastructure, including library, electronic and meeting services, should they wish to do so. The LSSA's School for Legal Practice in Johannesburg moved to new premises early this year. These premises too provide conference, workshop and meeting facilities for use by the profession in Johannesburg.

All new developments are, of course, measured against the requirements of the new dispensation envisaged in the Legal Practice Bill. Also, all initiatives and operations of the LSSA must take into account the budgetary constraints imposed on the profession by the reduced funds available as a result of the economic downturn the past few years. This, as we now, has impacted negatively not only on attorneys' firms, but also on the trust account income of the AFF. The LSSA has, accordingly undertaken to reduce its budget for 2011, but at the same time continue to provide the level of service it does to its constituents and to practitioners.

A word of thanks

As Co-Chairpersons we work closely with all the LSSA departments, but particularly with the Office of the CEO with whom we are in contact up to several times a day. We thank the CEO, his management and staff for the support they have provided to us as Co-Chairpersons. We also thank the members of the LSSA's Management Committee (Manco), which meets on a monthly basis, and the LSSA Council members, who meet every alternate month, for the hours of work they give to the attorneys' profession, and for their cooperation, counsel and advice at meetings.

Last but not least we thank our respective firms – Haarhoffs in Kimberley and Boqwana Loon & Connellan in Port Elizabeth – for allowing us the latitude and space to serve the profession in these demanding positions.

Peter Horn and Max Boqwana
Co-Chairpersons

THE COUNCIL

‘The control of the Law Society shall vest in a Council which shall determine the policy of the Law Society in accordance with its aims and objectives as out the functions of and exercise the powers of the Law Society as set out [in the constitution].’ - (*LSSA constitution*)

COUNCILLOR	CONSTITUENCY	MEETING ATTENDED
Max Boqwana	Co-Chairperson ¹	05, 07, 09, 02
Peter Horn	Co-Chairperson ²	05, 07, 09, 02
Koos Alberts	CLS	05, 07, 09, 11, 02
David Bekker	LSFS	05, 09, 11, 02
Dave Bennett	LSNP	05, 07, 09, 11, 02
Ronald Bobroff	LSNP	05, 09, 11, 02
William Booth	CLS	05, 07, 09, 11, 02
Mammule Peter Chidi	BLA	07, 09, 02
CP Fourie	LSNP	05, 07, 11, 02
David Geard	CLS	05, 07, 09, 02
Mohamed Husain	Nadel	07, 11
Jan Janse van Rensburg	LSNP	05, 07, 09, 11
Maahe Kganyago	Nadel	05, 07, 09, 11, 02
Lulama Lobi	BLA	05, 07, 09, 11, 02
Nano Matlala	BLA	05, 09, 02
Percival Maseti	BLA	05, 07, 02
Yvonne Mbatha	BLA	07, 11
Davies Mculu	BLA	05
Segopotje Sheila Mphahlele	Nadel	05, 07, 09, 11, 02
Henry Msimang	BLA	05
Silas Nkanunu	Nadel	05, 07, 11, 02
Praveen Sham	KZNLS	05, 07, 09, 11, 02
Jan Stemmett	LSNP	05, 07, 09, 11, 02

Key:

- 05 – May 2010
- 07 – July 2010
- 09 – September 2010
- 11 – November 2010
- 02 – February 2011
- BLA – Black Lawyers Association
- CLS – Cape Law Society
- KZNLS – KwaZulu-Natal Law Society
- LSFS – Law Society of the Free State
- LSNP – Law Society of the Northern Provinces
- Nadel – National Association of Democratic Lawyers

1 Mr Boqwana was on the Bench at the time of the November 2010 meeting.

2 Mr Horn led the delegation of South African attorneys in the Legal Services Trade Mission to London at the time of the November 2010 meeting.

REPORT BY THE CEO



Raj Daya, Chief
Executive Officer

From an operational point the Law Society of South Africa (LSSA) planned and consolidated its activities with a view to better serving the profession, the public and for closer cooperation with its six constituent members. This focus was established over the past five years and brought to fruition at the end of 2010.

THE END OF THE DECADE AND BEYOND 2011

2010 and the end of the decade was a relief to me. Many challenges and key focus areas that we had identified in terms of our strategic alignment, were achieved. By far the year under review was the most challenging and intense. The lines were drawn not just between the profession and its key stakeholders, but also within the profession itself, and specifically the constituent members of the LSSA. This reality has, in the past, limited the profession in grappling with hard issues. The end of the decade brought an end to that. I am relieved, since the survival of the legal profession lies not in what we determine with our stakeholders, but rather what we determine in our own understanding of the needs, aspirations, relevance and position of the legal profession within a transformative society.

The LSSA has positioned itself positively as the official mouthpiece for the attorneys' profession in South Africa. It has done so not coincidentally but through meticulous planning and in the knowledge that the LSSA serves the interests of the profession, and that its services – legal education and development (LEAD), enhancement of professional standards (professional affairs), communications (*De Rebus* and the communications department) and its advocacy role – are firmly entrenched.

A Fincom subcommittee has been tasked with reviewing the structure and processes of the LSSA with a view to making it more efficient and to reduce costs. The Management of the LSSA itself took a number of proactive and strategic steps to anticipate this. These initiatives are all premised and anticipated in the LSSA's three-year strategic document as well as in individual departmental strategies for the year.

As regards the overarching strategy, this was drafted by Management in consultation with the Co-Chairpersons and the Management Committee of Council (Manco), and presented to and approved by the LSSA Council in May 2010. Individual

departmental strategies speak to the overarching strategy, and staff performance contracts – introduced in 2010 by the Human Resources department – must similarly echo the overarching and departmental objectives in individual or developmental goals for all staff members.

Towards the end of 2010, and after the LSSA delivered its version of the Legal Practice Bill to the Department of Justice and Constitutional Development, the LSSA Management planned a strategic session taking into account the changes that may be effected to the profession and to the governance structures of the profession. Underlying the discussions is always the premise of how best to serve both the profession and the public.

Two of the significant realignments have been the restructuring of the Finance Department, on the one hand, to better service the expanding needs of the LSSA, particularly LEAD, which has shown remarkable growth in its training activities. This growth is quantified by LEAD Director Nic Swart in the education report later in this Annual Report. On the other, the Finance Department has been tightening its procedures by, for example the implementation of EFT transactions only for all LSSA payments, as well as reviews of payments over certain amounts by the Audit Committee Chairperson and the review of bank reconciliations and balance sheets at each audit committee meeting. Finance Director Anthony Pillay has also improved the payment flow and relationship with the SASSETA, with which the LSSA cooperates to ensure that monies paid in levies by attorneys are utilised for training initiatives in the profession for candidate attorneys, attorneys and support staff. The legal education report outlines the training initiatives funded through SASSETA subventions.

The communication and marketing functions of the LSSA, including *De Rebus* as the flagship publication and mouthpiece of the profession, have been realigned under the Communication Department to ensure a uniform message and branding across the LSSA offerings.

THE LSSA'S MANAGEMENT TEAM:
Standing: Nkhensane Nthane (HR), Barbara Whittle (Communication), Raj Daya (CEO), Kim Hawkey (Editor, De Rebus), Ogilvie Ramoshaba (LEAD), and seated, Anthony Pillay (Finance), Nic Swart (LEAD) and Lizette Burger (Professional Affairs).



Philip van der Merwe retired in January 2011 after almost 23 years as Editor of De Rebus.



The Communication Department has also undertaken a number of stakeholder relationship initiatives throughout the year. These not only improve the LSSA relationships with other stakeholders in the profession, but also provide various forums for attorneys to provide assistance. One example was the FIFA World Cup Courts where attorneys offered their services during the day and night sittings of the courts, in cooperation with the Justice Department and Legal Aid South Africa. The success of these courts was widely publicised and may serve as a blueprint for improving justice delivery. Another initiative was the Legal Services Trade Mission to the United Kingdom in cooperation with the Law Society of England and Wales, which is discussed in the Report by the Co-Chairpersons. Other initiatives are outlined in the Communication Report.

Similarly, the Professional Affairs Department has set up lines of communication and cooperation with various key stakeholders. This allows the LSSA's specialist committees to have closer access to government departments and other organisations drafting policy documents and legislation that affects their specific fields, as well as the public. Access to the Parliamentary Portfolio Committees was also implemented in 2010 through the Professional Affairs Department and with the assistance of the Parliamentary Liaison Officer. The fact that the Co-Chairpersons and I as the CEO were invited to brief the Justice Portfolio Committee in Parliament brought the LSSA and the developments in the attorneys' profession to the parliamentarians who are ultimately tasked with finalising legislation.

The LSSA Management continues to work closely with the constituent members, and the Directors Committee of the LSSA is dealing increasingly with uniform processes and initiatives. The Uniform Rules has been a major project that is nearing finalisation. This has been key to the discussions with the Competition Commission. The directors are commended on the enormous amount of work that was put into the draft Uniform Rules. Other matters being dealt with collectively by this committee – and where relevant with the input of the recently appointed Executive Director of the Attorneys Fidelity Fund, Motlatsi Molefe – include the national library project which will see attorneys throughout the country having access to the well-resourced KwaZulu-Natal Law Society libraries; the video-conferencing plans which will allow the constituents and committee to meet via video-conferencing, a platform that will, in the long run, save costs and practitioners' time, and the Attorneys Client Charter, based on the requirements in the Consumer Protection Act.

What lies ahead for 2011 is the finalisation of the Legal Practice Bill. Whatever form the final Bill will take, what is patently clear is that the role and functions of the provincial law societies (regional councils) will be limited to regulatory affairs such as discipline and

admissions. The LSSA – whether as part of the new National Legal Practice Council or National Legal Practice Society – will continue to deliver on what it currently does. This shift will enhance efficiency and provide clarity at last on whose responsibility it is to act for and on behalf of the profession. The current lack of clarity creates uncertainty for staff and even councillors. What we do know though, is that the existing model of autonomous, provincial law societies will be replaced. The unification of the regulatory framework and nationalisation of structures will translate to this: a legal practitioner will practise as a South African legal practitioner – whether an attorney or advocate – irrespective of where he opens shop. He will be subject to uniform rules of discipline, regulation and oversight. This can only be regarded as a step in the right direction. The creation of a State-funded office of the legal ombud will certainly give comfort to members of the public who currently have no appeal right against decisions that provincial law societies make, except through a costly appeal to the court.

The rollout of assistance to newly established law firms by the Attorneys Development Fund (ADF) will add value and support to many new practitioners who struggle to manage their law firms in the initial years. Mandatory practice management will equip lawyers to learn and acquire business skills to ensure that an understanding of the principle that the business of law must be managed with proper practice and financial planning.

In conclusion, I thank members of the Management team for their steadfast commitment to the resolutions of Council and for their proactive approach in defining what we consider the continuing role and focus of the LSSA. Manco remains the heartbeat of the institution and of the profession. Members in this committee sacrifice time monthly – and between meetings – to guide the profession in its endeavours to meet its challenges. The Co-Chairpersons of the LSSA, Max Boqwana and Peter Horn, have been stalwarts of transformation. They have been available to my office and the Management team on a daily basis. They have taken criticism and praise, whether constructive or positive, in a professional way. This has been a hallmark of the nature of their leadership. Thank you to both Co-Chairpersons.

We congratulate and welcome the new Council members for 2011/2012. This is the year that will define our profession. Tough times lie ahead and guidance and leadership direction will determine the way the legal profession prepares itself to meet the challenges beyond 2011.

Raj Daya
Chief Executive Officer

COMMUNICATION

The period under review saw a consolidation of the LSSA's overarching communication strategy, with *De Rebus* and the marketing functions of LEAD being integrated within the Communication Department of the LSSA.

Also, the Communication Department saw increased cooperation with other stakeholders in the profession and several joint projects were undertaken. The LSSA is increasingly being approached by stakeholders – both local and foreign – to seek the assistance and cooperation of attorneys in various initiatives. These initiatives provide attorneys on a national level with the opportunity to participate in activities which promote the image of the profession on the one hand, and also give back to the public on the other. Initiatives included

- the National Wills Week, during which some 1 000 attorneys' firms drafted free wills for members of the public, and which brought the profession much positive print and broadcast publicity;
- the participation of attorneys in the National Schools Moot Court Competition, coordinated by the Law Faculty at the University of Pretoria, which saw attorneys mentoring and assisting a school of their choice – with a focus on disadvantaged schools – to participate in the first national competition;
- the special 2010 FIFA courts, which sat for extended hours, and where attorneys made themselves available to assist those appearing before those courts during and some time after the 2010 World Cup. The courts were hailed as a great success and the model used is being considered by the Department of Justice and Constitutional Development for further implementation;
- cooperation with the International Criminal Court in promoting its 'Calling African Women Lawyers' campaign. A special workshop and recruitment session was arranged by the LSSA on behalf of the ICC in Johannesburg. Further sessions are planned for 2011;
- Cooperation with the Department of Justice and Constitutional Development in the launch of the Small Claims Courts Guidelines for Commissioners and Clerks in Alexandra; as well as recruiting attorneys to act as defense counsel at the Anti-Imperialism Mock Court held as part of the 17th World Festival for Youth and Students;
- the first Legal Services Trade Mission to the United Kingdom arranged jointly with the Law Society of England and Wales and UK Trade and Investment. This saw Co-Chairperson Peter Horn lead a delegation of 16 attorneys to the week-long mission to London. Several proposals arising out of this mission are being investigated by the LSSA Management for future implementation, including the possibility of reciprocal missions and trade missions to other countries, such as the SADC region and the BRIC countries;
- the successful International Bar Association African Regional Conference was held in Cape Town at the end of March 2010 and saw several hundred African and foreign lawyers attending together with local practitioners.
- After being awarded the bid to host the 2013 Commonwealth Law Conference in Cape Town in April 2013, the LSSA has been involved in publicising the 2013 conference at the 2011 conference being held in Hyderabad. An information stand was arranged at the conference in India and a promotional DVD

produced to be shown at the closing ceremony to encourage lawyers to make arrangements to attend the 2013 conference.

The LSSA has become the first port of call for enquiries from the media for the views of the profession on various issues. During the year, the LSSA – through the Co-Chairpersons and where relevant the specialist committee chairpersons – continued to speak nationally on behalf of the attorneys' profession on various issues. The views of the profession were publicised widely in the print and broadcast media. The LSSA also raised its concerns about the Protection of Information Bill, the independence of the media and the envisaged Media Tribunal; as well as making recommendations to the Press Council of South Africa on improving and strengthening its oversight functions in order to strengthen independent oversight of the print media.

Website and e-newsletter

The LSSA website (www.LSSA.org.za) was redesigned and launched in October 2010. It not only provides information on all the LSSA activities and news, but is also a source of information for the public and the media. This is evidenced by the overwhelming number of enquiries generated from the site on a daily basis. All enquiries are dealt with and referred to the correct forum by the Communication Department. The LEAD section of the website has also been redesigned and will provide a portal for all the educational requirements of the profession. Practitioners will be able to purchase educational materials and publications direct via the website and will also be able to register for LEAD seminars and courses on the website.

An e-newsletter has been developed and will be sent twice-monthly to all attorneys as soon as the national database is accessible. The e-newsletter will not only carry the latest news and developments to attorneys, but will also provide a platform for attorneys to interact with the LSSA. Attorneys will be able to make input to the LSSA on legislation and policy documents being considered by the various Professional Affairs specialist committees. Their views will be included with those of the LSSA or submitted to the relevant parliamentary channel.

Barbara Whittle

Communication Manager, LSSA

DE REBUS THE SA ATTORNEYS' JOURNAL

De Rebus is, of course, primarily intended for the profession, that is to say all practising and candidate attorneys, to all of whom the print copy is sent free of charge. It is also available, against payment, on general subscription and more than 1 300 paying subscribers take advantage of that. They include lawyers from several foreign jurisdictions, especially in the Southern African Development Community countries. The Law Society of Namibia has a bulk order, for instance, for all its legal practitioners.

However, the journal is also utilised by our publisher, the Law Society of South Africa (LSSA), as a means of keeping many other stakeholders, such as Cabinet Ministers, government departments,

senior law students at the universities and so on, informed of professional and legal developments, also free of charge. In the year under review we arranged to increase our complimentary distribution to the judiciary so that all the judges and the libraries of the superior courts would receive their own copies. This initiative has brought a warm response from several of the judges. In addition to that, copies of the print version are being made available to all members of the Parliamentary Standing Committee on Justice and Constitutional Affairs, through the LSSA's Parliamentary Office (see also below).

All in all, by December circulation had reached 22 554, including 17 935 attorneys, 4 342 candidate attorneys, 1 340 paying subscribers and 937 complimentary recipients.

In addition to the print version *De Rebus* is published in two electronic formats – online and digital – both of which are freely accessible by anyone with an internet connection. The digital version is actively marketed and is available a fortnight before the print version is delivered locally through the postal system. Given overseas postal delays, it is perhaps not surprising, that, after South Africans, North Americans make up the largest number of visitors to *De Rebus Digital* (DRD). On the other hand the online version, at www.derebus.org.za, has an archive going back to 1998 and a powerful search engine by means of which readers can easily research current and previous articles, again free of charge.

Since the launch of the DRD in January 2010 our online readership has increased. The DRD notice is sent out to an approximately 1 600 readers on our mailing list which started at 480. There are links to DRD on the *De Rebus* website, as well as the LSSA and LEAD sites. Our statistics show that 10% of our readers are accessing DRD from Google. We have over 3 000 hits in South Africa and over 900 hits from the United States and we have hits from countries as far as Russia and China. Our readership in the Africa region is also growing slowly with hits from Namibia, DRC, Nigeria and Botswana. Our statistics show that over 20% of our readers are online reading articles for more than 15 minutes at a time. The readership should increase enormously once the profession's National Database is accessible to the LSSA.

However, our intention is to maintain the free distribution of the print version of the journal to members of the local profession as long as possible; which is to say as long as the Attorneys Fidelity Fund can afford to foot the bill, which in turn will depend on the levels of claims and trust account interest. Although advertising income makes a considerable contribution towards costs, it is unlikely ever to be able to pay for the distribution of more than 23 500 (the current figure) print copies free of charge, especially in the present economic climate.

Although 2010, at R3,449-million in net advertising income (including the 'yellow pages'), was a better year for advertising than 2009, marketing spend on advertising remains under pressure in *De Rebus*, as in all the print media. Once again, by dint of careful cost management, the staff was able to save R685 000 on the printing budget (unaudited figures).

As regards editorial matters, the year under review saw the introduction of a regular column on the profound changes wrought by the new Companies Act 71 of 2008 which is due to come into effect at the beginning of April. The column is unusual for *De Rebus*

in that for the first time, instead of being the responsibility of one or two lawyers, it has been anchored by a specific firm, Edward Nathan Sonnenbergs, with a number of its practitioners participating in the writing of the monthly column.

The authorship of our regular New Legislation column was taken over, with effect from the August issue, by Unisa senior law lecturer Philip Stoop. He replaced the father and son team of Koos and Pieter Stassen, who between them wrote the column for more than 30 years.

A useful new adjunct to the New Legislation column, Updates from Parliament, was contributed by Zelná Jansen, the former LSSA Parliamentary Liaison Officer, until her resignation. Her last contribution appeared in 2010 (Oct) *DR* 48. We have invited the new incumbent of the office, Mfanelo Zamisa, to continue this special section. Apart from the regular columns, individual attorneys and candidates are always encouraged to contribute one-off feature articles, case notes, practice notes, letters to the editor and the like.

In May 2010 Pretoria attorney Morné Gouws was awarded the 2009 LexisNexis prize for Legal Practitioners for writing the best article by a practising attorney published in *De Rebus* in 2009. His article 'Unwanted goods – the consumer's right to choose' in 2009 (April) *DR* 16 was also the cover story for that month's issue. His article examined the consumer's right to choose under Chapter 2 of the Consumer Protection Bill of 2008 (as it then was) with specific reference to s 21(5). LexisNexis presented him with a voucher for electronic products to the value of R5 700.

Meanwhile, Pretoria candidate attorney MacGregor Kufa was awarded the 2009 Juta Prize for Candidate Attorneys for the best article by a candidate attorney published in *De Rebus* in 2009. He won the prize for his article 'Liability on the internet – what the ISPs did last summer' in 2009 (March) *DR* 20 in which he discussed information technology law and whether it is permissible for Internet Service Providers (ISPs) to be liable for the defamatory content on the sites that they host. He won a voucher for electronic products from Juta Law, to the value of R6 000.

We acknowledge our editorial staff for their dedication, our contributors for the high quality of their work and the members of the Editorial Committee, which meets eleven times a year to discuss each issue, for their commitment.

Philip van der Merwe, the Editor since mid-1988, retired at the end of January 2011, with his place taken by Kim Hawkey, a *Sunday Times* specialist legal journalist who is also a qualified attorney. She would have the support of the current very able and dedicated staff, including Mapula Sedutla who became Deputy Editor.

The retirement of our Editor after nearly twenty-three years at the helm requires more than noting. It would be hard to find another editor of any newspaper or magazine who has been longer serving in this country. However, the void will be filled swiftly and professionally. In this regard the Editorial Committee has no doubt that with the professionalism that has taken root under the LSSA and Philip's leadership, *De Rebus* will be in good hands.

It is important to record that the standards set, the relationships created and sustained, the programmes within *De Rebus* that were

developed by the Editor and the team at *De Rebus*, resulted in the production of a high-quality magazine. Tribute must, therefore, be paid to the outgoing Editor for consistently maintaining high levels of skills and efficiency throughout his long service to the attorneys' profession. His ability, knowledge and quality control will be missed, but we are secure in the knowledge that the team that he has left behind will meet all the challenges, and further, take the magazine to even greater heights.

The Editorial Committee wishes Philip the best of everything that one can hope for during retirement. We would not be surprised if a smart media mogul snaps up his wealth of experience which is in short supply in an environment that has more pools of mediocrity than seas of excellence.

The Editorial Committee also acknowledges with appreciation the participation and involvement of the CEO of the LSSA, Raj Daya, and the unstinting support of the Manager of Communications of the LSSA, Barbara Whittle, who contributes a regular monthly column on 'LSSA News and Views'.

Go well Philip!

Krish Govender

Chairperson, Editorial Committee, De Rebus

Philip van der Merwe

Editor

FINANCE

The Finance report for the Law Society of South Africa (LSSA) runs from January to December 2010. The audited financial statements are published as a separate annexure.

LSSA Audit and Remuneration Committee

Membership and meeting attendance

MEMBER	MEETINGS ATTENDED	NUMBER OF MEETINGS
Ashwin Trikamjee (Chairperson)	03, 05, 08, 09, 11	5
Etienne Horn (Vice Chairperson)	03, 05, 08, 09	4
Koos Alberts	03, 08, 09, 11	4
Vincent Faris	03, 05, 08, 09, 11	5
CP Fourie	03, 05, 08, 09	4
Mohamed Husain	08, 09, 11	3
Nano Matlala*	03	1
Thoba Poyo-Dlwati (Co-Chairperson)	03	1
Henri van Rooyen (Co-Chairperson)	03	1
Peter Horn (Co-Chairperson)	09	1

*Mr Matlala was replaced by Matshego Ramagaga

The table (*bottom left*) excludes the following

• LSSA Remuneration Sub-Committee meetings:	2
• LSSA Budget Sub-Committee meetings:	4
• Teleconferences	3
• Meetings between LSSA and AFF Fincom chairpersons	1

The Committee dealt with a number of issues, including standard governance matters, during the year under review. These included

- a review of the King III Report with the assistance of PwC; this resulted in the LSSA's Internal Audit Committee being collapsed into the Committee, with internal audit members, Igna Klynsmith and Paul Ranamane, forming a subcommittee of the Committee;
- the external audit committee recommended and approved an annual self-assessment by the Council;
- the external audit committee reviewed the LSSA's risk register with recommendations for improvement;
- the external audit committee members serving as an independent whistle-blower facility for the LSSA;
- the commissioning of a restructure of the Finance division by PwC, with implementation to be effected in the first quarter of 2011;
- the establishment of a rationalisation subcommittee to review the structure and processes of the LSSA, with a view to making it more efficient. This was motivated by the Attorneys Fidelity Fund budget cuts and financial constraints of the provincial law societies;
- the commissioning and implementation of an internal control evaluation by PwC;
- the implementation of EFT transactions for all LSSA payments, with cheques limited only to petty cash cheques;
- a review of payments above R100 000 by audit chairperson and tabled to the audit committee;
- a review of bank reconciliations and balance sheets at each audit committee meeting;
- an expanded role in the review of all SASSETA projects;
- the outsourcing of the credit control function of the LSSA to the firm of attorneys handling debt collection on behalf of the LSSA; and
- the committee allocated a large amount of time during three meetings (excluding two additional budget subcommittee meetings) to review and make necessary policy considerations to the LSSA budget due to current financial constraints which requires the LSSA to cap the budget at the very least for 2011 and 2012 to the 2010 budget levels.

Standard governance matters addressed by the Audit and Remuneration Committee, included

- monitoring the financial situation of the LSSA;
- monitoring the financial statement reporting process;
- reviewing reports by management and external providers on the effectiveness of internal control and risk management systems;
- monitoring the annual audit of the financial statements;
- assessing the independence of the audit firm;
- recommending the appointment of an external audit firm;
- substantive engagement with auditors on annual audit report (RTM); and
- recommending annual salary increment policy by the remuneration subcommittee.

Key honoraria and allowances for the year under review

CO-CHAIRPERSON'S HONORARIA	R 220 000 per annum each
CO-CHAIRPERSON'S S&T ALLOWANCE	R 7 000 per annum each
MANCO AND COUNCIL MEETING HONORARIA	R 2 365 per meeting
COMMITTEE MEETINGS	R1 535 per meeting
OVERSEAS PER DIEM	\$150 per day
REIMBURSIVE KM	R5,26 per km, fluctuates with fuel price

Key funding streams

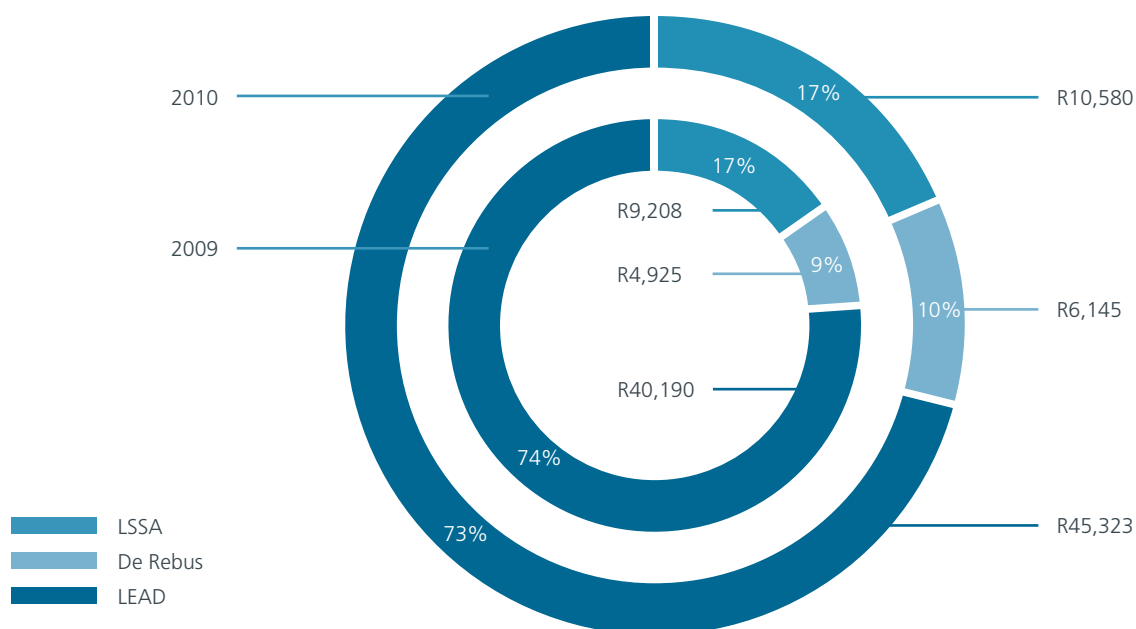
The majority of the LSSA's activities are funded by the Attorneys Fidelity Fund in terms of s 46(b) of the Attorneys Act. The funding in terms of the Act is to enhance the professional standards of the profession.

Provincial law societies pay a capitation levy to the LSSA based on the number of practising attorneys within their jurisdictions.

The capitation levies are used to cover the activities not falling within s 46(b).

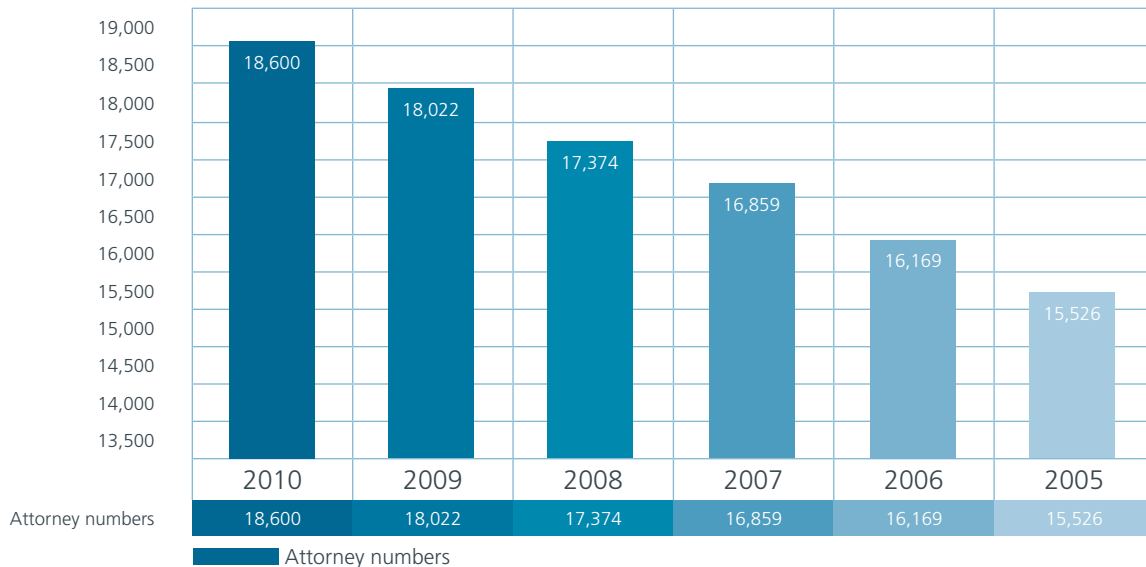
During the year under review, the SASSETA awarded approximately R14 million for legal education training that will cover 2010 and 2011, with potential for new awards in the latter part of 2011.

AFF subvention R 000s



R 000s	LEAD	LSSA	DE REBUS
Budget 2010	R45,323	R10,580	R6,145
Budget 2009	R40,190	R9,208	R4,925

Attorney numbers



Levies received	2010	2009	2008	2007	2006	2005
R 000s	R7,053	R 6,308	R 6,080	R 5,900	R 5,335	R 5,123

Anthony Pillay
Finance Director

HUMAN RESOURCES

The Human Resources (HR) report is for the year running from January to December 2010. An improved performance management system was introduced within the LSSA in May 2010, with presentation and training by the senior management and the HR Manager. The election of a new Staff Forum was finalised in June 2010. Employee wellness programmes have been introduced, covering issues such as cancer awareness, blood donor drives and TB awareness.

HR plan for 2011

- A review of the existing policy and procedure manual.
- Update the disciplinary code and procedure.
- Formal training of managers and supervisors to perform staff and policy management functions inherent in their posts.
- Promoting communication between parties.
- Formalising the Employments Equity Committee.
- Establishing a fully-fledged employee wellness programme.

Staff numbers (excluding contract posts)

CONSOLIDATED STAFF NUMBERS	TOTAL AS AT 31/12/2009	BUDGET	NEW POSTS	LESS TERMINATIONS	ADD APPOINTMENTS	TOTAL AS AT 31/12/2010
LSSA	23	28	0	6	9	26
De Rebus	6	6	0			6
LEAD	52	53	0	4	3	51
Total	81	87		10	12	83

Vacant posts as at 31 December 2010

POST	DEPARTMENT	COMMENT
Parliamentary Liaison Officer	Professional Affairs	Filled in 2011
Accountant	LSSA National Directorate	
Training Coordinator	LEAD	
Senior Training Coordinator	LEAD	

Staff movement

Appointments

TITLE	NAME	SECTION	POST	DATE	EQUITY
Mr	Kenneth Tladi	LSSA National Directorate	Driver and Messenger	11 January 2010	B
Mr	David Madonsela	LSSA National Directorate	Production and Mail Room	28 March 2010	B
Ms	Charmaine Grobler	LSSA National Directorate	Finance Officer	1 April 2010	W
Ms	Nkhensane Nthane	LSSA – Human Resources	Human Resources Manager	15 April 2010	B
Ms	Thamsie Rubushe	LSSA: Professional Affairs	Committee Secretary	1 May 2010	B
Ms	Cynthia Thamaga	LSSA – Finance	Finance Officer	1 May 2010	B
Ms	Veronica Doust	School for Legal Practice (Johannesburg)	School Administrator	1 June 2010	W
Mr	Ashley Sibanda	LSSA National Directorate – IT	IT Support Technician	1 July 2010	B
Ms	Veronica Shaba	LSSA National Directorate	Cleaner and Refreshments	1 July 2010	B
Mr	Tshepo Mothoa	LEAD	Manager: Course and Distance Learning	15 August 2010	B
Mr	Edward Kafesu	LSSA: Professional Affairs	Committee Secretary	1 November 2010	B
Ms	Michelle de Oliveira	School for Legal Practice (Potchefstroom)	Manager	1 November 2010	W
	CONTRACT POSTS				
Ms	KK Losaba	LEAD – Projects	SASSETA (contract ends 01/03/2011)	1 January 2010	B
Ms	ME Mlangeni	LEAD – Projects	SASSETA (contract ends 01/02/2011)	27 January 2010	B
Mr	ME Mathe	Polokwane School (Pilot)	Night School Coordinator (contract ends 31/08/2011)	15 March 2010	B

Terminations

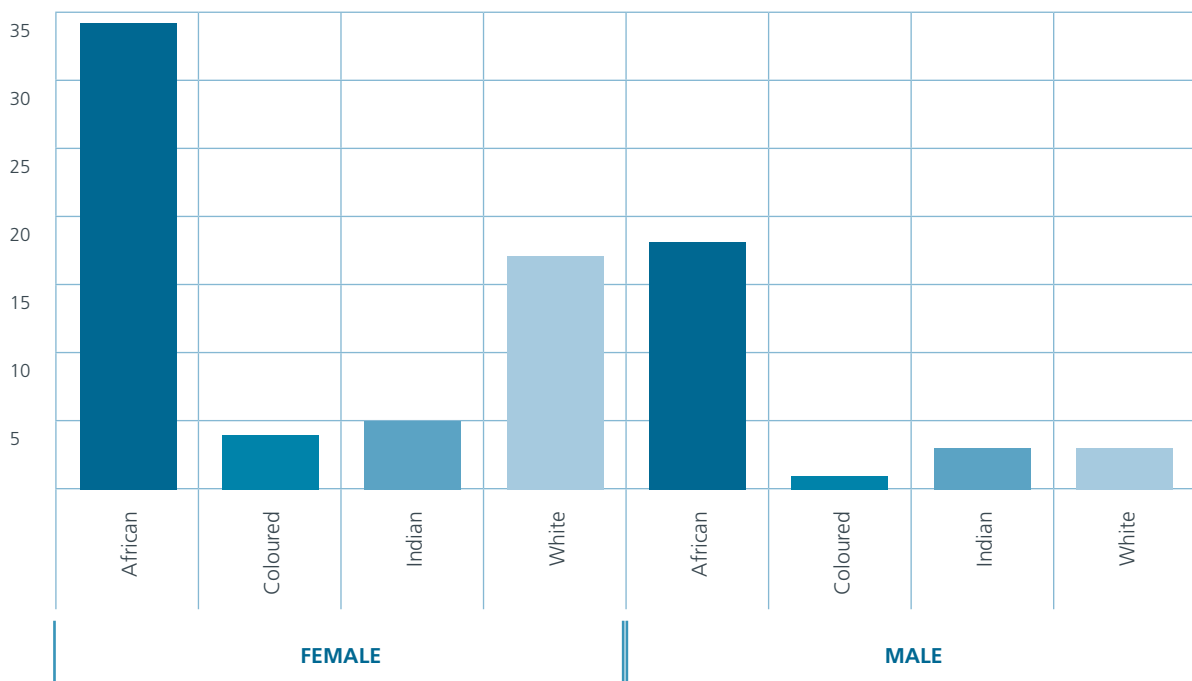
TITLE	NAME	SECTION	POST	DATE	REASON
Mr	Robert Pitt	School for Legal Practice (Johannesburg)	Administrator	9/01/2010	Resigned
Mr	Seth Hermanus	LSSA National Directorate	Production and Mail Room	31/03/2010	Retired
Mr	Frans Mashaba	LSSA National Directorate	Driver and Messenger	31/03/2010	Resigned
Ms	Marieta Gelderblom	Finance	Accountant	01/04/2010	Resigned
Ms	Elizabeth Shaba	LSSA National Directorate	Cleaner and Refreshments	12/06/2010	Deceased
Ms	Zelna Jansen	LSSA: Professional Affairs	Parliamentary Liaison Officer	01/08/2010	Better opportunity
Ms	Thamsie Rubushe	LSSA: Professional Affairs	Committee Secretary	31/08/2010	Poor performance
Mr	Andrew Morathi	School for Legal Practice (Potchefstroom)	Manager	31/08/2010	Contract ended
Ms	Amanda Kibido	LEAD	Training Coordinator	17/12/2010	Deceased
Ms	Martha Lubasi	LEAD	Senior Training Coordinator	15/12/2010	Better opportunity
	CONTRACT POSTS				
Ms	Anthea Josephs	LEAD – Projects	SASSETA projects	26/11/2010	Contract ended

Training

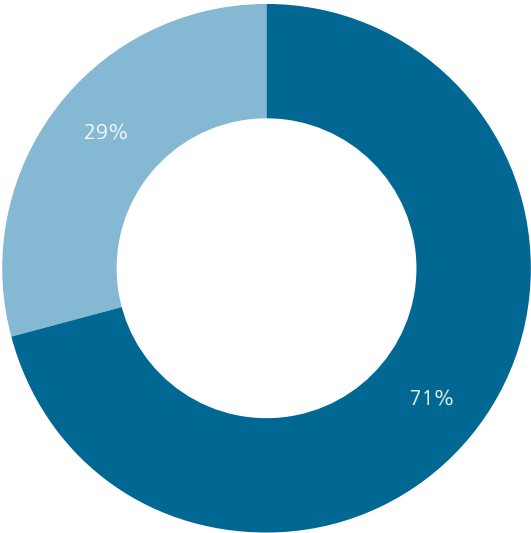
The LSSA strives to ensure that individuals should develop to their full potential, with the emphasis on those previously disadvantaged. The following is the representation of all training attended by staff members:

TRAINING	ATTENDANCE BY STAFF MEMBERS
MS Office (Advanced and Intermediate)	13
Project management	11
Meeting and minute taking	6
Problem solving	7
Stress management	12
Numeracy skills	3
Train the trainer	2
Camera handling	3
Moderator	3
VIP payroll and softline systems	2
De Rebus	2
<i>Total cost of training for 2010 was R228 993 across all departments</i>	

LSSA equity report by race

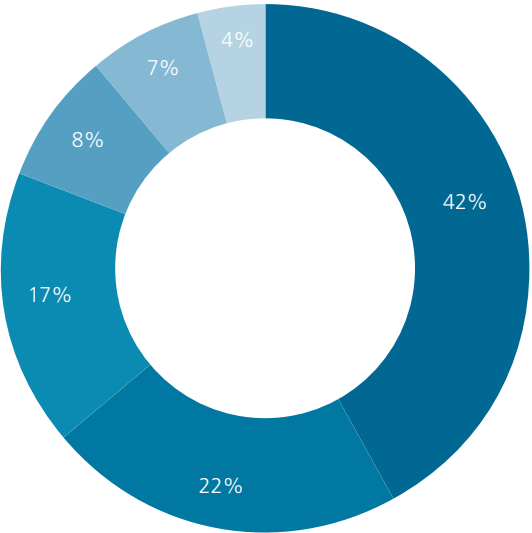


LSSA equity report by gender



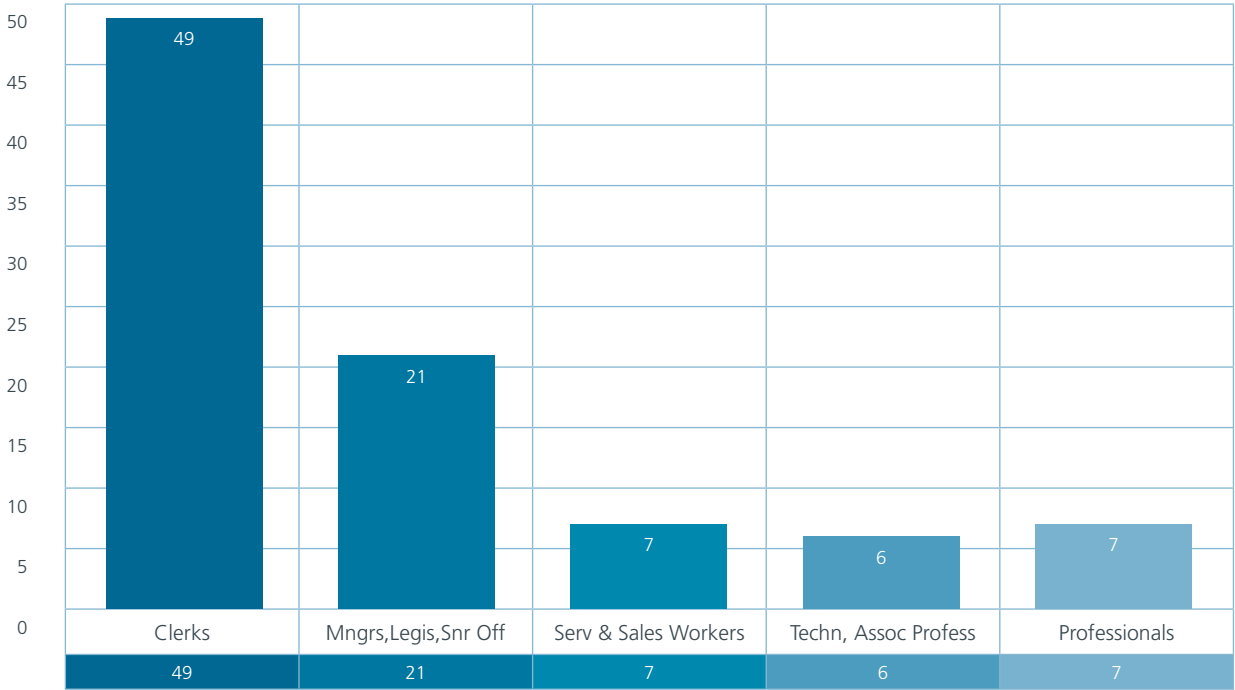
Female
Male

LSSA equity report by occupational level



Semi Skilled
Junior Management
Senior Management
Unskilled
Middle Management
Top management

LSSA equity report by occupational category



Nkhensane Nthane
Human Resources Manager

LEGAL EDUCATION AND DEVELOPMENT (LEAD)

Standing Committee on Legal Education members:

Abe Mathebula (Chairperson), Raj Badal, Dave Bennett, Emil Boshoff, Peter Horn, Lalit Mehta, Jan Maree, Buyiswa Majiki, Norman Moabi, Xoliswa Nakani, Bulelwa Ndzondo, Ogilvie Ramoshaba, Zubeda Seedat, Nic Swart and Ashwin Trikamjee

SASSETA Committee members:

Patrick Jaji, Caron Jeaven, Wilfred Phalatsi, Dr Nalini Maharaj, Letuba Mampuru, Ray Mashazi, Arnold Mohobo, William Mokoena, Refilwe Mthethwa, Cynthia Naidoo, Jack Segal, Fazoe Sydow and Modi Vinger

Examinations Committee members:

Dave Bennett, Emil Boshoff, Majeed Carrim, Nalini Gangen, Thinus Grobler, Gavin John, Abe Mathebula, Arnold Mohobo, Ilan Lax, Jan Maree, Leslie Masterson, Matshego Ramagaga, Bruce Stephens and Ashwin Trikamjee

Practice Development Committee members:

Praveen Sham (Chairperson), Koos Alberts, Ann Bertelsman, David Bekker, Dr Lewlyn Curlewis, Raj Daya, Leon Els, Glen Flatwell, Pearl Mfusi, Jeff Mathabatha, Abe Mathebula, William Mokoena, John Moorhouse, Harshana Munglee, Ogilvie Ramoshaba, Claudia Shalala, Nic Swart and Johan van Staden

The Legal Education and Development (LEAD) division continued with its training and development activities for the profession at both pre and post-admission level, with an attendance of more than 12 000 persons in 2010.

Special achievements

More than 12 000 persons enrolled for LEAD programmes in 2010, an increase of 38%.

- 2 780 persons enrolled for legal support staff training, 700 more than the target of 2 000.
- The Management Committee (Manco) of the LSSA Council approved the establishment of a business division at LEAD.
- As the first step in promoting mentorship, the following took place:
 - mentors were recruited;
 - training seminars were held; and
 - material for a mentorship relationship was developed.
- A fruitful discussion on law, language and learning took place at the LSSA AGM in March. The Council of the LSSA adopted the recommendations from the AGM discussion at its meeting in September 2010.
- 5 400 persons attended LEAD seminars, an increase of 49%.
- The LEAD mediation programme was accredited by the SASSETA and will be offered over five days in 2011.
- On 29 November 2010, the LSSA Council adopted a proposal for mandatory continuing professional development for attorneys.
- Major progress has been made with regard to e-learning. The introduction of a complete online bookkeeping course is one example.
- A night School was established at Polokwane.
- Staff and students have been involved in social responsibility projects at the School and at LEAD.

Location

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

Finance

Budget

It appears that there has been a substantial saving on the 2010 budget without curtailing delivery of services. Savings are the result of a disciplined spending approach at LEAD and discounts negotiated in respect of books purchased from the publishers. Additional income came from increased attendance SASSETA grants and the offering of courses for the Financial Services Board and for the Department of Rural Development. 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.

LEAD staff in Pretoria: Amanda Kibido (passed away on 17 December 2010), Andries Modiba, Anthea Josephs (until 26 November 2010), Anthony Matimbe, Belinda Povey, Beverly Chueu, Dianne Angelopulo, Elmarie Bester, Gail Mason, Grace Mukuru, Jackson Ndlovu, Jonathan Maseko, Jowie Dina Ramaripa, Joy Mosito, Lolita Pieterse, Maria Mokwape, Martha Baloyi, Martha Lubasi, (until 14 January 2011) Modi Vinger, Nic Swart, Nkhutliseng Mlangeni, Ntokozo Manzi, Ogilvie Ramoshaba, Portia Kadi, Ria Mahlangu, Selina Ramano, Sharon Lee, Stephne Pieterse, Tasha Roestoff, Tshepo Mothoa (from 12 August 2010) and William Khunou.

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

Johannesburg: Chandika Singh, Titus Mbatha, Connie Malinga, Louisa Madikoe, Veronica Doust (from 1 June 2010)

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

Pretoria: Ursula Hartzenberg, Zukiswa Kala and Ali Haji (from 1 October 2010)

Potchefstroom*: Andrew Morathi (until 31 August 2010), Kedibone Mello and Michelle de Oliveira (from 1 December 2010)

Port Elizabeth*: Lionel Lindoor and Anita Strydom

LSSA–UNISA distance learning school: Simla Budhu, Parma Govender and Thandeka Msiza

**Coordinators at these centres are appointed by universities.*

General developments

Commercial law training

Fifty-three attorneys received training in commercial law at courses in Pretoria and Cape Town from Irish and South African Lawyers. Ireland Aid provides the funding for the training (R2 million over three years).

Training in judicial skills (SASSETA funded)

Thirty-one attorneys attended courses over five days in KwaZulu-Natal and Gauteng. Judges and regional magistrates provided the training, which was evaluated as extremely successful.

Practice development activity

The Attorneys Development Fund was established. One hundred and thirty-eight mentors received training at mentorship courses.

Mandatory practice management training

Due to the course becoming mandatory, 496 persons attended distance and attendance courses.

Foreign liaison

The Law Society of Ireland provides commercial law training. The Chairperson of the SCLE and the LEAD Director attended the SADCLA conference in Lubumbashi (DRC).

Papers delivered

The LEAD Director delivered a paper on the 'Development of CPD in the SADC region' at the SADCLA conference in August 2010.

SASSETA grants

The SASSETA made R18 million available for training in 2010.

Support staff training

2 780 persons received training in ten areas of practice in Pretoria, Johannesburg, East London, Bloemfontein, Durban, Pietermaritzburg, Cape Town, Polokwane, Klerksdorp, Nelspruit and Richards Bay in 2010.

E-learning

Most staff at LEAD were trained to use this method. The first products have been developed.

Ongoing education and development activities

Conveyancing and notarial training: 350 persons participated in 2010.

Seminars: 5 400 persons attended seminars in 2010. The following topics were offered:

- Access to information
- Administration of estates
- Alternative dispute resolution
- Competition law
- Consumer law
- Conveyancing update
- Debt collection
- Environmental law
- Eviction and rental claims
- High court litigation
- Legal writing
- Mediation practice
- Mediation five-day training
- Opinion and report writing
- Promotion of administrative justice
- RAF update

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.

1 770 candidate attorneys attended in 2010.

Instructors and presenters involved in LEAD activities: More than 700 practitioners and other experts were involved in the activities of LEAD in 2010.

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. 1 221 persons attended the day, night and distance programmes in 2010.

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

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

Selling of documentation: LEAD has sold a substantial quantity of its publications in hardcopy and electronic format in 2010. These publications included 'PLT manuals', Consulta and E-PLT (CD-Rom).

Distance education programmes: LEAD offered diploma and certificate programmes in conjunction with Pretoria, UNISA, KwaZulu-Natal and Potchefstroom universities in labour law, corporate law, administration of estates, tax and insolvency.

Summary of attendance of all LEAD programmes: 2010

	2010	2009
School for Legal Practice	1 221	(1 189)
Conveyancing and notarial training	350	(439)
25-day courses for candidate attorneys	1 770	(1 907)
Diplomas and certificates (distance)	204	(153)
Practice management training	496	(114)
Seminars	5 400	(3 702)
Other training	3 238	(646)
Mentorship; Irish commercial law; skills transfer; FSB, Rural development		
Support staff; judicial skills, trial advocacy, insolvency		
Total	12 679	(8 150)

Abe Mathebula

Chairperson, Standing Committee on Legal Education

Nic Swart

Director of Legal Education and Development

PROFESSIONAL AFFAIRS

The Professional Affairs department of the LSSA coordinates and supports the activities of its 29 specialist committees.

Over and above the normal committee meetings and activities which are reported on later in this Annual Report under “Specialist committee reports”, Professional Affairs also facilitated meetings on several occasions with government departments and other stakeholders, including the Master’s Office, the Competition Commission, the Rules Board, Legal Aid South Africa, the South African Revenue Service, the Registrar of Deeds and a task team on environmental affairs. Professional Affairs also attended hearings of several Parliamentary Portfolio Committees when necessary and had very positive briefing sessions with the Parliamentary Portfolio Committee on Justice and the Parliamentary Portfolio Committee on Home Affairs during the period under review. We intend to have further briefing sessions with portfolio committees during 2011.

Furthermore, several specialised workshops have been attended by the Manager of Professional Affairs and the committee members. Professional Affairs also engaged with various international delegations with regard to consumer and regulation laws, GATS and land registration.

The committees have been ably assisted by the Parliamentary Liaison Officer, Zelna Jansen who left in October 2010 and Mfanelo Zamisa who joined the LSSA in January 2011, and the National Project Coordinator, Petunia Ramela. Some of the projects coordinated by Ms Ramela in the year under review included the prison visit project under the direction of the Criminal Procedure Committee and the maintenance workshop project under the Gender Equality Committee. These are reported on more fully under the respective committee reports.

Professional Affairs wishes to express its sincere appreciation to the committee members who voluntarily offer their expert knowledge and service to the benefit of the profession. Thank you for your contributions and assistance throughout the year.

Lizette Burger

Professional Affairs Manager

LEGAL PROVIDENT FUND

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

The Legal Provident Fund (LPF) has existed since 1967 and is a Law Society of South Africa initiative. Its function is to provide retirement and risk benefits to employees, partners and directors of law firms. In industry terms the LPF is a medium-sized retirement fund.

2010 was a busy year with the trustees meeting on three occasions for formal Board meetings and three occasions for Executive Committee meetings. In 2010, eleven trustees governed the LPF including a new trustee, Walton Ngxekisa, who joined the LPF’s deliberations after being nominated by the Black Lawyers Association.

The trustees ensure good governance by complying stringently with the LPF rules, retirement fund legislation and best practice. For this and their continued commitment and dedication to the strategic management of the LPF, I would like to express my sincere gratitude.

In 2010 several law firms with freestanding retirement funds transferred their funds to the umbrella fund of the LPF. These transfers can, *inter alia*, be attributed to the LPF’s lower administration fees.

At the beginning of the year the trustees launched the LPF life-stage model. This investment model is designed to switch the member’s assets into more conservative portfolios progressively as the member gets older. Switches in portfolios are, therefore, conducted as part of an overall strategy and not in an attempt to time the investment markets. The life-stage model is designed for members who do not have investment expertise.

Investment performance in 2010 was good across the whole range of portfolios in which members’ funds are invested. In all cases actual performance exceeded benchmarks. Looking at the three-year performance data, it is gratifying to note that the good performance in 2009 and 2010 more than made up for the downturn experienced in 2008.

For most South Africans their only form of savings is retirement-fund membership. To encourage members to save more, the trustees recently introduced additional contribution rates to the list of options available to members. To enhance their final retirement benefits, members can also elect to contribute additional voluntary contributions on a monthly or ad hoc basis.

In conclusion, I would like to convey my gratitude to all the participating employers and members for their continued support of the LPF. I am confident that with the support of all stakeholders the 2011 financial year will be a highly successful one.

For more information on the Legal Provident Fund, please access the website on www.legalprovidentfund.co.za

Andrew Stansfield

Chairperson of the Board of Trustees, Legal Provident Fund

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

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

This is particularly so in the field of divorce mediation, which was given a boost firstly by the promulgation of ss 33 and 34 of the Children's Act and, secondly, by the seminal judgment of *MB v NB* 2010 (3) SA 220 (GSI) (known as the *Brownlee* judgment) which received approval from the Supreme Court of Appeal in *S v Mrs J and Mr J* (case no 695/2010 (SCA) unreported).

There are now 42 statutes containing dispute resolution provisions, the latest being the Companies Act and the new rules on the conferring of matrimonial and civil jurisdiction on regional courts, which create potential for mediation. In addition, there are enormous opportunities and possibilities under the Consumer Protection Act in which, again, Government specifically cites dispute resolution processes as the way forward.

LEAD, with the active participation, personal involvement and under the guidance of Nic Swart, has done much to propagate a culture of mediation among attorneys, having held three forty-hour training programmes for attorneys during 2010 in Midrand, Cape Town, Durban and Port Alfred.

Ten such training programmes for attorneys are scheduled to be held in various centres during 2011, as well as a number of two-day courses for candidate attorneys, as an introduction to divorce mediation. These courses will be run by LEAD and are subsidised by the SASSETA.

A National Dispute Settlement Practitioners Council was established in the fields of family and commercial dispute resolution on which the LSSA is represented by Committee members Charles Cohen and John O'Leary. The Council is in the process of formulating standards for the accreditation of training courses and mediators.

The National Accreditation Board for Family Mediators (NABFAM) steering committee met several times to draw up proposed standards for accreditation and training. These were due to be finalised at a meeting on 18 February at which the LSSA ADR Committee was to be represented by Mr Cohen and Mr O' Leary.

Ongoing developments

The Committee is

- attempting to ensure and oversee, through LEAD training once legislation is in place, for attorneys to become accredited by the LSSA and/or provincial law societies as mediators, arbitrators and, generally, ADR practitioners capable of appearing in or before all legal forums;
- trying 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 be lists of attorneys trained and accredited by the LSSA and/or the provincial law societies to the extent described above, to which lists the public and commerce would have access;
- selling the notion to Government that the profession is best placed to train and accredit attorneys to the extent described above, thus ensuring that standards, ethics and codes of professional practice are maintained;
- investigating how and where an infrastructure can be created (possibly through the law societies) where training, accreditation and the making available of information could be controlled;
- engaging with the court structures, the Department of Justice and Constitutional Development and with other applicable committees of the LSSA, and with any other such structures, NGOs and organisations as may be appropriate, as well as the public at large, in order to demonstrate where the current adversarial systems may not necessarily be in the best interests of all concerned, and to make litigation attorneys more aware of the benefits of mediation and arbitration;
- generally, and perhaps most importantly, doing all such things and taking all such steps as may be appropriate and feasible to promote and inculcate the culture of ADR as a means of providing speedy and affordable access to justice for all citizens involved in conflict and/or disputes.

Daryl Burman

Chairperson, Alternative Dispute Resolution Committee



COMPANY LAW COMMITTEE

Members: Miranda Feinstein (Chairperson), Paul Hay, Davies Mculu and John Simon

The Committee meets as and when circumstances dictate. During the period covered by this report, the Committee met three times to prepare comments on the first draft of the regulations to the Companies Act, 2008 published during December 2009 and on the proposed Amendment Act to the Act published in the last quarter of 2010. The first two meetings were very lengthy and examined the draft regulations in detail. Submissions were made to the Department of Trade and Industry in regard to both sets of legislation.

Miranda Feinstein

Chairperson, Company Law Committee

COMPETITION LAW COMMITTEE

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

The main activity of the Competition Law Committee was to provide support to the LSSA Council with regard to the exemption application filed by the LSSA in 2004 with the Competition Commission in terms of Schedule 1 of the Competition Act 89 of 1998 (the Act). The exemption application was filed on behalf of the four statutory provincial law societies, and sought to exempt their disciplinary rules from the application of the Act on the grounds that they are necessary for the maintenance of the professional standards of attorneys and the ordinary function of the legal profession.

During the year under review, the LSSA made good progress in recommending to the law societies the adoption of a uniform or harmonised set of rules. The Committee advised that these rules should be drafted so as to be in compliance with the Act as far as possible, and the exemption application should then be amended once the new rules have been adopted by the various provincial law societies.

The Competition Commission requested a moratorium on all disciplinary proceedings pending the disposition of the exemption application, but the Committee advised the LSSA Council that the Act did not require this.

Towards the end of the period under review, the Commission indicated

that it has decided in principle to reject the exemption application.

The categories of rules for which the LSSA applied for exemption are

- the setting and monitoring of professional fees;
- reserving certain types of work for attorneys only;
- prescribing organisational forms; and
- advertising, marketing and touting.

The Commission has found that these rules are too wide and go beyond what is necessary for the ordinary function of the legal profession. It indicated that there are other ways to police excessive pricing by attorneys and that the rules on reserved work, multidisciplinary practices and advertising should be relaxed to be more in line with international norms.

Unfortunately the notification of the Commission was not very detailed and accordingly it was difficult to determine the exact reasons for the rejection of the application and whether they would pass muster in an appeal to the Competition Tribunal. The LSSA, therefore, called for more detailed reasons to be supplied by the Commission.

The Council appointed an ad hoc committee which, with the assistance of the LSSA's attorneys, embarked on a series of meetings and interaction with the Commission with a view to negotiating the approval of the new set of uniform rules. Suffice it to say that the rejection of the exemption application will have far-reaching consequences for the regulation of the legal profession and significant changes can be expected to the way in which attorneys have practised law in the past.

As Chairperson of the Committee, I met with George Lipimile, a special envoy from the Southern African Development Community (SADC), who was appointed to report on possible harmonisation of competition laws in the SADC region. Various areas of possible coordination were considered during the meeting. Further interaction with the Bar associations and law societies in other countries in the SADC region will be sought as a result of this meeting.

The mandate of the Committee has been expanded to include the application of the Consumer Protection Act, which will come into force on 1 April 2011. The Government's policy approach to this Act is similar to the Competition Act and we expect that the Committee will be heavily involved with the authorities as this legislation comes into operation.

Paul Coetser

Chairperson, Competition Law Committee

CONTINGENCY FEES COMMITTEE

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

The Committee met once during the year under review. The issue of common law contingency fees languished during 2010 mainly because, for a while, the Government contemplated the inclusion of contingency fees in the Legal Practice Bill. This was eventually removed from the later draft of the Bill. Given the fact that the Cape Law Society Council is now prepared, in principle, to side with all the other bodies which recognise common-law contingency fees, the way would appear to be open to call a meeting and draft a replacement to the existing Contingency Fees Act or amendments to it.

Clem Druker

Chairperson, Contingency Fees Committee

COSTS COMMITTEE

Members: Asif Essa (Chairperson), Graham Bellairs, Bennie Makola, Danie Olivier, Sias Reyneke, Morné Scheepers and Jan van Rensburg

The Costs Committee of the LSSA convened a meeting in February 2010 and teleconferences during May and August 2010. In addition, members of the Committee met with the Costs Committee of the Rules Board in February 2010 in Durban. The primary purpose of the Committee is to consider all issues relating to legal costs, *inter alia*, the tariffs of fees, disbursements and counsel's fees, and matters incidental to these costs.

The main issues that are deliberated by the Committee relate to the inhibition of access to justice as a result of the tariffs not being adjusted on a regular basis and the resultant disparity between attorney-and-client charges and the party-and-party tariffs. The motivations to the Rules Board resulted in amendments being effected to the tariffs in 2009 and 2010, after a significant period during which the tariffs of fees remained stagnant. However, the amendments have only to a certain extent ameliorated the recovery of reasonable and necessary costs, having regard to attorney-and-client fee structures in the profession.

The challenge facing the profession is to engage with the Rules Board, supported by economic data, as regards the annual adjustments to the tariffs. This will need to be properly motivated and will also require the profession to speak with one voice. In addition, simplified and practical tariffs are a necessary prerequisite to the proper administration of justice, particularly with regard to obviating the current delays in the taxation process.

It will be necessary to engage further with the Rules Board in 2011 to achieve the objectives of the profession so as to ensure access to justice. This will be the objective of the Costs Committee in the year ahead.

Asif Essa

Chairperson, Costs Committee

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 in May and November 2010.

At its two meetings, the Committee discussed certain legislation, including amendments to s 49 of the Criminal Procedure Act 51 of 1977. It also engaged a consultant and later made detailed submissions to the South African Law Reform Commission on the working paper on Electronic Evidence in Criminal and Civil Proceedings.

The prison visits project, as coordinated by the LSSA's National Project Coordinator, Petunia Ramela, was successful and various practitioners visited prisons throughout South Africa and conducted workshops focussing on plea bargaining. It was felt that these workshops should be sustained throughout 2011.

It was also decided that the LSSA should be involved with the Department of Correctional Services with regard to parole and conditions at prisons. It was resolved that a member of the committee should attend the Parliamentary Portfolio Committee meetings on Correctional Services.

It was resolved that arrangements be made with the Minister of Police to engage with the South African Police Service (SAPS) on issues involving the arrest of suspects. There was concern about the fact that many police officials do not have adequate training or knowledge on when and when not to arrest a suspect.

Although the Committee had decided to arrange a seminar with the SAPS on the issue of unlawful arrest, this still had not taken place. It is hoped that the SAPS will agree to such a meeting and/or seminar during 2011.

Other matters of interest that were discussed were the involvement by the National Institute of Crime Prevention and the Re-Integration of Offenders (NICRO) with regard to the diversion of cases from the criminal justice system, as well as the International Criminal Court which operates within the confines of the Rome Statute.

The functioning of courts was also debated and it was noted that members of the various provincial law societies attend caseload management meetings with the relevant role players on a regular basis.

Concern was also raised about consulting facilities at prisons, police stations and at many courts. The functioning of courts after hours was a topic which it is felt should be further debated and that the Justice Department should look at reintroducing a system akin to what took place during the 2010 FIFA World Cup to assist with clogged court rolls.

As Chairperson, I attended a meeting with the Chief Justice and other judges in Cape Town dealing with the problems with regard to the functioning of the criminal justice system. Both the attorneys' and advocates' professions have been engaged to put forward proposals in this regard.

The appointment of attorneys as acting judges was raised as a topic, and a suggestion was proposed that a dedicated criminal Bench be supported where attorneys and advocates who have experience in criminal law matters would be appointed as acting judges. It was felt that to have an experienced practitioner appointed to the Bench would, in most instances, ensure a speedier conclusion of criminal trials.

The Committee wishes to thank to Lizette Burger and Petunia Ramela for their assistance at meetings and in facilitating the work of the Committee.

William Booth

Chairperson, Criminal Procedure Committee

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 Deceased Estates, Trusts and Planning Committee held the following meetings in 2010:

- 9 February 2010: A joint meeting with the LSSA E-Commerce Committee, which was also attended by Lester Basson on behalf of the Chief Master.
- 11 August 2010: A committee meeting was held. Mr Basson also attended the meeting on behalf of the Chief Master.
- 12 August 2010: The Chairperson met with John Gibson, Chairperson of the Fiduciary Institute of South Africa.

A formal objection to a proposal that para 3 of Reg 910 of the Administration of Estates Act 66 of 1965 be amended to include full members of the South African Institute of Professional Accountants was submitted to the Department of Justice and Constitutional Development on the basis, *inter alia*, that it was not in the public interest to do so. Regulation 910 prohibits the

liquidation or distribution of the estates of deceased persons by any person other than an attorney, notary, conveyancer or law agent.

The Bureau for Economic Research (BER) of the University of Stellenbosch was commissioned to provide a proposal regarding the adjustment of appraiser fees as published in *Government Gazette* 22734, such adjustment to be based on the most appropriate economic indicator. The proposal was duly received and formed the basis of a submission that was made to the Department of Justice and Constitutional Development to adjust the appraiser fees accordingly. The Business Process Improvement Unit of the Department has indicated that its investigation should have been finalised by the end of July 2010.

A new version of the Integrated Case Management System/ Masters (ICMS) was implemented by the Department of Justice and Constitutional Development and deployed to some 14 Master's offices and 340 Magistrates' offices. Its implementation is a welcome development as it enhances output and productivity.

The Office of the Chief Master introduced a new fast-track procedure at some of the Master's offices. The LSSA was not consulted. It is reasonable to expect that the procedure and processes should be comprehensively set out in a Chief Master's Directive and be available to all stakeholders, including attorneys. The roll-out to a segment of stakeholders to the exclusion of others is discriminatory and, therefore, untenable. The integrity of the new fast-track procedure and processes will require interrogation once details are made available.

The failure by the Department of Justice and Constitutional Development to make appropriate amendments to the Administration of Estates Act is a dereliction of duty to fiduciary law practitioners and the public.

The office of the Chief Master must give serious consideration to the introduction of an electronic file management system to improve service delivery. Risk management and control systems must be reconsidered on an ongoing basis. All letters of executorship and letters of authority should have a secure seal of office and disclose the full name of the official signing these documents. Next-of-kin affidavits in intestate estates are becoming notoriously inaccurate and are a cause for great concern.

Hussan Goga

Chairperson, Deceased Estates, Trusts and Planning Committee

The following Chief Master's Directives were issued during 2010:

	SUBJECT MATTER	EFFECTIVE DATE
1 of 2010	Bonds of security in assetless companies and close corporations	5 January 2010
2 of 2010	Ongoing assurance on the effectiveness of risk management and control systems	26 March 2010
3 of 2010	Turnaround times/monthly statistics/quarterly key performance indicators	22 November 2010
4 of 2010	Uniform approach by Masters in respect of fees to be charged by the Master for making of copies, refund of incorrect payments made to the DoJ&CD and dishonoured cheques	23 November 2010

E-COMMERCE COMMITTEE

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

This Committee has remained in contact with the Department of Justice and Constitutional Development – including the Office of the Chief Master and the Department of Rural Development and Land Affairs – as they move towards electronic interaction with the profession and others.

It will also be involved in the Chief Justice's forthcoming *imbizo* involving online courts and other electronic interactions with the justice system, and will be working with the Magistrate's and High Courts committees on this as necessary.

The Committee has provided comments for the LSSA's submissions on the proposed cyber-security process as well as the commission on electronic evidence procedures in civil and criminal courts. The Committee will also be working with LEAD to arrange workshops on digital forensics and evidence for practitioners, as this is an increasingly important area of practice.

Together with the Property Law Committee, the E-Commerce Committee has investigated the biometric processes that will be introduced by the banks and the State. In addition, the Committee will be providing comments on the current draft Electronic Deeds Registries Bill and will continue to work in conjunction with the Property Law Committee.

Online authentication of users is becoming very important and we will be meeting shortly with some seminal role players in this regard, since the profession's involvement is very important for those role players.

Local e-law conferences are increasingly important and members of the Committee have been attending and participating in them. It is also necessary to improve awareness of the consequences of the forthcoming Protection of Personal Information Act and the Chairperson was to attend a national workshop on this.

The Committee will also provide input for the Attorneys Development Fund about improving practitioners' e-skills and the use of technology, and hopes also to enlist some large local vendors in this process.

The Committee will continue to work with LEAD and to try and increase the profession's visibility in the local e-law environment, as well as provide meaningful input to the e-justice and e-filing processes.

Gavin McLachlan

Chairperson, E-Commerce Committee

ENVIRONMENTAL LAW COMMITTEE

Members: Terry Winstanley (Chairperson), Catherine Warburton (Deputy Chairperson), Norman Brauteseth, Karmini Krishna, Ilan Lax, Bongile Mpitso, Jerome Mthembu, Bulelwa Ndamase

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

During the reporting period, the committee met on 18 August 2010 and considered the amended Environmental Impact Assessment (EIA) Regulations that came into effect on 2 August 2010.

The shortcomings and complexities of these were discussed and it was agreed that each member of the committee would be responsible for drafting comments on aspects of those regulations, to be submitted to the Department of Environmental Affairs. In addition, case law affecting environmental law was debated.

Catherine Warburton is now the Chairperson of the Committee and Terry Winstanley is the Deputy Chairperson.

Terry Winstanley

Chairperson, Environmental Law Committee

ETHICS COMMITTEE

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

Although the Ethics Committee was not seized with any matter of consequence during the past year, the importance of ethics to the profession can never be judged by this. There are many challenges that the profession faces and with it goes many questions around ethics which are seemingly, better not asked by some attorneys.

After a somewhat non-controversial discussion at the last AGM of the LSSA on aspects of ethics, the subject of ethics remains on the proverbial back burner, and something of a millstone around the profession's neck.

The financial scandals that rocked the world and caused the global economic meltdown were closely associated with poor regulatory controls over banks and major corporate institutions, all of which had teams of lawyers and accountants advising those responsible for the meltdown.

Are the Rules of Ethics mainly observed in the breach? The biggest pyramid schemers who take millions of dollars or ten millions of Rands off hundreds of gullible citizens can bank on (pun intended) lawyers to be there to filibuster and drag out the search for justice with convoluted and complex legal arguments that do not advance or promote the reputation of the legal profession, but certainly add to the impoverishment of many victims.

The number of texts that are published on numerous aspects of old or new law keeps the publishing houses busy. However, a single call to one big legal publishing house in February indicated that there was only one book on *Law and Medical Ethics* on its catalogues and the good old book by Lewis on Ethics could not be found.

Nic Swart of LEAD laments the paucity of texts for his students on this subject and states that he has to rely on compilations of notes over the years.

The pace of the global village and the accumulation of cash and surpluses in an electronic age where large sums of money are transferred in transactions at a click on sophisticated mobile phones or other smart IT systems, does not encourage a pause to reflect on the legalities of such transactions, let alone grappling with an ethical question.

Deals are often struck such that legal questions are squeezed and have to be found within short time frames, as time is money. The rest is left to litigation. The role of some 'in-house' lawyers who would find conflicts of interest offensive to their employers and who would have to just 'make it work', needs regulatory attention.

Can our law societies in their current shape and size take on the excesses of the large corporate legal giants? It has taken a few courageous councillors in one or two law societies to take on those who engaged in touting on a massive business level. The jury is still out on those lawyers distancing themselves from the Ponzi schemes operated through their own trust accounts that have brought financial ruin to hundreds of clients.

Ethics does not, in this age, form an essential part of the sword or shield of the majority of legal practices. Ethics is more likely to be slashed by the slick lawyer and trodden upon to get to the loot. The Ethics Committee salutes those attorneys, young and old, who valiantly serve clients with distinction, integrity, sacrifice and satisfaction, earning less but definitely sleeping well.

Krish Govender
Chairperson, Ethics Committee

EXCHANGE CONTROL AND TAX MATTERS COMMITTEE

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

During the period under review the Committee commented on various revenue Bills and attended several workshops arranged by SARS for the discussion of the Tax Administration Bill (TAB), which is now in its second draft. It was, by all accounts, a busy period for the Committee.

Several provisions of the TAB aim to confer the most draconian powers on SARS officials. These include the right to search private dwellings without a warrant, the right to demand payment of assessments immediately upon their issue and the right to take collection steps without affording the taxpayer the opportunity to be heard on the question of liability. The Bill seeks to oust the jurisdiction of the High Court to review any decision of a SARS official and to enable SARS to confer the right of appearance in the High Court on SARS officials notwithstanding any other law governing such a right.

The LSSA has drawn the attention of its constituent societies and the General Council of the Bar to the provisions of this Bill and is

currently working in close cooperation with the Law Society of the Northern Provinces in opposing the Bill. It has requested SARS – under the provisions of the Promotion of Access to Information Act – to disclose the legal opinions SARS has allegedly obtained in support of the constitutionality of some of the provisions of the TAB. SARS has to date refused disclosure.

The Regulation of Tax Practitioners Bill, which makes serious inroads into the right of the legal professions to regulate their own affairs, has been held in abeyance. During the period under review no further action was required on the part of the LSSA.

With regard to exchange control developments, the Committee has noted the liberalisation initiatives announced by the Minister of Finance during October 2010, but there has thus far not been a need for it to seek clarification of the regulations published to implement these initiatives.

Henry Vorster
Chairperson, Tax and Exchange Control Committee

FAMILY LAW COMMITTEE

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

The following issues, *inter alia*, are those which are of concern to the Family Law Committee and are being focused on.

The Regional Civil Court Rules and their implementation or training of magistrates and court officials

There was concern expressed regarding magistrates' understanding of family law, the Children's Courts and the Regional Courts Rules and Regulations. The Committee was of the opinion that its input in the training of magistrates and the development of family law was of paramount importance and it was resolved that the Committee should offer its assistance in this regard. The Committee will also offer to assist with the refining of and adding to the content of magistrates' training material.

A workshop was to be held on 16 March 2011 to consider the Regional Civil Court Rules, the Regulations and the forms filled in at the magistrates' courts, as well as the High Court Rules with a view to streamlining them. The views expressed there will then be presented at a Family Law Conference the following day, whereafter submissions will be made to the relevant authorities.

Implementation of the Children's Act and issues of concern

The Committee is of the view that family advocates are overburdened with work; the regulations are so rigid that their focus has shifted to the form, at the expense of content. A procedure is to be worked out with the Family Advocate to get the regulations changed.

Further, the wording of the Act is creating problems for attorneys due to its strictness. As an example, settlement agreements have to

be submitted to the Family Advocate in respect of all cases where children are involved, even in respect of unopposed divorces. There is a strong feeling that some kind of arrangement has to be worked out with the Chief Family Advocate.

Rules of the High Court regarding family law matters

There is concern with regard to guardianship being dealt with by the High Court and that the Regional Courts, in terms of the Children's Act, have no jurisdiction in opposed matters. The Domestic Arbitration Act could assist in this regard and the Committee resolved to pursue its implementation.

Costs, including in respect of Rule 43 applications

The Committee is of the view that the issue of costs, including those in respect of Rule 43 applications, should be considered when the rules are reviewed and has resolved that a request be made to have a member of the Family Law Committee included in the meeting of the LSSA Costs Committee with the Rules Board.

Legislation

During the year the Committee submitted comments on various pieces of legislation. This is an extremely important committee and it requires the maximum number of members as the workload is vast and there is legislation to be considered on an urgent basis, regularly.

Susan Abro

Chairperson, Family Law Committee

FINANCIAL INTELLIGENCE CENTRE ACT (FICA) COMMITTEE

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

The Committee or representatives of the Committee met on more than one occasion with Financial Intelligence Centre (FIC) representatives to discuss the cash threshold limit, training, the training manual, the role of the supervisory bodies and feedback and follow-up processes of the Financial Action Task Force (FATF) Mutual Evaluation of South Africa's Anti-Money Laundering (AML) and Counter-Terrorist Financing (CTF) regime.

The cash threshold reporting limit of R25 000 came into operation on 4 October 2010 (*Government Gazette* 33596, Regulation Gazette 9386, vol 544, 1 October 2010). In terms of the notice reporting about cash payments above the cash threshold limit is to be made within two days after becoming aware of the transaction. The notice also amends the regulation to indicate what needs to be reported about the transaction.

The Committee considered the *FICA Manual* for the profession. The manual will be reviewed in 2011 to ensure that it is compliant with the amendments to the Act which came into operation on 1 December 2010.

It is, however, important that attorneys do not merely take the sample forms and implement them, as attorneys have a duty to apply their minds. The manual will, *inter alia*, cover issues such as the importance of the approval of a manual by the management of the firm, the appointment of a FICA officer for the firm, identifying a client, keeping of records and reporting suspicious transactions.

It is important to note the amendments that came into operation on 1 December 2010 (*Government Gazette* 33781, vol 545, 26 November 2010). The four statutory provincial law societies are now 'supervisory bodies'. All 'practising attorneys' are accountable institutions and were to have registered with the FIC no later than 1 March 2011 or within 90 days from starting their practices. The supervisory bodies must report to the FIC about intended action against accountable institutions.

Each supervisory body will have to designate a FICA officer to assist and monitor attorneys. The practicalities around the supervisory functions and implementation of supervisory powers are still under consideration by the law societies.

Unfortunately not all the submissions made by the LSSA on the Amendment Bill were accepted. It is worth noting that a party aggrieved by a decision of the FIC or the supervisory body will have to pay R10 000 to note an appeal.

FIC representatives attended some of the annual general meetings of the law societies and made presentations to practitioners on the implementation of the Act and regulations.

David Bekker

Chairperson, Financial Intelligence Centre Act Committee

GENDER EQUALITY COMMITTEE

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

The Committee had two meetings and three teleconferences during the year under review. As part of its objective for the year, the Committee planned the continuation of the programmes set up in the previous year, which included hosting maintenance workshops in five provinces as a follow-up to the workshops held in Durban, Cape Town and Pretoria during 2009.

In 2010 the Committee planned to host workshops in Mpumalanga, Limpopo, Free State, Eastern Cape and North-West. The Committee managed to raise funds from SASSETA to make these workshops a reality. The workshops were planned to take place during the 16 Days of Activism on No Violence Against Women and Children, and they were a great success.

The target audience for the year was attorneys and candidate attorneys. Eighteen participants attended the workshop in North-West and 34 participants attended the one in Limpopo. In the other three provinces the workshops were over-booked. The workshops have been well received and there have been requests for ongoing initiatives from all areas where workshops were held.

Workshops were scheduled to run through until the end of February 2011 in the remainder of the provinces. These workshops once again gave the Gender Committee an opportunity to take part in the campaign that seeks to uphold and protect the rights of women and children. The committee would like to plead with the LSSA and all its constituent members to implement programmes that will affirm the status of women lawyers in this country.

I would like to thank the committee members and the staff at LSSA for their hard work and commitment.

Martha Mbhele

Chairperson, Gender Equality Committee

HIGH COURT COMMITTEE

Members: Adam Pitman (Chairperson), André Bloem, Asif Essa, Peter Horn, Neil Joubert, Danie Olivier, Cassim Sardiwalla, John Wills and Eric Zaca

The High Court Committee has had a busy year. Every year the volume of documentation the Committee needs to consider seems to increase.

One of the important issues that was considered was the challenge whereby the auctioneers wish to amend Rule 68(5) to have access to sales in execution of immovable property, which are presently the sole domain of the Sheriff of the High Court.

While the Committee is of the view that the Magistrate's Court Rules should be harmonised with the High Court Rules, the Committee believes that the rule should not be changed to accommodate auctioneers.

Another important development this year was the increase in the High Court tariff, which was thanks largely to previous work by the High Court Committee.

The Committee resolved to meet regularly and to use teleconferences, which have been found to be very effective.

The Chief Justice has requested a memorandum on the challenges facing practitioners in the High Court and possible solutions. The Committee believes that this memorandum should be as comprehensive as possible as the Chief Justice is clearly motivated to make a difference and to ensure that there is better access to justice in the High Courts.

The High Court Committee members enjoy a good working relationship with each other and our meetings often involve vibrant debates before we reach consensus.

Finally, I need to thank the LSSA for all its assistance in making our committee a success, in particular Lizette Burger whose professionalism and hard work needs a special mention.

Adam Pitman

Chairperson, High Court Committee

IMMIGRATION AND REFUGEE LAW COMMITTEE

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

The period under review has been a very active one for the Immigration and Refugee Law Committee of the LSSA. It has been characterised by several draft Bills affecting the area of immigration, citizenship and refugee law, as well as by a period of the worst and lowest level of service delivery by the Department of Home Affairs in the history of the Committee.

Many attempts to interface with the Minister of Home Affairs to discuss proactively matters of mutual interest have been frustrated. Similarly, meetings were arranged with the Director General of Home Affairs that were postponed at the instance of the Director General's office and simply never rescheduled.

On the positive side, however, the Committee was able to secure several meetings at senior management level with the Department of Home Affairs on various issues, with Modiri Matthews, the Chief Director of the Inspectorate, André Goosen, the Acting Chief Director at the time in the Permitting Directorate, and the newly appointed Provincial Manager: Gauteng East, Jurie de Wet. During these meetings, very positive interchanges took place relating to various enforcement issues under the Immigration Act, issues surrounding the amnesty and special dispensation for Zimbabwean nationals announced by the Minister of Home Affairs, and various other relevant issues.

As a direct result of the positive interaction that took place, the Chief Director of the Inspectorate invited the LSSA to meet with him and top management on a quarterly basis. This offer was taken up and in total three meetings were held at this level.

The draft Citizenship Amendment Bill made its appearance during the period under review. The committee submitted considerable input on the draft Bill and was ably represented before the Parliamentary Portfolio Committee on Home Affairs on 11 August 2010 by Committee member William Kerfoot. Several of the suggestions made by way of proposed amendments to the draft Bill were indeed incorporated in the Bill that was gazetted on 7 December 2010.

The Births and Deaths Registration Amendment Bill was also published during the period under review and the Committee submitted numerous proposals and made written input to the Parliamentary Portfolio Committee on Home Affairs and indeed was again represented at the Portfolio Committee hearings in respect of this Bill on 24 August 2010. Again several of the constructive suggestions that were made in the input of the LSSA were incorporated in the Amendment Act gazetted on 7 December 2010.

The committee was again represented at the CDE Conference (Regional Migration Flows) on 24 August 2010, where numerous inputs were given and where the LSSA representatives had the opportunity to interface with numerous Directors-General of Home Affairs from neighbouring countries.

During October 2010, comments on the Refugees Amendment Bill were submitted to the Portfolio Committee on Home Affairs and again the Committee was represented at the public hearings before the Portfolio Committee by Mr Kerfoot. The amendments to the Refugee Appeals Board rules became available during this period.

Numerous media interviews were conducted by the Chairperson, Julian Pokroy, and Vice Chairperson of the committee, Chris Watters. These included numerous radio stations and television stations with a two-hour segment on Immigration and Citizenship Law issues on Radio 702/Cape Talk.

The Immigration Amendment Bill of 2010 was introduced in the last quarter of 2010 and by the time this report is published, public hearings would have taken place at which considerable input will have been presented to the Portfolio Committees. A proposal in the draft Bill seeks to repeal s 46 of the Act, which is the enabling provision allowing attorneys, advocates and immigration practitioners registered under the Act to 'conduct work flowing from the Act'. This is part of a perceived attack on the legal profession and a blatant and obvious attempt to remove attorneys from another sphere of specialty. It is not believed that this proposal will pass constitutional muster.

Regular meetings of the Committee were held during the period under review, with face-to-face meeting at least twice a year and interspersed with teleconferences. The latter has provided a platform for the Committee to deal with urgent matters.

On 18 January 2011, the long-awaited meeting between the LSSA Immigration and Refugee Law Committee and the Parliamentary Portfolio Committee on Home Affairs took place. This meeting had originally been set down for August 2010, but had been bumped off the Parliamentary roll of the Portfolio Committee, due to public hearings on the Citizenship Bill and subsequently the Births and Deaths Registration Amendment Bill.

The LSSA delegation was lead by Co-Chairperson Peter Horn and included Julian Pokroy, William Kerfoot and Solly Lockhat.

A host of issues were dealt with at the meeting, including the following:

- Matters requiring statutory intervention not canvassed in other Home Affairs Acts.
- The need for a national conference on immigration policy.
- An overview of the difficulties being experienced in obtaining permits under the Immigration Act, highlighting the kinds of issues that need to be factored into immigration legislation, policy and review.
- Various Refugees Act-related matters, including but not limited to travel documents, identity cards, extended validity of documents and situations surrounding the illegal seizure of expired documents.
- The possibility of a workshop to be hosted by the organised legal profession in order to lay a foundation for proactive interaction between the profession and the Parliamentary Portfolio Committee.
- Matters needing statutory intervention but which are not canvassed in the draft Immigration Amendment Bill, such as

- clarifying the desired role of the Immigration Advisory Board;
- dealing with inherent problems surrounding temporary and permanent residence permits which have not been addressed in the various amendments to the Immigration Act and neither in the current Immigration Amendment Bill;
- dealing with certain enforcement issues and penalties under the draft Immigration Amendment Bill.

The LSSA Committee was particularly well received and welcomed by the Portfolio Committee and a very useful exchange took place during which all the aspects above, and many others, were canvassed. A vigorous question time took place, which clarified many of the issues for the Portfolio Committee.

The public hearings on the Immigration Amendment Bill took place from 25 to 27 January 2011 and the LSSA delegation comprised Julian Pokroy and William Kerfoot. A substantial written presentation had been submitted to the Portfolio Committee. The considerable input by Chris Watters in the drafting of the submission is acknowledged. The main rationale for the attendance of the LSSA representatives was to clarify any issues for the Portfolio Committee and to answer questions that could potentially arise. Numerous matters surrounding both procedural and substantive issues and many canvassing principles potentially bad in administrative and even constitutional law, were highlighted by the LSSA.

This has been a very positive interaction for the Committee and we trust that the efforts made by the Committee will not fall on deaf ears.

During the period under review considerable input was also given to LEAD on the question of Continuing Professional Development (CPD) at a time when planning was already in place in association with LEAD to conduct workshops and seminars in the fields of immigration, nationality and refugee law, hopefully during 2011.

As Chairperson, I would like to express my thanks to my fellow committee members for their continued and active input. I also wish to express my gratitude to the LSSA Professional Affairs Manager, Lizette Burger, for her continued support, and last but not least, to Kris Devan for her very able secretarial support to the committee.

Julian Pokroy

Chairperson, Immigration and Refugee Law Committee

INSOLVENCY AND LIQUIDATIONS COMMITTEE

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

Initially two dates were reserved for the Committee's meetings. Unfortunately the March 2010 meeting coincided with other LSSA meetings and was rescheduled for a future date. The date for the next meeting was settled for September 2010. In the interim, the Committee continued discussions by e-mail, in particular, the skills training programme for previously disadvantaged attorneys.

The Committee engaged extensively with Nic Swart, Vaneetha Dhanjee, Ogilvie Ramoshaba and others, and this resulted in the curriculum for the five-day programme by LEAD.

The programme was discussed by the Committee and forwarded to various persons who might have an interest. The Chairperson of the Insolvency Committee was assured of assistance from Black Lawyers Association President, Nano Matlala, in inviting participants to the programme. He offered to act as one of the observers in the programme. The Committee tried to reach as many senior insolvency practitioners for assistance with tutoring or mentoring the participants in the programme.

Committee members were invited to avail themselves as panel members to ensure that the course content is practical and appropriate for an attorney who is keen to practise in this sphere of the law.

Various issues, like the problems at the Master's Office in Johannesburg and the moratorium on the appointment of previously disadvantaged individuals, were discussed.

Yvonne Mbatha
Chairperson, Insolvency Committee

INTELLECTUAL PROPERTY COMMITTEE

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

In the course of the year, Mr Majeke indicated that he would be unable to continue to serve on the Committee, due to his increased workload and responsibilities as President of the Cape Law Society.

Broad mandate

A broad mandate was initially given to the Committee. Since the Committee was satisfied that its mandate adequately covered all contingencies in the area of intellectual property (IP) law, or relevant to intellectual property, the Committee conducted its affairs also during 2010 in accordance with this mandate, namely to

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

Activities of the committee

In assessing the activities of the Committee, it should be borne in mind that the Committee is responsible for a specialised but divergent area of law. Legislative changes could, therefore, apply to different specific areas of law, eg the different laws on patents, trade marks, copyright, industrial designs, ambush marketing, anti-counterfeiting measures, etc. Statutory changes could also impact on the structures and procedures for the registration and enforcement of different 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 on IP.

Developments on international level

Although discussions and negotiations continued to take place within the two most relevant international bodies in the area of IP, ie the World Trade Organisation (WTO) and the World Intellectual Property Organisation (WIPO) in order to define consensus positions, not much progress was made. The following IP-related issues were included in the matters discussed at the WTO and WIPO meetings:

- the still 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 international registration system for Geographical Indications and the rights to arise from such registration, and the extension of GI protection to goods and services other than wine and spirits;
- the legal bodies responsible for, and the ambit of provisions for, the seizure and detention of counterfeit and/or infringing goods, particularly generic drugs, at ports of importation; and
- the need for an international instrument to harmonise the protection of Traditional/Indigenous Knowledge (TK) 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

The draft IP Amendment Bill

This was the most significant development in the IP field on national level, which occupied the attention of the Committee during 2010.

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 *Government Gazette* 31026, 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 TK. The draft Bill was initially submitted to the Committee and considered during 2008.

However, the Bill did not proceed through Parliament during 2008 and was eventually re-published in *Government Gazette* 33055, 29 March 2010 as Bill [B8-2010].

The Bill was introduced in the National Assembly in March 2010 and put on the parliamentary programme for 2010. In view of the contentious nature of the Bill, both as regards the principle of its approach and its many drafting defects, the Committee decided to reconsider the Bill with a view to formulating comments for submission by the LSSA.

Dr Owen Dean and Dr Tim Burrell were delegated to collate the comments on the various parts of the Bill and to submit these to the Portfolio Committee for Trade and Industry. Drs Dean and Burrell also addressed the Portfolio Committee and explained the position of the LSSA on the various issues.

In particular, the basic position of the LSSA was put forward, namely that the protection of manifestations of TK as species of intellectual property was the wrong approach and was fundamentally flawed, and that TK should be protected by way of *sui generis* legislation.

The Portfolio Committee eventually, after prolonged hearings, concluded that it would continue to process the current Bill and would seek advice from experts on appropriate amendments to the Bill.

Act on IP Rights from Publicly Financed Research and Development 51 of 2008

Although the Act was passed in December 2008, the draft Regulations were published for public comment only in April 2009. The Act and the Regulations were eventually put into effect on 2 August 2010 (Proc R 675 in *Government Gazette* 33433). The objective of the legislation is to ensure that IP and research and development (R&D) outcomes emanating from publicly financed R&D will be identified, protected, utilised and commercialised. The legislation accordingly primarily applies to universities and research councils.

New Companies Act 71 of 2008

This Act, which contains provisions to convert CIPRO 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.

The Committee noted that the establishment of the independent commission was reported to be on track; the commencement of its operation was expected by October 2010. It was not clear in what manner and by which person or body the legislative review processes would take place. It was decided that the Committee would continue to monitor developments in this regard.

Draft Policy Paper on IP

The Department of Trade and Industry has prepared a document entitled *Draft Policy on Intellectual Property of South Africa*. This document, which was made available to a selected number of stakeholders on a confidential basis, came to the notice of the Committee. It was resolved that the LSSA should request permission from the DTI to release the document so that all stakeholders, also the LSSA, be given an opportunity to submit comments.

Ambush marketing

In view of the many questions around ambush marketing in the context of the 2010 FIFA World Cup, it was resolved that the legislative provisions on ambush marketing be considered and that a proposal be drafted for the provisions to be improved.

Legal Practice Bill

In my capacity as Chairperson of the Committee on IP, I was requested by the LSSA drafting team revising the Legal Practice Bill to provide certain information on the position of patent and trade mark attorneys. The information, which was relevant in the context of reserved work for attorneys, was provided.

Meetings of the Committee

During 2010 the only meeting of the Committee was held on 20 July 2010. The major part of the meeting was devoted to the IP Amendment Bill, which was found to be unacceptable from a legal perspective. The Committee, in principle, supported the need for the protection of TK. However, as indicated above, the Committee confirmed the position taken by it in 2009, namely that the policy approach of the Bill (ie to protect different manifestations of TK 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 TK should be provided for in a different format, eg in *sui generis* legislation. It was suggested that independent professionals/consultants, with expertise in IP law, should be appointed to draft such *sui generis* legislation. The Committee accordingly confirmed its recommendation to the LSSA Council namely 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 arranged, 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.

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 2011; the Committee will keep track of these. The anticipated Bills include the

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

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 ATTORNEYS' AND ACCOUNTANTS' COMMITTEE

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

The Joint Attorneys' and Accountants' Committee (JAAC) decided that there should be two meetings per annum commencing in 2010. The first meeting was held on 19 May 2010 and the second on 14 October 2010.

As a cost – and time – savings exercise, it was decided that the attorneys would meet prior to each joint meeting so that matters raised by the provincial law societies and the agenda of the Joint Attorneys and Accountants Committee could be discussed fully.

The draft Uniform Accounting Rules were finalised and sent to the Independent Regulatory Board of Auditors (IRBA). In the light of changes to their standards affecting some of the rules, a response from IRBA is still being awaited. The issue of auditors to be included in the accreditation process was canvassed with IRBA, pending the finalisation of the Uniform Accounting Rules.

It was noted that the Cape Law Society had identified instances where auditors are conducting their audits remotely. Although none have presented a qualified report or there have not been adverse audit findings thus far, it is of concern to the law societies, as it is unclear whether these audits are being conducted properly.

It was noted that IRBA is in the process of adopting the International Federation of Accountants' Code of Ethics for Professional Accountants, which will prohibit such practices by auditors. The South African Institute of Chartered Accountants (SAICA) is investigating the possibility of the JAAC merging with their Legal Compliance Committee. The idea behind this is to eliminate duplication and pool resources to optimise delivery to SAICA members.

Vincent Faris, on behalf of SAICA, is investigating how foreign currencies should be treated in trust accounts and will revert to the Committee with his findings. The main issue is the accounting of the fluctuations due to currency movements. The Attorneys Fidelity Fund is also looking at the issue.

Finally, it was reported that the Reform Audit Support System (RASS) is running smoothly and reports were being submitted promptly. The formulation and finalisation of a model for the Cape Law Society, which would similarly be applied at the Law Society of the Northern Provinces, due to geographical spread, is pending.

Iqbal Ganie

Chairperson, Joint Attorneys and Accountants Committee

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

Members: Esmé du Plessis (Chairperson), Max Boqwana, Iqbal Ganie, Krish Govender, Rian Geldenhuys, Mvusi Edward Ngubane, Silas Nkanunu, Wilfred Phalatsi, Thoba Poyo-Dlwati (ex officio as Council member of the SADCLA), John Moorhouse replaced by Motlatsi Molefe (representing the Attorneys Fidelity Fund), Peter Levenberg (representing the General Council of the Bar)

As and when required, meetings take the form of joint meetings with the LSSA Ad hoc Committee on Foreign Qualifications which includes the following members: Emil Boshoff, Thinus Grobler and Nic Swart.

John Moorhouse, who has been a long-standing and active member of the Committee, retired as Executive Director of the Attorneys Fidelity Fund in October 2010. His place on the Committee has been taken by the new Executive Director, Motlatsi Molefe.

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

Broad mandate

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

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

The Committee has been identified as a Committee of particular relevance to the LSSA, mainly due to the potential impact of the issues with which the Committee deals. This means that the Committee is privileged to have, and can enjoy the benefit of, the attendance of its meetings by one or both of the Co-Chairpersons. This position endured during 2010, for the reason set out below.

Extended mandate

In the course of 2009 the LSSA Council considered the issue of Cross-border Practice Rights in the SADC region, and specifically the applicability of 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, 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.

Activities of the Committee

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

On the basis of initial deliberations in the course of 2009, a draft Summary Report and Broad Workplan was prepared, which was submitted to Manco as the proposed framework proposal for a plan of action. The implementation of the workplan and the necessary fact-finding work were to proceed in 2010.

In the course of 2010 the following meetings and other actions took place:

GATS Committee meeting: 1 September 2010

At this meeting the following was discussed:

- to proceed with the work as set out in the finalised workplan;
- to focus specifically on legal practice in SADC countries, but also to take cognisance of developments in other countries on the African continent;
- to obtain from each SADC country a copy of its legislation governing legal practice, and that all members should assist in this regard;
- to take into account relevant developments in the context of the Legal Practice Bill;
- to consult with SADC countries to determine their positions on cross-border practice rights, and in this regard to take into account information provided by Mr Geldenhuys on the current country-to-country trade negotiations;
- to determine from the DTI whether SADC regional trade negotiations were in progress, and to this end to convene a joint meeting with representatives of the DTI.

Joint meeting with DTI/DOJ&CD: 26 November 2010

At this meeting, attended by two representatives each of the DTI and the DOJ&CD, the Committee was informed that

- a SADC Services Protocol was in the process of being negotiated by the DTI, which would impact also on legal services;
- mergers with foreign law firms were being assessed, and that advice from the LSSA would be useful;
- the possibility of a PAN SADC fidelity fund was being investigated; and
- further joint meetings, also with the GCB, would be beneficial.

Submission on the Legal Practice Bill

At the request of the LSSA drafting team, the Committee submitted comments on provisions in the Legal Practice Bill which would be impacted on by the GATS Agreement, in order to ensure compliance with GATS; and also to point out aspects previously considered by the Committee in the context of the recognition of foreign qualifications.

Future work

The Committee was primarily established to monitor GATS-related developments in the international arena. Once the WTO negotiations are resumed (which have faltered in recent years), GATS issues are expected to be high on the WTO agenda and the GATS Committee will have to watch the developments closely. In the meanwhile the Committee takes note of discussion in regard to GATS within the International Bar Association.

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

Finally, once progress is made with the Legal Practice Bill, the Committee will have to meet again jointly with the Committee on Foreign Qualifications to ensure that the issue of the recognition of foreign qualifications and 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: Standing Committee on GATS

LABOUR LAW COMMITTEE

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

The area of labour and employment law has been relatively settled until the four Amendment Bills – the Draft Labour Relations Amendment Bill, 2010 the Draft Basic Conditions of Employment Amendment Bill, 2010, the Draft Employment Equity Amendment Bill, 2010 and the Draft Employment Services Bill, 2010 – were published in December 2010.

The Minister has called for comment. The Committee was considering a response to these. The Bills have obvious political and business implications which have been well documented in the media. The challenge is to assess, comment and if necessary act on the implications for practitioners.

For instance the amendment clearly empowers the Commission for Conciliation Mediation and Arbitration (CCMA) to prohibit legal representation in the CCMA. Whereas the Bill still has to go to NEDLAC to be negotiated, this will be the focus of the Committee in the coming while.

Peter Hobden

Chairperson, Labour Law Committee

LIQUOR MATTERS COMMITTEE

Members: Solly Epstein (Chairperson until September 2010), Jacobus Burger (Chairperson from October 2010), Chris Bodlani, Guy Dakin, Muke Khanyile Kheswa and Barry Kruger

Mr Epstein stepped down as Chairperson and was succeeded by the Vice-Chairperson, Mr Burger in September, 2010, and Mr Dakin was elected the new Vice-Chairperson.

During the year under review the Committee dealt with many diverse issues, *inter alia*, new liquor legislation in most of the provinces, service delivery by the various liquor boards, the bylaws of the City of Cape Town regarding liquor trading hours, the roll of liquor inspectors in the Eastern Cape etc.

Interaction between the members ensured that the Committee was able to keep abreast of developments and to interact with the authorities.

The annual meeting of the Committee in Johannesburg was as fruitful as usual. Mr Burger dealt extensively with the position in the Free State where a new Act had been promulgated. There seems to be no change as far as the lack of service delivery by the various boards is concerned.

Solly Epstein

Chairperson, Liquor Matters Committee

MAGISTRATE'S COURT COMMITTEE

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

The Magistrate's Court Committee met in Johannesburg on three occasions in 2010 namely 25 February, 6 July and 15 September.

The Committee was concerned with its usual business, such as queries and proposed amendments to rules received from attorneys; commenting on proposed amendments to the Magistrate's Court Rules; monitoring the implementation of the new Magistrate's Court Rules and the Regional Courts with civil jurisdiction. The Committee has also monitored and considered the numerous High Court decisions relating to various sections of the National Credit Act.

Input has been made by the Committee to the Minister of Justice and Constitutional Development in relation to State liability and the

execution of judgments against the State. The Committee's input was made after the decision in the Constitutional Court case of *The Minister for Justice and Constitutional Development v Nyathi* 2010 (4) BCLR 293 (CC). Representations were also made to the Minister for the amendment to s 3(4)(a) of the Institution of Legal Proceedings against Certain Organs of the State Act 40 of 2002 to allow applications for condonation to be made in the Magistrate's Court.

Two matters of relative importance require more extensive reporting.

Firstly, it has always been considered that our communication with and representation on the Rules Board has been of utmost importance to the profession in order to ensure that timeous and adequate input can be made in relation to new rules and amendments. The Minister formally appointed Danie Olivier and Buyiswa Majiki as full members and the late Charlie Mnisi as an alternate to participate in the meetings of the Rules Board. As a consequence of the recent passing away of Mr Mnisi, the Rules Board now seeks two alternates. However, there appears to have been a communication breakdown between the Board and the LSSA representatives, presumably as a result of there being major personnel changes at the Board. Consequently it will be necessary for the committee to investigate and rebuild the lines of communication with the Rules Board in 2011.

Secondly, a major objective of the Committee has been the development of the national survey in order to assess and report back to the Justice Department on the problems being experienced in the various magistrates' courts throughout South Africa.

The Committee was initially led to believe that the survey had the support of the Justice Department, however, at a meeting held with senior representatives from the Department during late October 2010, the LSSA was informed that, as the Department was fully aware of the problems and complaints that were to be investigated, the survey would, therefore, serve little purpose. The Department indicated further that it was embarking on a new strategy for the reform and restructure of the courts and the civil procedure.

The Department invited the LSSA and its committees to participate in and have representation on the various sub-committees to be established by the Department for this purpose. In response to this the LSSA has written to the Department calling for details of the various committees, their terms of reference and the participation required from the attorneys' profession. Indication from the Department was that the process was to be implemented in March 2011.

Whereas it is in the Magistrate's Court Committee's view that it would be preferable to participate in the proposed review process in partnership with the Justice Department in order to bring about reform, it is uncertain whether the review process will get off the ground, in which case the profession's national survey will have to proceed.

The Magistrate's Court Committee was to meet in February 2011 to consider the matter and decide whether to proceed with the national survey.

Finally the Committee enjoys representation on and, therefore, a close relationship with the LSSA Costs Committee. Through this committee the LSSA is making representations to the Rules Board to introduce an increased tariff for matters dealt with in the Civil Regional Courts. We will continue to try to expedite this increase.

Graham Bellairs

Chairperson, Magistrate's Court Committee

PRO BONO COMMITTEE

Members: Norman Moabi (Chairperson), Dawie Beyers, Poobie Govindasamy, Tumi Musi, Taswell Papier, Vincent Matsepe, Marissa Beyers and Pearl Mfusi

The Committee has in the past year experienced some low and high developments. The participation and attendance of meetings by members was at some stage almost non-existent with quorums not being formed.

On a positive note, the KwaZulu-Natal Law Society joined the others when its members adopted a compulsory *pro bono* rule at its annual general meeting in October 2010. The position is that all the provincial law societies are now on par and South Africa has a body of legal practitioners committed to assisting needy South Africans with free legal services.

Projects and coordination

With all hands on deck, what remains is for the provincial law societies to design and implement *pro bono* projects that will impact on their jurisdictions.

It will be up to the LSSA *Pro Bono* Committee to harness synergies of the provinces and the goodwill of the members to make an impact on the greater South African public.

The LSSA has created an environment that is exciting and inviting for South Africans to explore in fighting for and defending the rights of the poor and marginalised through the provision of free legal services.

With the commitment and dedication of members who are willing to plough in their skills and talents at every challenge facing the poor, *pro bono* will be a legacy the legal profession can proudly bequeath to the citizens of this country.

Norman Moabi

Chairperson, Pro Bono Committee

PROPERTY LAW COMMITTEE

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

Although two meetings were held during the year, the Committee has been extremely active this year. Great concern has been noted by the Committee on the ruling of the Competition Commission and the Committee has been in constant discussion about the effect of the ruling on the profession as a whole.

The Committee has continued to forge links with role players during the year. Meetings were held with SARS on the intended implementation of s 9(20) of the Transfer Duty Act, culminating in the committee assisting with and drafting a memorandum to the attorneys' profession on the implementation of this section.

The Committee continues to meet and hold discussions with SARS on other matters of interest. E-filing of transfer duty applications began in earnest in January 2011 and the Committee continues to hold meetings to resolve problems being experienced by members of the profession.

The Committee has also held meetings with the Office of the Chief Registrar of Deeds to discuss matters of mutual concern. A member of the Committee attended the Registrar's Conference at which meeting contributions of the profession were presented and adopted into the decisions pertaining to practice which were due to be implemented. The Chief Registrar has acknowledged the importance of the relationship with the profession and the continued support it makes.

Members of the Committee have contributed to discussions with the Office of the Chief Registrar of Deeds in the drafting of the Electronic Deeds Registration Act. It is envisaged that the registration of deeds will occur in the office of the conveyancer and not in the Deeds Office in the presence of the Registrar of Deeds.

The Committee has made contributions in the comments on draft Bills before Parliament as and when they are published for comment. The regulations under the new Companies Act were no exception.

The Committee has discussed the importance of using the media in educating the public, particularly on the role of the conveyancer and the importance of seeking legal advice. One such endeavour was the appearance of the Chairperson on the television programme *Speak Out*.

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

The 2005 Road Accident Fund Amendment Act and Regulations

Judgment was handed down by the Constitutional Court on 25 November 2010 in the appeal against the findings of the North Gauteng High Court which had dismissed the LSSA's entire application attacking aspects of the Road Accident Fund Amendment Act, 2005 and Regulations.

The appeal to the Constitutional Court was limited to three issues, namely

1. section 21, which abolishes a motor vehicle accident victim's common law right to claim compensation from a wrongdoer for losses which are not compensable under the RAF Act;
2. section 17(4)(c) which limits the amount of compensation that the Road Accident Fund (RAF) is obliged to pay for claims for loss of income or a dependant's loss of support arising from the bodily injury or death of a victim of a motor accident; and
3. regulation 5(1) in which the Minister of Transport (the Minister) has, pursuant to s 17 (4B)(a) of the Act, prescribed tariffs for health services which are to be provided to accident victims by public health establishments.

The Constitutional Court dismissed grounds (1) and (2), but upheld the constitutional challenge to reg 5(1). The finding applies retrospectively and with immediate effect. This means that claimants are entitled to be compensated in full for all medical, hospital and related expenses in any matters not yet settled.

The restoration of full compensation for medical and hospital costs to accident victims is a significant human-rights victory for accident victims, particularly for impoverished victims and those without medical aid. Although this is an interim measure pending the prescription by the Minister of a new tariff in terms of reg 17(4B)(a), any new tariff prescribed would have to be preceded by consultation and would have to take into account the findings of the Constitutional Court that any tariff prescribed would have to meet the purpose for which is intended 'namely a tariff that would enable innocent victims of road accidents to obtain the treatment they require'.

It is, naturally, disappointing that the abolition of the common law rights to sue the negligent driver or owner for damages not covered in terms of the Amendment Act was upheld by the Constitutional Court as 'a necessary and rational part of an interim scheme whose primary thrust is to achieve financial viability and a more effective and equitable platform for delivery of social security services'.

In arriving at this conclusion the court kept in mind 'not only the Government's intermediate purpose in enacting this legislation, but also its long-term objective' and found that [t]he new scheme is a significant step in that direction'.

The divergent approach of the English judicial system is encapsulated in remarks recently made by the chief executive of the Law Society of England and Wales, Desmond Hudson, who was quoted as saying that it was the 'backbone of the British legal system' that those harmed by others' negligence should be entitled to compensation and he offered to meet with the Minister and Ministry of Justice to offer a 'clearer picture' of solicitors' work.

Apart from the fact that full medical and hospital expenses are claimable (until such time as a new tariff is promulgated) the finding does not affect the current prosecution of claims under the Amendment Act, 2005 and the regulations published in terms thereof in *Government Gazette* 31249, 21 July 2008. A copy of the full judgment of the Constitutional Court is on the LSSA website.

The initial application brought in the North Gauteng High Court was extremely wide ranging and there are several aspects which may be worth testing in the Supreme Court of Appeal. In particular certain aspects of the '[a]ssessment of serious injury in terms of s 17(1A)' as prescribed in reg 3 may be assailable as ultra vires the enabling Act. The provisions of reg 6 in relation to interrogation may also be vulnerable to attack.

It is also worth noting the recent judgment of Tuchten AJ in the North Gauteng High Court, Pretoria in the matter of *FTJ Nhambe v RAF* (Case No 70721/2009 (unreported)) on the provisions of the Amendment Act, 2005 which can be viewed on the LSSA website).

The Road Accident Fund Benefits Scheme

Government's long-term objective as referred to in the Constitutional Court judgment was articulated in the policy document presented to the Parliamentary Portfolio Committee on Transport in February 2010 by the Minister after approval by Cabinet in November 2009.

Submissions on the policy were prepared and submitted by the LSSA's RAF Committee during April 2010 and can be viewed on the LSSA website. The Road Accident Fund Benefits Scheme (RABS) policy document can be viewed on the RAF website.

The LSSA's comment focussed on the principle of restructuring the RAF as part of the social security system. Reference was made in the policy document to the findings and recommendations of the Taylor Commission in its report made in 2002 as well as to 'the policy to reform the current common law based compensation system and to align it with the principles of other social insurance funds within the Comprehensive Social Security System'.

The Taylor Commission, in fact, recommended that it be investigated whether the RAF and workers' compensation systems should not be abolished on the basis that the benefits they provide are also required for injury and death arising from natural causes as a result of illness. One of the main recommendations of the Taylor Commission was the introduction of a basic income grant (BIG) to all citizens at a flat rate without any criteria (such as illness or disability) having to be met.

This recommendation is still topical and has received support from unions and other interest groups who consider the failure to provide such a grant to unemployed and impoverished adults as a fundamental shortcoming in the current social welfare programme.

A minority opinion of the Taylor Commission was that the amount of any BIG which would be affordable would not make this a desirable option.

In the light of the obvious and extensive demands on general government revenue for social security and health, before any allowance is made for BIG (from a general tax base collection of approximately R585 billion in February 2010) it would seem to be more prudent (and equitable) to retain as ring fenced dedicated funds the three social insurance schemes namely, UIF, COIDA and the RAF.

Taken as a cluster they are cash-flow positive to the tune of R9 billion per annum and both COIDA and UIF have substantial capital and cash reserves which have been invested, in the case of the UIF, mainly in the Public Investment Corporation.

If the social insurance schemes are dismantled, these claimants would join the 13 million South Africans who are already totally dependent on the State welfare and health systems and who have little or no prospect of economic rehabilitation and/or caring for their families' most basic needs.

If one also considers that these schemes are entirely funded by levies and contributions paid by potential claimants and employers (in addition to 'normal' income tax, VAT and the like) to continue to levy the contributions and simultaneously deprive those paying of the benefits that should accrue to them out of those contributions seems most inequitable.

To summarise: the three so-called social insurance schemes (UIF, COIDA and RAF) were established to cater for specific risks and were intended to be funded by way of dedicated revenue payable by those affected or benefiting from the scheme itself. They were never intended to form part of general social welfare and in fact because the beneficiaries contributed by way of 'premiums', the schemes are insurance schemes rather than welfare grants.

If one has regard to the enormity of the Government's current social security budget for welfare payments (excluding the three social insurance schemes) and the ongoing policy considerations to introduce a BIG, it would seem clear that the revenue diverted from the dedicated social insurance funds into the welfare system will make little impact on the needs of genuine social welfare recipients and at the same time will have a devastating impact on those who are currently contributing to and benefiting from the social insurance schemes. The long title of the draft policy paper refers to 'The Comprehensive Social Security System'. This is in an embryonic stage and it is not clear whether there is any firm policy as to how such a system should develop. In this regard reference is once again made to the findings of the Taylor Commission, which in fact recommended the dismantling of both the COID and RAF.

The current policy paper, in fact, appears to be aiming at restructuring the RAF scheme more or less in line with the existing Compensation for Occupational Injuries and Diseases Act (COID). If the long-term policy is, in fact, to dismantle both COID and RAF and to end up with one uniform system of social welfare benefits regardless of cause, then there seems little reason to materially restructure the RAF compensation scheme at this stage pending finality on future policy relative to the social security system as a whole.

Despite the recommendations of the Satchwell Commission, RABS abolishes common-law rights and does not make any provision, at all, for payment of general damages (regardless of the severity of the injury). RABS is also no-fault based, contemplates provincial hospital tariffs for all treatment and proposes caps on loss of income (dependant on proof of income as at the date of injury) and failing proof, payment equivalent to social welfare grants and a sliding scale for school children and students.

Claims for those 100% disabled are capped at R144 000 per annum (before tax) being 75% of the maximum deemed salary of R192 000 and, if no proof of income can be provided, the claim is limited to R12 000 per annum being 75% of R16 000 or the equivalent of the current state disability benefit.

Claims made in excess of the income tax threshold (currently R46 000 per annum) will be entertained only on production of income tax assessments or returns or IRP5 or IT3 documents. On production of such documents the highest of the three previous year's income will be used. For income above the State disability grant and below the tax threshold, verifiable supporting vouchers in the form of pay slips and/or employer's certificates are required.

A fundamental aspect of RABS is the 'buy-in' of private health care providers.

The cornerstone of the current policy proposal is that '[t]he RABS will cooperate with public and private sector providers to enable the delivery of quality healthcare to road accident victims across South Africa at affordable cost. The healthcare component of the RABS will primarily be structured in the form of accessible services to injured road users rather than cash benefits.

Healthcare financing will be structured to enable injured road users to have seamless access to emergency medical and appropriate acute care. The policy paper proposes that the current ineffective and expensive fee for service and reimbursement practices be replaced with a capitation model which is described as follows:

'Capitation arrangements enable a defined population (road accident victims) to access a specific menu of healthcare services against the payment by a third party funder (the RABS) of a fixed monthly fee. The payment remains the same irrespective of the number of services provided.'

If one has regard to the guiding principles for healthcare as set out in the draft policy document, the focus is on subsidising the public health department 'most resources should be channelled to the public health sector for treating road accident patients and to improve emergency medical services, trauma care and rehabilitation'.

The current public healthcare budget is R80 billion and this is inadequate for current needs in that many provincial hospitals had exhausted their annual budget well before financial year end.

The policy paper anticipates that R7.3 billion of RAF revenue will be diverted to healthcare, including rehabilitative treatment. R7.3 billion will go a substantial way if allocated to treating 220 000 people injured on average in traffic accidents per annum (according to the policy document) of whom approximately 61 000 sustain serious injuries.

It will be a mere drop in the ocean when compared to the annual general health budget of R80 billion in a Health Department that is already underfunded and not delivering.

In fact all it means is that a good percentage of those 61 000 seriously-injured persons who prior to the 2008 amendments to the RAF Act were cared for in the private sector and thus were afforded 'seamless access to pre-hospital and emergency medical care' and thus had a better chance of avoiding complications which 'tend to have an exponential as opposed to a linear impact on outcome and costs' will now be obliged to rely on the public health department for treatment for pre-hospital and emergency medical care.

Furthermore those same accident victims, pre-1 August 2008, would have also qualified for ongoing rehabilitative treatment in the private sector and thus have had a better chance of resuming productive roles in society. The recent judgment of the Constitutional Court referred to above has restored this right and will no doubt be taken into account before a final policy decision is taken.

No indication has been given in the policy document as to whether the private healthcare sector has been consulted with regard to the proposal to adopt a capitation system or whether there have been any discussions as to practical details and implementation. The major focus does seem to be for involvement of the public health sector (on the basis that the RAF will become a major debtor of the public health department) and one would, therefore, assume that the private healthcare sector has not yet offered any comment nor have they been consulted.

The policy document further acknowledges that the public sector capacity for rehabilitative care requires 'development'. What is of greater and more immediate concern to the road accident victim is surviving the emergency and acute phase of treatment.

Jacqui Sohn

Chairperson, Road Accident Fund Committee

SMALL CLAIMS COURTS COMMITTEE

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

Although no formal meeting of the Committee was held during the year under review, members of the Committee continue to be actively engaged in assisting the Department of Justice and Constitutional Development to maintain and extend the administration of the Small Claims Courts system throughout the country.

During the course of the year, members of the Committee participated in radio panel discussions with the Deputy Minister of Justice and Constitutional Development, who publicly thanked members of the profession for their contribution in running the Small Claims Courts.

The Minister also hinted at the possibility of extending the number of courts as well as increasing the jurisdiction of the courts. Both these possibilities have come to fruition in that the number of Small Claims Courts throughout the country has been increased to 211, with a possibility of extending the system to all 384 magisterial districts in the near future.

The jurisdiction of the courts has been increased from R7 000 to R12 000. As far as the running of the courts is concerned, problems are still being experienced with the lack of interpreters and the inexperience of some clerks of the Small Claims Courts, who continue to refer matters to the courts, although some of these matters cannot be entertained in those courts.

Members of the SAPS also refer matters, which in fact are of a criminal nature and should have been investigated by the SAPS in the first place, to the courts.

At present, commissioners are required to have a minimum of five years' practical experience and, if possible, consideration should be given to increasing the number of years of experience prior to a practitioner being allowed to become a commissioner of the Small Claims Court, due to the fact that, in many instances, the courts function without the assistance of court orderlies and/or the police and the seniority of the commissioner is of vital importance to maintain order in the court during sessions, as litigants often become unruly.

The Small Claims Courts: Guidelines for Commissioners, Version 1, 2010 (as well as a guideline for clerks) have been released, published and circulated by the Justice Department. An electronic copy of these and other useful material is available on the Department's website at www.justice.gov.za.

LEAD is currently working on a judicial skills e-learning course, which will include introductory training for commissioners of the Small Claims Courts.

On the whole, the Small Claims Courts appear to be functioning in a satisfactory manner, largely due to the contribution made by members of the profession.

Johann Gresse

Chairperson, Small Claims Courts Committee



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