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



LEGAL EDUCATION AND DEVELOPMENT
www.lssalead.org.za

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



2012/2013 ANNUAL REPORT

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LAW SOCIETY
OF SOUTH AFRICA

ANNUAL REPORT
April 2012 to March 2013



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

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

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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 the LSSA;
- cooperate or liaise with any fund or other body established for the purpose of guaranteeing the fidelity of practitioners of the profession;
- deal with any matter referred to it by the council or governing body of any constituent member; and
- take up membership of or otherwise to cooperate with any other organisation or body whether within or outside the Republic of South Africa, including organisations or bodies of an international character and, without derogating from the generality of the foregoing, to combine, affiliate or merge with any other organisation or body of similar nature to its own and having objects similar to and reconcilable with its own, whether or not its field of operations extends beyond the borders of the Republic of South Africa as they may from time to time be established.

(From the constitution of the LSSA)



CONSTITUENT MEMBERS OF THE LAW SOCIETY OF SOUTH AFRICA

Black Lawyers Association

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

Cape Law Society

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

KwaZulu-Natal Law Society

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

Law Society of the Free State

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

Law Society of the Northern Provinces

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

National Association of Democratic Lawyers

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



Since we took office as Co-Chairpersons of the Law Society of South Africa (LSSA) at the end of March 2012 our main focus has been on three major issues that have a fundamental impact on the attorneys' profession: the Legal Practice Bill, the discussions with the Competition Commission on the exemption of the rules of professional conduct of the provincial law societies and the finalisation of the uniform rules.

Minister of Justice and Constitutional Development Jeff Radebe published the Legal Practice Bill in May 2012. This was after comments and submissions made by the LSSA on various preliminary drafts of the Bill. Although the Bill, as published, contained aspects that we believe need refinement – and some indeed need to be removed totally from the Bill – in general the LSSA welcomed the numerous improvements that had been made to the draft Bill as a result of our and other submissions. The LSSA noted the fact that better regulation of all legal practitioners – including those that currently do not fall under any specific regulatory body – was a positive move for the profession and also for the protection of the public.

The improvements in the Bill noted by the LSSA included the following:

- The provision for the accreditation of voluntary associations which will acquire certain regulatory functions has been deleted. We have always been of the view that this would lead to fragmentation of the profession.
- The Bill does not provide for the regulation of paralegals in the same legislation.
- The definitions of 'conveyancer' and 'notary' make it clear that these practitioners will be registered and enrolled attorneys.
- Provision is made for easy conversion of an attorney to that of an advocate and *vice versa*.
- The Transitional Council and the Legal Practice Council

(LPC), and not the Minister or the Justice Department, will draft a code of conduct and the rules.

- Provision is made for the investment of trust monies for the benefit of clients.
- The majority of the members of the Board of Control of the Attorneys Fidelity Fund will be nominated by the LPC.
- The investigation of complaints against legal practitioners will be conducted by regional councils in terms of powers delegated to them by the LPC.

Despite the above, there were still a number of worrying aspects in the Bill which the LSSA's Legal Practice Bill Task Team and the LSSA Council considered. In addition, the Task Team and Manco members held several meetings in 2012 with representatives of the General Council of the Bar (GCB) in order to find as much common ground with the advocates' profession.

The Justice Department briefed the Justice Portfolio Committee on the Bill in June after which the Portfolio Committee published its call for written comments on the Bill, setting a deadline of 27 July 2012. The LSSA and the GCB jointly approached the Portfolio Committee for an extension of that deadline, informing the committee directly and also through a joint press release, that both the LSSA and GCB were of the view that there were good prospects that the two branches of the profession would be able to make a largely uniform submission to the portfolio committee, but that more time was needed.

The LSSA and GCB both emphasised that their engagement with the Bill was premised on the fact that the legal profession is, first and foremost, a service profession, serving the public and the community. We both stressed that an independent legal profession was essential for the protection of the Rule of Law and the promotion of a constitutional democracy. Much of the public debate and comments in the media have focused on the independence of the profession and whether ministerial representation on the LPC would jeopardise the independence of the profession or create a perception that the profession is not independent. There are different views on this aspect within the LSSA's constituents as well as between the LSSA and GCB. However, both branches of the profession are of the strong view that the Minister should not have the power to dissolve the LPC.

As Co-Chairpersons we have commented on the Bill in the broadcast and print media and have participated in a number of panel discussions with different stakeholders. We have ensured that the views of the attorneys' profession have been put forward at every opportunity.

The Portfolio Committee set the final deadline for written comments for 12 February 2013 and public hearings were set for 19 and 20 February. The LSSA was among the twelve organisations and individuals invited to make oral submissions to the Justice Portfolio Committee on 19 and 20 February 2013. The submissions were made by us in our capacity as Co-Chairpersons, as well as Max Boqwana and Busani Mabunda. The LSSA's submissions were well received by the Portfolio Committee and we undertook to provide supplementary information requested by the committee. The LSSA's presentation was followed at the Portfolio Committee by oral submissions by the Attorneys Fidelity Fund (AFF) and, at the time of writing, the LSSA and AFF were in discussions regarding the submissions.

Competition Commission exemption application

Discussions with the Competition Commission have been ongoing for some time. The Commission and the LSSA grappled with the modern concept of anti-competitive practices and what has traditionally been regarded as the framework necessary to regulate the profession as a profession – rather than a business – and where this intersects with free market forces and the interests of the public.

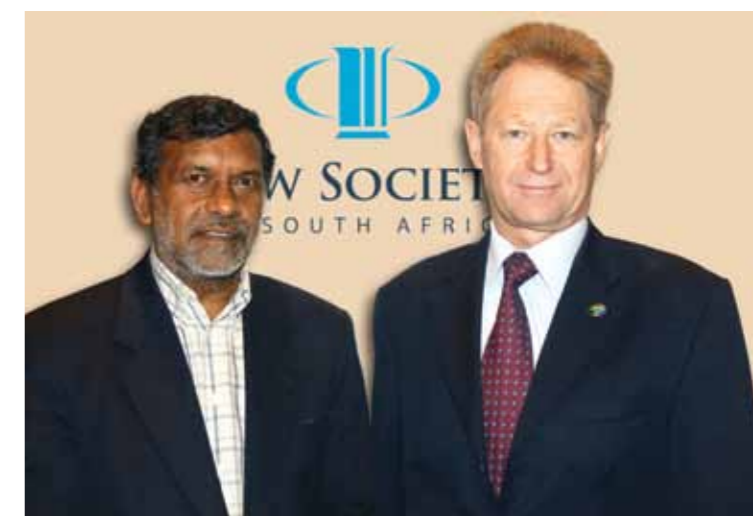
Regular contact has been maintained between the LSSA and the Commission, and after a high-level meeting in April 2012, a joint statement

was issued in which both parties agreed and committed themselves – as far as possible – to resolving all matters concerning the professional rules governing the attorneys' profession in a manner that would ensure the continued professionalism and integrity of the profession, while addressing competition law concerns raised by the Commission.

The LSSA and the Commission acknowledged that some confusion may have arisen from the Commission's decision regarding the application of the existing professional rules since its refusal to grant the exemption application in 2011. It is important to appreciate that while the Commission has decided that certain rules that restrict competition have not been exempted, such rules cannot be dispensed with without promulgating new ones, as this would create an untenable vacuum. In addition, change in the rules requires a change in legislation as the rules emanate from the Attorneys Act. In view of the above, the LSSA and the Commission agreed that until the process of finalising the Legal Practice Bill has been concluded, the existing rules would be interpreted and applied in a manner that is not offensive to competition law. In the event of doubt as to whether any conduct offends competition law principles, the LSSA has agreed that the provincial law societies will consult the Commission on such cases. The LSSA will facilitate these processes.

The uniform rules

The process of combining the rules of professional conduct and the accounting rules of the four statutory law societies into one uniform set of rules that apply equally to all attorneys throughout the country has been a protracted one. We believe that the process is nearing completion.



Krish Govender and Jan Stemmett

We urge attorneys to promote and approve the uniform rules so that, as a profession, we take the opportunity to move into the new, unified dispensation with a set of rules acceptable to all of us.

Public comments and communication

The LSSA has spoken out publicly through a number of press statements on several topical – and sometimes burning issues – this year. As we mentioned above we issued joint statements with the Competition Commission on the one hand and with the GCB on the other. We expressed shock and concern at the use of live ammunition against striking workers at Marikana and the resultant loss of life. We called on attorneys in the Western Cape to make their services and skills available to assist farmworkers, farm owners and the other related stakeholders to reach an acceptable resolution to the labour conflict in the Cape winelands, and objected publicly to the impeachment of the Chief Justice of Sri Lanka, indicating that we plan to take this matter up at the Commonwealth Law Conference in South Africa in April 2013. We also called for greater consistency in sentencing by South African courts, particularly in cases dealing with sentences imposed on rapists and sexual abusers. More recently, we welcomed the North Gauteng High Court: Pretoria judgment declaring the CCMA rule 25(1) (a) – which does not allow legal representation at arbitrations – unconstitutional. Last year we condemned the reported attacks against a member of the prosecutorial service and the muted response to these by some key institutions. We stressed that members of the legal profession – whether they be judges, attorneys, advocates or prosecutors – should be able to carry out their professional duties without fear of intimidation or harm, otherwise the Rule of Law and our constitutional democracy will be undermined.

We congratulated Dr Nkosazana Dlamini-Zuma on her appointment as Chairperson of the African Union Commission, urging her to provide leadership against dictatorships, tyranny and attacks on democratic institutions on the African continent. Soon thereafter, we welcomed the extension of the mandate of Dr Navi Pillay – a former Durban attorney and acting judge – as United Nations High Commissioner for Human Rights, for a further two years. We called on her to work with Dr Dlamini-Zuma to advance justice, peace and prosperity and specifically focus on the safety of women and children who are the victims of gender discrimination, poverty, rape and political strife, particularly, in many parts of Africa. We were pleased to receive a response from Dr Pillay thanking the LSSA and her colleagues from South Africa for the support.

As regards communication with the profession, the LSSA does this on an ongoing basis through *De Rebus* and its monthly electronic newsletters. *De Rebus* remains the primary communication medium for the profession to inform practitioners of the activities of the LSSA. It also continues to play an important educational role for the profession through the numerous columns and articles contributed in the main by attorneys, but increasingly also by candidate attorneys.

We commend *De Rebus* on its redesign, which has been favourably received by readers. We look forward to constructive feedback from readers on a reader survey regarding *De Rebus* which will be conducted in the first quarter of 2013.

As mentioned above, electronic communication plays an increasingly important role. Besides *De Rebus Digital*, which is available monthly free of charge, and the monthly LSSA e-newsletter – which has carried a number of valuable resource documents for attorneys (all of which are accessible on the LSSA website) – the LSSA is grateful to Juta Law for making the weekly consolidation of ‘legal’ news available to all attorneys and candidate attorneys free of charge. The Legalbrief LSSA Weekly – a joint initiative between the LSSA and Juta Law – is e-mailed to all on the LSSA database every Friday morning.

National initiatives

LSSA Synergy Link: The LSSA Council agreed last year that former Co-Chairpersons Praveen Sham and Nano Matlala should continue the empowerment initiative they started during their term as Co-Chairpersons by extending it to law firms. The ‘LSSA Synergy Link’ was launched in 2012 when larger, experienced attorneys’ firms were invited to link with smaller, predominantly black-owned firms in creative relationship, where one firm transfers leadership and practical skills to another. The ‘transferring firm’ provides guidance in business models, systems and strategy development as well as transfer of skills in advanced areas of legal work. In particular, the ‘growing firm’ must acquire the ability to identify a business idea and transform this into a viable practice opportunity.

The LSSA salutes the 15 ‘transferring’ firms who have signed up and are currently sharing their experience with ‘growing’ firms. We encourage more firms to participate in this initiative.

Legal Service Sector Charter: The LSSA rolled out the electronic scorecard nationally earlier this year and the paper-based version is in the process of being sent to all firms. Because of the fact that completion and submission of the Charter are not mandatory for attorneys, as well as the fact that the completion requires sensitive salary and income level information, the response rate from attorneys’ firms has been poor.

Financial Intelligence Centre (FIC): The supervisory functions by the provincial law societies have as yet not been implemented due to the fact that the memorandum of understanding between the FIC and the law societies has not been finalised.

Sustainability: The LSSA has been tasked with coordinating discussions on the financial sustainability of the provincial law societies in the run-up to the Legal Practice Bill implementation.

Legal Education and Development (LEAD)

LEAD has increased its contribution to the training of legal practitioners significantly this year with more than 11 000 persons having enrolled for LEAD programmes in 2012.

Attendance of the PLT School for Legal Practice has been the highest in the history of the School, with 1 390 candidates attending the nine centres of the School nationally and 180 training through the LSSA-UNISA distance programme. To date 21 386 graduates have attended the School for Legal Practice.

LEAD offers a comprehensive skills programme in commercial law in cooperation with the Law Society of Ireland and a successful business rescue course was introduced this year in cooperation with Unisa. This attracted more than 200 enrollments in the first term and 170 in the second term. This course continues in 2013.

The LSSA has been reaccredited by the SASSETA to provide training through LEAD and has received R1,9 million for skills development within the profession. This will include training for law firm support staff.

Various online training programmes have been offered and developed through the LEAD e-LEADer platform. A comprehensive learning support system has been introduced.

Professional affairs

The obligations, functions and operation of Professional Affairs’ specialist committees have changed significantly in recent years. This is due to urgency, new communication methods, as well as an increased workload and pressure under which committee members function. The volume of policy documents and legislation has also increased dramatically, while at the same time, time-frames for responses are often very short.

This year the committees again considered a wide variety of Bills and policy documents and submitted comments to Parliament and other relevant bodies relating to, *inter alia*,

the Protection of State Information Bill, the Green Paper on Land Reform, the Draft Mediation Rules, the Road Accident Fund Amendment Bill and the Traditional Courts Bill. All the submissions can be accessed on the LSSA website at www.LSSA.org.za.

The LSSA has also been invited to address Parliament on the Traditional Courts Bill, the Protection of State Information Bill and the Road Accident Fund Amendment Bill.

Various meetings were held with identified stakeholders to make input at policy level stage. These are set out in the Specialist Committee reports section later in this Annual Report.

We convey our sincere appreciation to all the committee members for their continued support.

The annual general meeting of the LSSA Council on 14 April 2013, where this Annual Report will be tabled for adoption, will be followed by the four-day 18th Commonwealth Law Conference in Cape Town. This is the first time in the sixty-year history of Commonwealth law conferences that this prestigious international conference – which will feature some 175 local and international speakers at 48 sessions – is being held in southern Africa. The LSSA has played a major role in assisting the Commonwealth Lawyers Association (CLA) with the arrangements for the conference. We would like to single out Mohamed Husain, who has represented the LSSA on the CLA Council for many years and who has served tirelessly as the chairperson of the conference Local Organising Committee, committee members Nolita Kose, Ashraf Mahomed and Graham Bellairs, with the able assistance of Nic Swart, Tony Pillay, Barbara Whittle and Ros Elphick at the LSSA.

We express our gratitude to the, CEO and Staff at the LSSA, the LSSA’s Management Committee (Manco) and the LSSA Council members for their dedication to the affairs of the profession.

Finally, as Co-Chairpersons of the LSSA we take this opportunity to thank all attorneys who give of their time generously to participate in the affairs of the profession. We single out those who continue to act as commissioners in the small claims courts and those who are participating actively in various *pro bono* activities. In addition, we thank the six constituent members of the LSSA – the Black Lawyers Association, the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces and the National Association of Democratic Lawyers – who bring together all the disparate views of the profession within the LSSA.

Jan Stemmett and Krish Govender
Co-Chairpersons



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

(LSSA Constitution)

Councillor	Constituency	Meeting attended
Krish Govender*	Co-Chairperson	05, 07, 11, 02
Jan Stemmett*	Co-Chairperson	05, 07, 09, 11, 02
Koos Alberts	CLS	05, 09, 11
Ettienne Barnard	CLS	05, 07, 09, 11, 02
David Bekker*	LSFS	05, 09, 11, 02
Dave Bennett	LSNP	05, 07, 09, 11, 02
Max Boqwana*	Nadel	02
Mamule Peter Chidi	BLA	
CP Fourie	LSNP	05, 07, 09, 11, 02
David Geard ¹	CLS	02
Mohamed Husain	Nadel	05, 07, 02
Peter Horn*	CLS	05, 07, 09, 11, 02
Jan Janse van Rensburg	LSNP	05, 07, 09, 02
Maake Kganyago	Nadel	05, 07, 09, 11, 02
Percival Maseti*	BLA	05, 07, 09, 11, 02
Kathleen Matolo-Dlepu*	BLA	05, 07, 09, 02
Mimie Memka	BLA	05, 07, 09, 11, 02
Segopotje Sheila Mphahlele ²	Nadel	05, 09
Francois Mvundlela ³	BLA	11, 02
Janine Myburgh ⁴	CLS	07
Lesane Sesele	BLA	05, 07, 09, 11, 02
Praveen Sham*	KZNLS	05, 07, 09, 11, 02

* Member of the Management Committee (Manco).

Key:

- 05 – May 2012
 - 07 – July 2012
 - 09 – September 2012
 - 11 – November 2012
 - 02 – February 2013
 - 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. Replaced Mr Alberts in February 2013
 2. Ms Mphahlele was an acting judge on the North Gauteng High Court bench at the time of the November 2012 and February 2013 meetings.
 3. Replaced Mr Chidi in November 2012
 4. In place of Mr Alberts at July 2012 meeting



The referral of the Legal Practice Bill to the parliamentary portfolio committee last year signaled the end of a long wait and marked the beginning of a period of intense debate and transition in the profession.

The Council of the Law Society of South Africa (LSSA) met on a record number of occasions to reach fairly wide consensus on key issues. Despite a number of productive meetings with the advocates' profession, agreement on important issues remained outstanding.

The next two years will require us all to move forward purposefully to ensure that the profession will act in the public interest and at the same time make certain that the affairs of the profession are run efficiently.

Our relationship with the Competition Commission has strengthened significantly. This should provide a platform for resolving future challenges relating, *inter alia*, to fees, reserved work and multidisciplinary practices.

During the year under review, the LSSA engaged with foreign jurisdictions at different levels. Our representatives attended a variety of significant international conferences and the LSSA offered seminars and training in conjunction with the International Bar Association, the Law Society of Ireland and Irish Aid. Other exchanges included speaking engagements in Africa and abroad.

Our relationship with the SADC Lawyers Association has remained a priority. In addition, the LSSA and LEAD hosted representatives of several visiting organisations during the year, including the Law Society of Swaziland, the Law Society of Tanganyika, the Law Society of Zimbabwe, and the Law Society of South Sudan. Delegations from China and from the Johan Marshall Law School, Chicago also visited LEAD.

The LSSA has communicated effectively, externally and internally. We have communicated regularly electronically, through *De Rebus* and otherwise with more than 21 000 attorneys and others.

Numerous press releases have been issued on issues of national significance. This indicates that the LSSA is in touch with its environment and with legal developments.

The LSSA has devoted much time to the planning of the 18th Commonwealth Law Conference in Cape Town in April 2013, and an exciting, high-level programme has been developed. This is the first time this prestigious international conference has been held in Southern Africa in the sixty-year history of Commonwealth law conferences. It featured four high-profile keynote speakers – UN High Commissioner for Human Rights, Navi Pillay, Chief Justice Willy Mutunga from Kenya, African entrepreneur and philanthropist Strive Masiyiwa and Lord Judge, The Lord Chief Justice of England and Wales – in addition to some 150 speakers in 48 sessions.

The specialist professional committees of the LSSA set meaningful objectives and have, in many instances, made influential input to legislation and other legal developments. When necessary, the LSSA interacted constructively with State and other institutions.

De Rebus adopted a 'new look' and digital readership has increased markedly.

The LSSA's Legal Education and Development division, LEAD, received more than 11 000 enrolments for various training events. The most significant developments among these include training in business rescue and insolvency. E-learning, practice management and the Schools for Legal Practice attracted record enrolments of 657, 776 and 1 380 respectively.

The activities and initiatives referred to briefly above are set out more fully in this report.

The management of the LSSA has placed a renewed value on its leadership role. My task has been made easier by the quality and loyal input of all in the LSSA. This includes the LSSA offices in Menlo Park, Sunnyside and the ten centers of the School for the Legal Practice.

It is an honor, and I am humbled by the privilege to serve our profession in this capacity.

Nic Swart

Chief Executive Officer

COMMUNICATION

Members: David Bekker (Chairperson), Hester Bezuidenhout, Max Boqwana, Gavin John, Kim Hawkey, Arnold Mohobo, Rampela Mokoena, Azwifaneli Matodzi, Nic Swart and Barbara Whittle

The LSSA's Communication Committee reviewed the communication-related risks on the LSSA's Risk Register at its two meetings in 2012.

Some of the communication risks are relatively low, such as the risk of insufficient communication between LSSA and practitioners and between the LSSA and the public. These are mitigated by ongoing electronic communication with practitioners through the monthly e-newsletter, the weekly *Legalbrief LSSA Weekly* – a joint venture between the LSSA and Juta Law – as well as regular advisories dealing with priority information, such as that relating to the Legal Practice Bill, Financial Intelligence Centre and SARS e-transfer trouble-shooting. LEAD training initiatives are also communicated electronically on a regular basis.

De Rebus continues to be the premier communication medium for the profession and reaches those practitioners that do not have electronic access. It also provides a lasting record of developments in the profession.

One of the risks which was included in the Risk Register and which was rated relatively high during 2012 was that of reputational risk. The LSSA's Council noted with serious concern the increasing negative perception and publicity surrounding the attorneys' profession, particularly in the media. The LSSA is cooperating with the Attorneys Fidelity Fund (AFF) in devising a public image campaign to promote the profession and the services of attorneys; to alert the public of the complaints mechanisms in place and to promote the role of the AFF in guaranteeing the public's money in attorneys' trust accounts.

During 2012 the LSSA Co-Chairpersons commented publicly on several burning and critical issues through press releases which received wide media coverage in the print and broadcast media.

The National Wills Week was held in September 2012 and proved to be increasingly popular with the public, media and other stakeholders such as municipalities and parastatals. The extensive media coverage generated much-needed goodwill for the profession.

The Committee is considering the extension of this initiative to cover other areas, such as assistance to the elderly.

Two new brochures for public information and for use as marketing tools by attorneys' firms were made available in 2012; one on 'Marriage: The Legal Aspects' and the other on the Consumer Protection Act. The brochures are available in English, isiZulu, seSotho, Afrikaans and isiXhosa.

David Bekker

Chairperson, Communication Committee

Barbara Whittle

Communication Manager

DE REBUS

The SA Attorneys' Journal

Editorial Committee members: Sithembele Mgxaji (Chairperson), Peter Horn, Danie Olivier and Mohamed Randera

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

The journal also plays an important educational role and its content – which includes articles on practice management, professional news and updates in all fields of law – is authoritative and enables practitioners to practise more efficiently and effectively. It also reinforces a sense of belonging in the profession, which in turn promotes high professional standards.

Although its primary readership comprises attorneys, *De Rebus* is also read by judges, magistrates, prosecutors, academics, advocates, law students and corporate legal advisers, among others.

Circulation

By December, *De Rebus'* circulation was 24 875, which is made up of 18 537 attorneys, 4 112 candidate attorneys, 1 212 paying subscribers and 964 complimentary recipients, as well as the sale of individual copies.

Statistics indicate that *De Rebus* is read (primarily electronically) beyond South Africa's borders in the SADC region and in overseas jurisdictions. The growing interest in these countries speaks to the value of the journal.

As a complement to the hard copy printed version of *De Rebus*, the journal is also available in online and digital formats. The online version can be found at www.derebus.org.za, which also serves as a useful search engine and archive service for editions of *De Rebus* that date back to 1998. The digital version, which is an exact replica of the print version, is available approximately two weeks prior to the hard copy. Readers can access digital copies of *De Rebus* through a number of sources, including by e-mail (for those on the *De Rebus Digital* mailing list); from links on the *De Rebus*, LSSA and LEAD websites; and via Google.co.za and Google.com searches.

There has been an increase in the number of readers on the *De Rebus Digital* mailing list, which at the end of December consisted of 2 600 e-mail addresses (when *De Rebus Digital* was first sent out in January 2010, the list stood at 480). *De Rebus Digital* is also available on the websites of the LSSA, LEAD, the Johannesburg Attorneys Association, My Virtual Paper and the Council for Medical Schemes. The journal can also be accessed online on the website of the Southern African Legal Information Institute (Saflii) and in Sabinet's African Journal Archive.

Financial information

As *De Rebus* is provided free of charge to all practising attorneys and candidate attorneys in South Africa, the *De Rebus* staff is mindful of the need to manage the costs incurred in producing the journal each month. 2012 was a successful year for *De Rebus'* advertising sales (unaudited figures), with a net income of R4 498 000 generated for both the journal and the Classifieds supplement, which is an increase of nearly R700 000 from the income of R3 812 000 generated in the previous year, and is also in excess of the budgeted amount of R4 323 000.

Due to a price negotiation with the printers of the journal and the Classifieds supplement to provide the quality of litho printing at the cost of web printing, *De Rebus* saved approximately 45% on its printing budget. As a result, *De Rebus* achieved a saving of R 1,28 million on printing costs and the Classifieds supplement saved R700 000 (all unaudited figures). There were additional savings due to the fact that the journal did not exceed the 64 pages budgeted for, while the Classifieds supplement also remained under the budgeted 32 pages.

The R700 000 saving in printing the Classifieds supplement includes the amount of R300 000, which is the annual saving from the previous period of review for changing the colour of the paper the Classifieds supplement is printed on from yellow to white. *De Rebus* has, therefore, achieved a significant saving on printing costs over the past two years. It is important to note, however, that such savings will not be replicated in 2013, as the 2013 budget is based on the cost of web printing.

It is anticipated that as a result of its increased advertising income and savings, *De Rebus* will have a surplus of R 2.85 million to be refunded to the Attorneys Fidelity Fund for 2012.

Further, the net annual cost to the Attorneys Fidelity Fund per free subscription of *De Rebus* for attorneys and candidate attorneys for 2012 is estimated at R150 per annum (compared to R216 in 2011).

Editorial matters

One of the biggest achievements of 2012 for *De Rebus* was a successful redesign of the journal, which was launched in the March 2012 issue – at no cost to the LSSA. As a result of the redesign, the quality of the journal's content is now matched by its look and feel, without derogating from its professionalism in any way.

In the period under review, *De Rebus* reported on a number of noteworthy events that affected the profession. This included developments in respect of the long-awaited Legal Practice Bill (B20 of 2012), the announcement by the Justice Minister of the proposed assessment of the impact of the decisions of the Constitutional Court and Supreme Court of Appeal and the linked 'Discussion document on the transformation of the judicial system and the role of the judiciary in the developmental South African state', as well as a planned overhaul of the state legal services.

In addition, *De Rebus* carried topical reports on a number of landmark judgments that were handed down by the courts in 2012. Those especially relevant for attorneys related to, in-

ter alia, legal practitioners' fees, contingency fees agreements, attorneys' right of appearance in the High Courts and legal representation in certain matters before the Commission for Conciliation, Mediation and Arbitration.

Other cases reported on in *De Rebus* reflected the impact of legislation passed in recent years, such as the Companies Act 71 of 2008, the Consumer Protection Act 68 of 2008 and the National Credit Act 34 of 2005.

Feature articles in the journal during the relevant period covered a variety of topics, from business rescue proceedings to the Consumer Protection Act to tax and the law of persons. *De Rebus* also published a number of interviews with legal luminaries such as Public Protector Thuli Madonsela and Director of the Justice Department's Gender Directorate, Ntibidi Rampete.

In addition, the *De Rebus* staff increasingly wrote articles as part of the journal's succession planning. This resulted in the team producing a social media-themed November 2012 issue, which contained several feature and news articles, as well as illustrations, by the staff.

The news section continued to improve during 2012, with current and topical articles, and more self-generated content by the *De Rebus* staff. This included comprehensive coverage of the annual general meetings of the LSSA, the Black Lawyers Association, the National Association of Democratic Lawyers, the four provincial law societies, the SADC Lawyers Association, as well as those of various other relevant bodies.

2012 prizewinners

Three practitioners were recognised in 2012 for their contributions to *De Rebus* during 2011. Cape Town attorneys Richard English and Megan Jackson jointly won the 2011 LexisNexis Prize for Legal Practitioners for the best article by a practising attorney published in *De Rebus* for their article titled 'A closer look at legal process outsourcing in South Africa' published in 2011 (Nov) *DR* 18. The article highlighted the advancements in legal process outsourcing in South Africa and globally. The pair won a Netbook with one year's free access to their choice of five online titles.

In addition, Benoni candidate attorney Clement Marumoagae won the 2011 Juta Prize for Candidate Attorneys for his article titled 'Forfeiture of patrimonial benefits – it's not about what's fair' published in 2011 (July) *DR* 20. In his arti-

cle, Mr Marumoagae set out to clear up some of the confusion relating to the law regarding forfeiture of patrimonial benefits on divorce. He won book vouchers to the value of R 7 500.

The *De Rebus* team members are acknowledged for their excellent work during 2012 and for their commitment to producing a top quality journal, as are *De Rebus*' regular contributors. The Editorial Committee members are also recognised for the work they put into *De Rebus*, not only through their attendance at the monthly Editorial Committee meetings, but also for the behind-the-scenes work that goes into producing *De Rebus* each month.

Sithembele Mgxaji

Chairperson, Editorial Committee

Kim Hawkey

Editor

FINANCE

This report covers the period from January to December 2012. The audited financial statements were finalised after this annual report, and for completeness it is recommended to refer to the audited financial statements which are available as a separate annexure.

LSSA Audit and Remuneration Committee (ARC)

Member	Number of meetings
Ashwin Trikamjee (Chairperson)	5
Etienne Horn (Vice Chairperson)	5
Koos Alberts	3
Vincent Faris	5
CP Fourie	4
Krish Govender (Co-Chairperson, LSSA)	3
Mohamed Husain	2
Ignatius Klynsmith	3
Praveen Sham (Co-Chairperson, LSSA until April 2012)	1
Jan Stemmett (Co-Chairperson, LSSA)	2
Matshego Ramagaga	4
Paul Ranamane	5

The above excluded the following meetings:

- LSSA Remuneration Sub-committee meetings 2
- LSSA Budget Sub-committee meetings 4
- Internal Audit Sub-committee meetings 3

The Internal Audit Sub-committee has an independent role and is accountable to the LSSA Council. It is chaired by Ignatius Klynsmith and reports via ARC.

The Remuneration Committee is chaired by Mohamed Husain and reports via ARC.

The Budget Committee is chaired by Etienne Horn and reports via ARC.

ARC is, *inter alia*, responsible for assisting the Council in discharging its duties in respect of the safeguarding of assets, accounting systems and practices, internal control processes as well as the preparation of accurate financial statements. It makes recommendations for approval by Council and or Manco.

ARC deals with a number of governance matters, including the recommendations of the Budget Sub-committee; the Internal Audit Sub-committee and the Remuneration Sub-committee

During 2012 ARC

- focused on cost containment, with increased attention due to the capping of the Attorneys Fidelity Fund (AFF) budget and provincial law societies' capitation levies;
- ensured that the financial policy of the LSSA complied with appropriate best-practice standards;
- implemented the process and made recommendations for the appointment of the new auditors, Nkonki Inc; and
- dealt with general finance matters referred to the Committee by the Council.

The LSSA does not have an internal audit function and the Internal Audit Sub-committee primarily considers

- the effectiveness of internal controls and the risk profile of the LSSA;
- the LSSA Risk Register as per the review by management, including risk aversion measures adopted by management, and
- the fraud prevention measures of the LSSA.

The Budget Sub-committee ensures that

- the budget process is in terms of the approved policy and guidelines; and
- reviews the operational performance measured against the budget.

The Remuneration Sub-committee

- determines the remuneration policy of the LSSA;
- benchmarks and sets the appropriate Rand value range for all posts;
- determines the total compensation practices of the LSSA on an annual basis, including design and revision of benefits plans and policies; and
- ensures that staffing levels are within the financial constraints of the LSSA, via ARC, with final approval vested in the Council.

The Joint AFF and LSSA s 46(b) Committee agreed to keep the allocation of s 46(b) funding for 2012 on the existing basis. The *De Rebus* and LEAD net deficits are fully funded. The LSSA national directorate is funded on the ratio of 2:1 (2 – AFF : 1 – LSSA), subject to separate allocations for specific Professional Affairs committees and no allocation for those activities or committees deemed to be outside of s 46(b) of the Attorneys Act, 1979.

Governance statement

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

- Integrated report
- Sustainability report
- Combined assurance report.

The LSSA does not have a formal internal audit function and, during the course of reviews of risks and internal controls by the ARC (Internal Audit Sub-committee), external auditors and management, the LSSA will outsource specific internal audit interventions on an *ad hoc* basis.

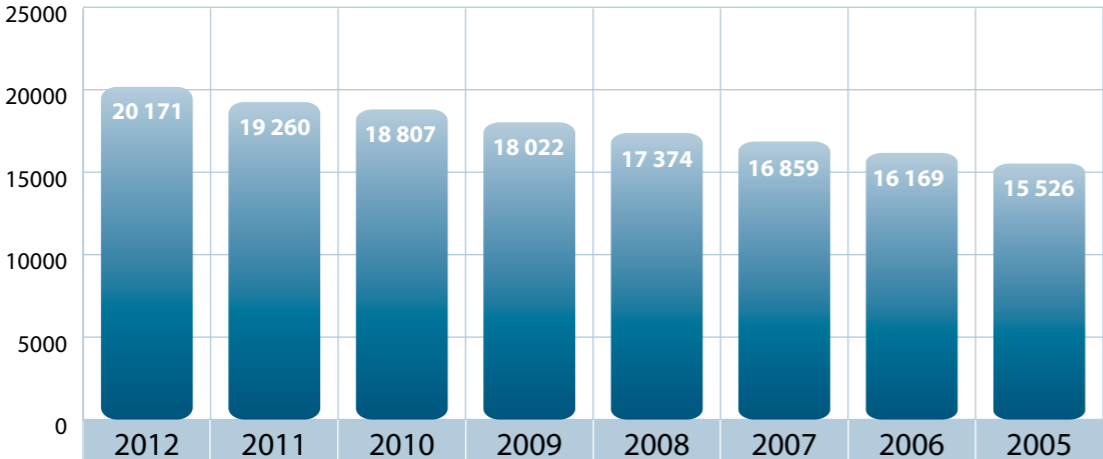
Main funding streams

The main funding streams for the LSSA are Attorneys Fidelity Fund s 46(b) honoraria and capitation levies from the provincial law societies.

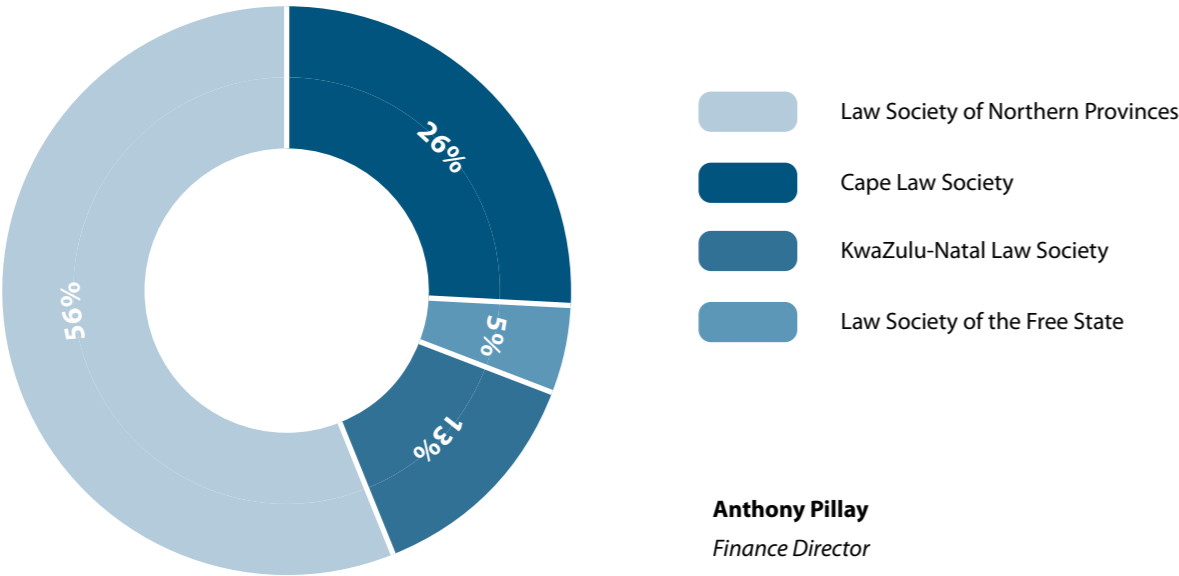
AFF s 46(b) honoraria

R 000's	LSSA	De Rebus	LEAD	TOTAL
2012	9 026	6 295	45 977	61 298
2011	9 323	6 196	44 544	60 063

Capitation levies



R 000's	R 7 665	R 7 318	R 7 146	R 6 307	R 6 080	R 5 900	R 5 335	R 5 123
Levy R/member	380	380	380	350	350	350	330	330
Members	20 171	19 260	18 807	18 022	17 374	16 859	16 169	15 526



Anthony Pillay
Finance Director

HUMAN RESOURCES

Members: Krish Govender, Percival Maseti, Jan Stemmett, Nkhensane Nthane, Anthony Pillay (ex officio) and Nic Swart (ex officio)

This report covers the period for the year ended 31 December 2012.

Various activities have been embarked on in preparation for the changes that may be brought about by the Legal Practice Bill. The LSSA has taken an active role in informing and keeping its employees abreast of all the developments and processes thus far.

Active participation and management of performance has increases in the past year, ensuring that employees, managers and supervisors take ownership of performance management, including acceptable standards and ownership of the process. This leads to dealing with poor work performance effectively and promptly.

The right-sizing of the salaries of the Directors of the centres of the School for Legal Practice was completed.

Employee Wellness Guidelines have been finalised and circulated to all employees.

Human resources (HR) plan for 2013

The following is envisaged:

- Rigorous training on HR policy, procedures and guidelines continues.
- Personality profiles of all employees will be finalised and the development of a training plan that is career orientated will be introduced.



- Leadership training and development for senior management and supervisors will be prioritised.
- A strategy to combat loss of skills (staff retention) and attracting competent employees will be identified and implemented.
- New employees are appointed on contract for a maximum period of two years. This condition poses risks and challenges for the LSSA.

Staff numbers

Consolidated staff numbers	Total as at 31/12/2011	Budget	Less Resignations	Add Appointments	Total as at 31/12/2012
LSSA	31	33	8	6	30
De Rebus	6	6			6
LEAD	55	57	3	3	52
Total: actual	92	96			91

Permanent post resignations are replaced with fixed-term contracts

Staff movement

Appointments

Title	Name	Section	Post	Date	Equity
Ms	Nonhlanhla Chanza	Professional Affairs	Parliamentary Liaison Officer	09 January 2012	A
Ms	Nonkuselo Chokoto	Finance	Finance Officer	03 January 2012	A
Mrs	Dilshaad Gani	LEAD	Director (UNISA Distance School)	05 March 2012	I
Mr	Lloyd Msamadya	Finance	General Ledger	01 July 2012	A
Ms	Kamogelo Letsoalo	Finance	Data Capturer	01 July 2012	A
Ms	Thabiso Moyo	Finance	Creditors / travel bookings	01 July 2012	A
Ms	Fiona Kedijang	Office of the CEO	Secretary	27 August 2012	A
Mrs	Barbara Makhanda	LEAD	Seminar Coordinator	19 November 2012	A
Ms	Helanie Jonker	LEAD	Administrator (Potchefstroom School)	08 November 2012	W
Ms	Marlene Steyn	LEAD	Director (Potchefstroom School)	01 December 2012	W

Terminations

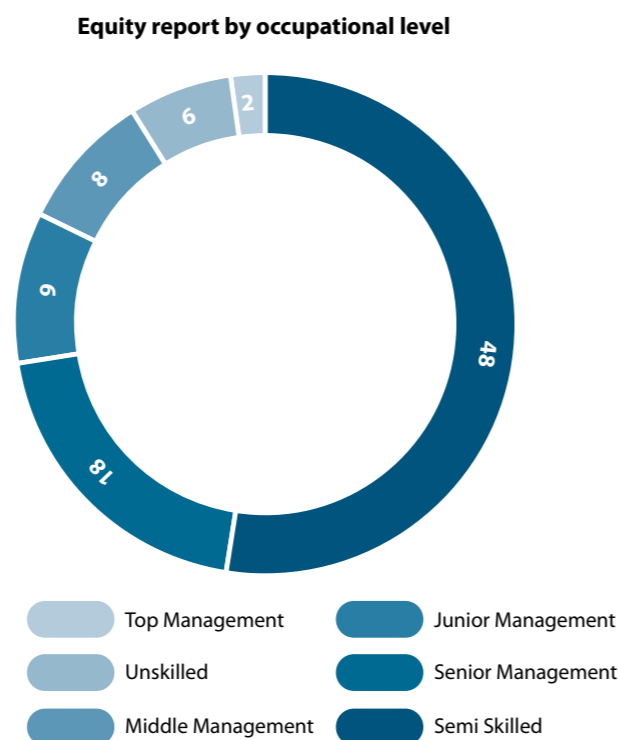
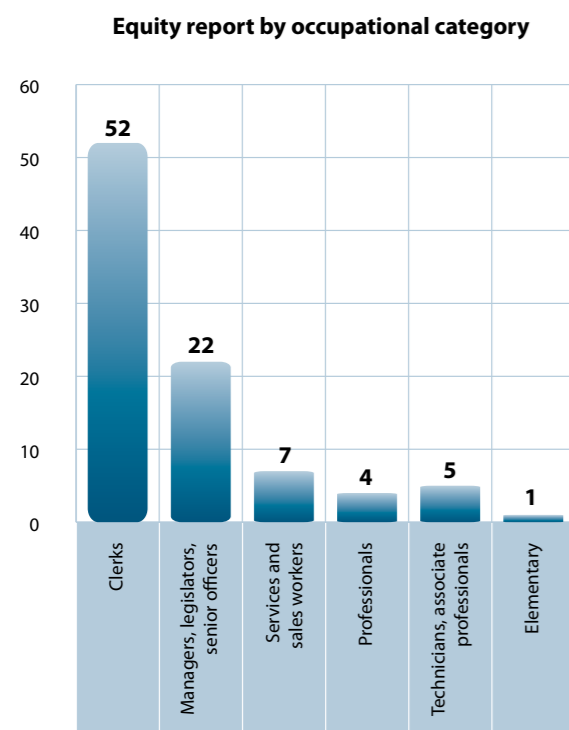
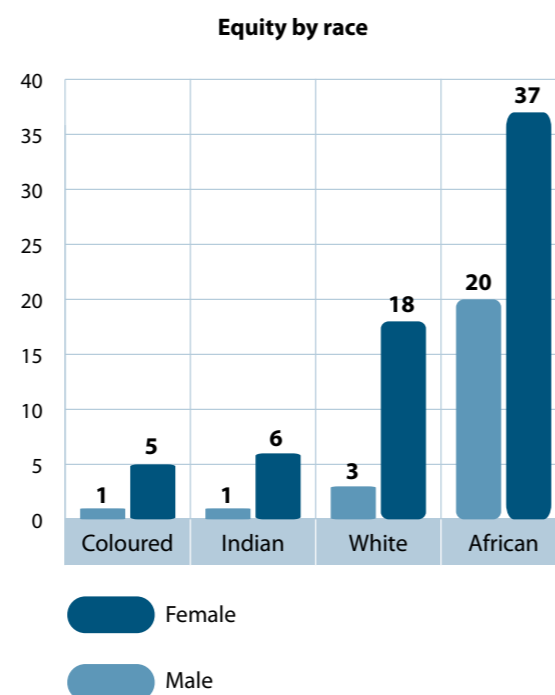
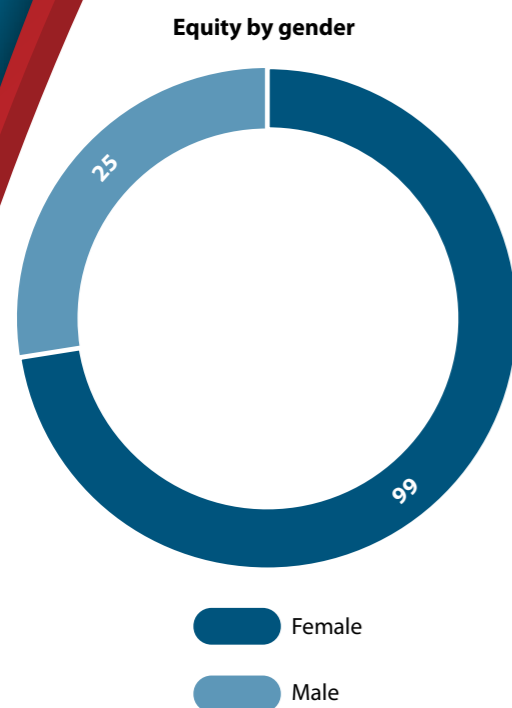
Title	Name	Section	Post	Date	Reason for Termination
Ms	Vijaya Bhowan	Finance	Finance Officer (Data Capturer)	23 February 2012	Resigned
Ms	Petunia Ramela	Professional Affairs	Projects Coordinator	28 February 2012	End of contract
Ms	Nonkuselo Chokoto	Finance	Finance Officer (General Ledger)	03 May 2012	Resigned
Ms	Debbie Nieuwoudt	Office of the CEO	Secretary	01 August 2012	Resigned
Ms	Michelle de Oliveira	LEAD	Director (Potchefstroom School)	01 August 2012	Resigned
Ms	Kelebogile Losaba	LEAD	Seminar Coordinator	01 October 2012	Resigned
Mr	Lloyd Msamadya	Finance	Finance Officer (General Ledger)	05 October 2012	Resigned
Ms	Cynthia Thamaga	Finance	Finance Officer (Accounts Payable)	01 December 2012	Resigned
Ms	Veronica Doust	Johannesburg School	School Administrator	01 December 2012	Resigned
Mr	Mthoba Gantsho	Finance	Finance Officer (LEAD)	19 December 2012	Resigned
Ms	Olga Shaba	Support Services	Cleaner	07 January 2013	End of contract

Training

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

Training	Attendance by staff members
Advanced driving	1
Time and stress management	2
Occupational health and safety (representatives)	6
Fire fighting	6
Introduction to health and safety	51
First aid	14
Computer training	25
Assessors training	3
Moderator training	1
Project management	6
VIP payroll	2
Report writing	2
Events management	1
Effective communication	4
Public speaking	3
English business writing	5
Client care	21
Office administration	9
Strategic marketing	1
Practical company secretarial workshop	1

Training	Attendance by staff members
Anger and conflict management	1
Assertiveness training	2
Skills development facilitation	1
Course development and design	1
ISO 9001:2008	4
Skills development	1
Conveyancing	1
CBPM01L/CBPM02M	2
Customer service	3
Learning advisor	2
Telephone manners	1
Assetware	1
Emotional intelligence	1
Magic makers	2
Internet show mobile	1
Subbing and proof reading	1
Advanced sub-editing	1
Management/leadership training	8
Total cost of training for 2012 was R358 993 across all departments	



Equity citizenship	Total
South African	88
Other	3

Nkhensane Nthane
Human Resources Manager

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

Members: Abe Mathebula (Chairperson), Raj Badal, Michelle Beatson, Dave Bennett, Taunyana Hlapolosa, Peter Horn, Jan Maree, Buyiswa Majiki, Janine Myburgh, Bulelwa Ndzondo, Ogilvie Ramoshaba, Praveen Sham, Nic Swart and Ashwin Trikamjee.

The Legal Education and Development division of the LSSA – LEAD – continued with its training and development activities for the profession at both pre and post-admission level.

Special achievements

- More than 11 000 persons enrolled for LEAD programmes in 2012.
- 1 390 graduates attended the School for Legal Practice – the greatest number to date.
- Major progress has been made with regard to e-learning. The continuation of complete online courses in adjudication skills, bookkeeping, legal office administration and legal writing were major achievements.
- Extensive training was offered in mediation:
 - a two-day introduction to court-aligned mediation; and
 - a five-day course was designed to equip practitioners for court-aligned mediation.
- New training
 - A tax course was approved for 2013.
 - Insolvency and business rescue courses were introduced.

LEAD continues to play a meaningful role in the transformation of the profession at its School for Legal Practice. Of the candidates who attended the day, night and distance programmes at the various School centres in 2012, 81% were black and 51% female.

Certain programmes are aimed at attendance by historically disadvantaged practitioners.

In addition, special courses, such as that presented with the Law Society of Ireland focusing on commercial training, are targeted at previously disadvantaged practitioners who may not have had the opportunity to develop skills in that area of law.

Location

LEAD 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 2012 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 Safety and Security Seta (SASSETA) grants and by offering courses for external entities. 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: Andries Modiba, Anthony Matimbe, Barbara Makhanda (from 18 November 2012), Belinda Povey, Bettie Lubbe, Beverly Chueu, Dodo Dubazane, Dianne Angelopulo, Gail Mason, Grace Mukuru, Jackson Ndlovu, Jonathan Maseko, Jowie Dina Ramaripa, Joy Mosito, Kelebogile Losaba (until 31 October 2012), Kezzy Chauraya, Lolita Pieterse, Maria Mkwape, Martha Baloyi, Modi Vinger, Nic Swart, Nomfundo Mbinambina, Ntokozo Manzi, Nomsa Sethosa, Ogilvie Ramoshaba, Ria Mahlangu, Selina Ramano, Sharon Lee, Stephne Pieterse, Tamara Sihlangu, Tasha Roestoff, Thandeka Msiza and William Khunou.

Bloemfontein: Willem Spangenberg and Marietjie van der Westhuizen.

Cape Town*: Gail Kemp, Zulpha Anthony, Ian Yuill and Dawn Arendse.

Durban*: Vaneetha Dhanjee (until February 2013), Nadira Sewnarain and Ntokozo Ndlovu.

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

Johannesburg: Chandika Singh, Titus Mbatha, Connie Malinga, Veronica Doust (until 31 December 2012), Dorah Dumane.

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

Pretoria: Ursula Hartzenberg, Zukiswa Kala and Ali Haji.

Potchefstroom*: Michelle De Oliveira (until 31 August 2012), Kedibone Mello (until 31 May 2012), Marlene Steyn (from 1 November 2012) and Helani Jonker (from 8 November 2012).

Port Elizabeth*: Lionel Lindoor and Anita Strydom.

LSSA-UNISA distance learning school: Dilshaad Gani (from 5 March 2012), Parma Govender and Dorcas Hamido.

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

General developments in 2012

Commercial law training: 20 attorneys received training in commercial law at courses in Pretoria from Irish and South African practitioners. Irish Aid provides the funding for the training. The programme included a Unisa certificate course, drafting course and practical commercial course.

Mandatory practice management training: A record number of 776 persons attended distance and attendance courses.

Foreign liaison: The Law Society of Ireland provides commercial law training. The chairperson of the Standing Committee on Legal Education, the Director and seminars manager attended the SADC Lawyers Association conference in Mozambique.

The Director attended the annual conference of the International Institute for Law Association Chief Executives (IILACE) and the Law Society of Zimbabwe Summer School National Conference.

Papers delivered: The Director delivered papers at the Board for Sheriff annual general meeting and at a conference at Nyanga, Zimbabwe, ILLACE and SADCLA in Mozambique.

SASSETA grants: The SASSETA made R1 995 539 available for training in 2012.

New business development (ACT): A total of 1 095 persons received training in 2012.

The following projects took place:

- Legal support staff training
- Other external training
- Business rescue
- SASSETA projects

E-learning: Most staff and several instructors were trained to use this method.

Ongoing education and development activities

Conveyancing and notarial training: 204 persons participated in 2012.

Seminars: 5 388 persons attended seminars in 2012.

The following topics were offered:

- Company law update
- Consumer Protection Act
- Conveyancing: New developments
- Conveyancing: Skills to make a difference
- Court-aligned mediation - 2 day
- Court-aligned mediation - 2 day (phase 2)
- Debt collection
- Deceased estates
- Emotional intelligence
- Evictions
- Foreign nationals in South Africa
- High Court techniques for success
- Labour law update
- Magistrate's Court procedure: A practical approach
- Medical law
- National Credit Act
- Negotiation skills and techniques
- Quantification of personal injury claims
- Road Accident Fund Amendment Act

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. 1 879 candidate attorneys attended in 2012.

Instructors and presenters involved in LEAD activities: More than 700 practitioners and other experts were involved in the activities of LEAD in 2012.

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. 1 380 persons attended the day, night and distance programmes in 2012.

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 LLB degrees and what the trends are with regard to admission, practice and training.

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

Selling of documentation: LEAD sold a substantial quantity of its publications in hard copy and electronic format in 2012. These publications included practical legal training manuals, the Practitioners Guide to Conveyancing and Notarial Practice and the e-PLT (CD).

Distance education programmes: LEAD offered diploma and certificate programmes in conjunction with the Universities of Pretoria, South Africa, and North-West in insolvency, corporate law, administration of estates and labour law.

Summary of attendance of all LEAD programmes

	2012	2011
School for Legal Practice	1 380	1 190
Conveyancing and notarial training	378	375
25-day courses for candidate attorneys	1 879	1 850
Diplomas and certificates (distance)	134	113
Practice management training	776	552
Seminars	5 388*	8 929
Other training	1 800	1 362
<i>Irish commercial law course</i>	20	
<i>Insolvency</i>	28	
<i>Other external training</i>	155	
<i>Support staff</i>	243	
<i>Business rescue</i>	451	
<i>SASSETA projects</i>	246	
<i>E-learning</i>	657	
Total	11 735	12 679

** The seminar figure is lower in 2012 as compared to 2011 because of a decrease in the funding made available by the SASSETA.*

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 again had a very active year. Over and above the normal committee meetings, we engaged with various stakeholders. We attended hearings of several Parliamentary Portfolio Committees and were invited to address Parliament on the Protection of State Information Bill and the Traditional Courts Bill.

During the year we had 42 normal committee meetings and telephone conferences, where a range of issues were discussed and attended to. The activities of the committees are reported on under 'Specialist Committee reports'.

The many changes in legislation made it necessary for us to engage *inter alia* with the South African Revenue Service the Rules Board for Courts of Law, the Department of Correctional Services, the South African Police Service (SAPS), the Office of the Chief Master, the various Deeds Offices, the Department of Home Affairs, the Department of Water Affairs, the Banking Association South Africa, the National Home Builders Registration Council and the Commission for Conciliation Mediation and Arbitration (CCMA).

Much has happened in the conveyancing field and, for the first time, the LSSA was invited to send more than one delegate to the Cadastral Conference 2012 (previously known as the Registrar's Conference).

We are also involved in training initiatives with the SAPS and the Department of Correctional Services.

The committees are ably assisted by Andrew Sebapu (Legal Official), Edward Kafesu (Committee Secretary), Nonhlanhla Chanza (Parliamentary Liaison Officer) and Kris Devan (Personal Assistant).

We are indebted to the committee members who voluntarily offer their expert knowledge and service for the benefit of the profession and the public. Thank you for your dedication in serving the profession and in making a difference.

Lizette Burger

Professional Affairs Manager



LSSA Senior Management

Above: Nic Swart, Chief Executive Officer and Director, LEAD; Anthony Pillay, Finance Director; Nkhensane Nthane, Human Resources Manager; Lizette Burger, Professional Affairs Manager

Below: Ogilvie Ramoshaba, Senior Manager, LEAD; Kim Hawkey, Editor, De Rebus; Barbara Whittle, Communication Manager; Leonard Nyoni, Management Accountant

OTHER REPORTS

5

ATTORNEYS DEVELOPMENT FUND (ADF)

Board of Directors: Thoba Poyo-Dlwati (Chairperson), Michelle Beatson, David Bekker, Etienne Horn, Pumzile Majeke, Jeff Mathabatha, Segopotje Mphahlele and Xolile Ntshulana

Summarised report for the period ended 31 December 2012

It gives me pleasure on behalf of the Board of Directors to present the first annual report for the period ending 31 December 2012 to the constituent members of the Attorneys Development Fund (ADF). The aim of my report is to provide an overview of the activities of the ADF during 2012, and also highlight the strategic direction of the ADF as envisaged by the Board.

ADF objective

The main objective of the ADF – which was launched by the constituent members at the LSSA's 2010 annual general meeting – is to promote the sustainability and growth of newly-established attorneys' firms. Its establishment is rooted in the commitment made by the profession in the Legal Services Sector Charter to improve the public's access to justice and legal services, and also to improve access to the profession.

The Board

The ADF is an independent body and is registered as a Section 21 non-profit company with a start-up capital of R30.2 million provided by the constituent members. Two investment and asset management companies manage the assets, namely Melville Douglas (a member of the Standard Bank Group) and ClucasGray.

The ADF got off the ground only in the latter part of 2011. The past twelve months was a busy year for the Board with three board meetings, two strategic meetings and *ad hoc* teleconferences.

An Executive Committee was appointed in November 2012 to assist the Board to manage the affairs of the ADF between Board meetings.

As the ADF is still a developmental initiative, the impetus during 2012 was largely focused on getting the project off the ground. For this purpose, investment; procurement/infrastructure, grants, legal and human resources committees were established.

Applications

The needs of each applying law firm (or proposed law firm) are assessed by the ADF individually and preference is given to attorneys from historically disadvantaged backgrounds. Examples of deserving law firms can include newly established firms; attorneys at existing firms looking to establish their own firms; firms which specialise or which intend to specialise in specific legal fields; and firms in areas (usually rural) where there is a shortage of attorneys.

Loans are not in cash, but rather in the form of infrastructural resources such as electronic equipment, software and office furniture. The cost of the equipment, including interest, is repayable by the law firm over a maximum period of three years. Dependent on evaluation and approval by the Board, the maximum amount that may be approved for resources is currently R40 000 (VAT included). 2012 was the first year that attorneys were invited to apply for assistance and sixteen applicants were approved and are in the process of receiving resources.

Applicants are encouraged to nominate possible mentors, and approach them before applying for assistance. The mentors focus on assisting the attorneys to manage their practices, as well as with bookkeeping and business planning. For members of the Cape Law Society and the Law Society of the Northern Provinces, this mentorship counts towards *pro bono* hours. The ADF has requested that the LSSA encourage the other societies to follow suit.

The future

The ADF can succeed only if the organised profession and all its structures work together to achieve its objectives and to ensure entrants to the profession are economically sustainable and empowered to ensure the risks to the Attorneys Fidelity Fund are reduced.

Training, mentorship and ensuring the high ethical values required in the profession are critical.

The long-term objectives of the ADF are to ensure that benefits – such as discounted products and value added services – are extended to the entire profession.

The Board has identified practice development interventions and business leadership training to underpin the current empowerment initiatives.

Attorneys are welcome to make constructive input to the ADF as this is their organisation. See www.ADF.za.net for more information.

It is the Board's steadfast view that the ADF should remain a going concern after the adoption of the Legal Practice Bill. The ADF strategy to ensure its sustainability is linked to the legal practitioners that it assists.

The Board is in the process of formulating a strategy to allow the ADF to be sustainable in the long term which will include extending an invitation for sponsorships.

Operational report

The ADF appointed a manager, Chesley Mnisi (a qualified attorney), in January 2012. He resigned and left at the end of August 2012, with limited progress made on agreed deliverables. The Board has reviewed the operational performance and agreed that in the interim the ADF will appoint an administrator and revisit the appointment of a manager in the future.

The first roll out of assistance was implemented in the latter part of 2012 and the following are the approved recipients who met all the criteria to receive assistance:

AG Kekana, Pretoria
KJ Towsey, George
HP Mncwango, East London
Ms NI Yokwana, Grahamstown
TP Avenant, Wynburg
DD Mtebule, Pretoria

MG Sefalafala, Johannesburg
IN Dandala, Mthatha

Recipients can elect to receive the following items, subject to the approval of the ADF and the loan conditions:

Laptop or desktop and software
Office desk
Office chairs (2)
Visitors chairs (4)
Printer (multifunctional)
Accounting software
Data access (limited)
Telephone line (limited)

In addition to the above an outright donation of law books to the value of R2 000 in total is provided.

ADF Investment Committee: Etienne Horn (Chairperson), Se-gopotje Mphahlele and Praveen Sham

Procurement/Infrastructural Committee: Praveen Sham (Chairperson), Xolile Ntshulana and Pumzile Majeke

Loans Committee: Jeff Mathabatha (Chairperson), Michelle Beatson and David Bekker

Legal Committee: Jeff Mathabatha (Chairperson), Thoba Poyo-Dlwati and David Bekker

HR Committee: Pumzile Majeke (Chairperson) and Xolile Ntshulana.

The Chairperson of the Board serves on all committees *ex-officio*.

In conclusion, I would like to convey my gratitude to my fellow Board members for their commitment and dedication to the strategic development and management of the ADF during the year. I also thank the Law Society of South Africa for making the administration resources available while the ADF develops and rolls out its initial projects. To the constituent members, I thank you for all the assistance, guidance and resources provided to the ADF.

Thoba Poyo-Dlwati

Chairperson of the Board of Directors

LEGAL PROVIDENT FUND

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

The Legal Provident Fund (LPF) continues to maintain a strong brand as a Law Society of South Africa initiative. Its function is to provide retirement and risk benefits to employees, partners and directors of law firms, including advocates' groups. The LPF trustee board is a team with both legal and financial skills, advised by a specialist principal officer. The majority of the trustees are appointed by the LSSA.

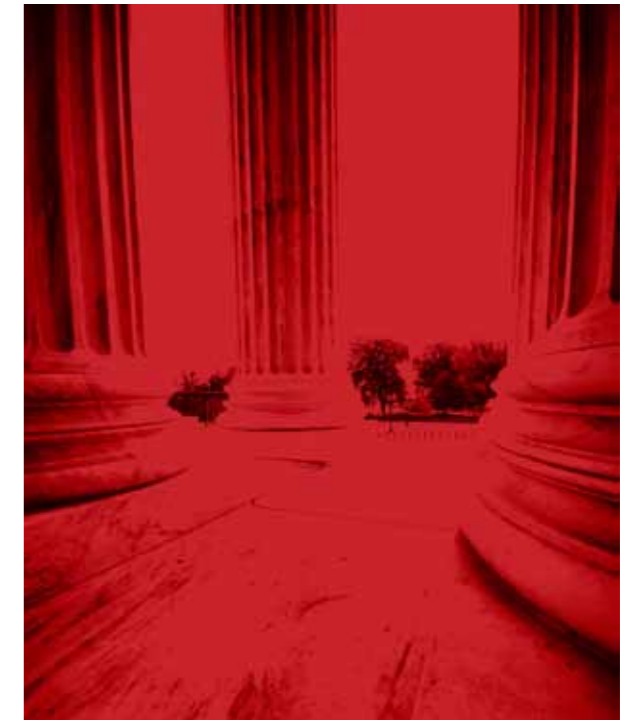
The LPF has managed to achieve net growth in membership during the course of 2012, despite the ongoing effects of the economic slowdown. In industry terms the LPF is a medium-sized, umbrella-type retirement fund, with approximately 450 participating employers and 4 500 members. The members enjoy economies of scale with regard to the LPF cost structure; the administration cost per member is competitive when compared with other retirement funds.

2012 was a busy year with the trustees meeting on three occasions for formal board meetings. The Executive Committee met four times.

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

Investment performance met or exceeded expectations across the full range of portfolios in which members' funds are invested, with the exception of one portfolio manager which was replaced during the year. The three-year and five-year rolling performance of the portfolios also met expectations. This good performance has more than made up for the downturn experienced in 2008, and it goes without saying that investment performance is under constant scrutiny going forward.

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



that with the support of all stakeholders the 2013 financial year will once again be a highly successful one.

Andrew Stansfield

Chairperson of the Board of Trustees, Legal Provident Fund



ALTERNATIVE DISPUTE RESOLUTION COMMITTEE

Members: Darryl Burman (Chairperson), Faizel Bulbulia, Charles Cohen, Marebe Mamabolo, Lutuba Mampuru, Jerome Mthembu, Krish Naidoo, John O'Leary and Ebrahim Patelia

This year the Committee has been engaged mainly in monitoring the process of finalising the draft court-based mediation rules so as to continue to be engaged actively with the authorities in achieving the best possible results.

There is a possibility that the rules will, at this stage, make provision for voluntary – as opposed to mandatory – mediation. It is uncertain as to when further developments will take place, but the Committee will remain involved.

We have continued at all levels with promoting alternative dispute resolution (ADR) as a means of providing speedy and affordable access to justice for all citizens involved in conflict and/or disputes.

During the year under review, members of the Committee were involved in the training of attorneys to become trainers in this field. Once the legislation is in place, the Committee will ensure training through LEAD for attorneys to become accredited as mediators, arbitrators and ADR practitioners. We will promote accreditation and training by the profession, thus ensuring that standards, ethics and codes of professional practice are maintained. We will arrange that the names of the accredited attorneys will be readily available to the public and commerce.

We will continue to engage with all stakeholders, including the public, in order to demonstrate where the current adversarial system may not be in the best interest of all concerned. We will also make litigation attorneys more aware of the benefits of mediation and arbitration.

Darryl Burman

Chairperson, Alternative Dispute Resolution Committee

COMPANY LAW COMMITTEE

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

The Committee meets only on an ad hoc basis as and when circumstances dictate. The Committee met only once during the period covered by this report via telephone conference. This was to discuss the issue of suretyships given for the debts of a company which then goes into business rescue, and whether the moratorium given to the company in business rescue should be extended also to the surety. The members were not *at idem* on this issue and it was referred to the Specialist Committee on Company Law established in terms of the Companies Act 71 of 2008 which did not agree that the business rescue moratorium should be extended to sureties. The matter may be taken further in other forums by certain members of the Committee.

Miranda Feinstein

Chairperson, Company Law Committee

COMPETITION LAW COMMITTEE

Members: Paul Coetser (Chairperson), David Bekker, Hussan Goga, Gavin Gow, Petra Krusche, Lufuno Mathobo, Eric Mbhele, Howard Stephenson and Kagi Tladi

During the past year the Committee, through its chairperson, has been engaged with several interactions relating to the rejection by the Competition Commission (the Commission) – pursuant to a notice dated 4 March 2011 (the rejection notice) – of the LSSA's exemption application in respect of the professional rules of the four statutory provincial law societies which are members of the LSSA. As part of an ongoing dialogue between the Commission and the LSSA relating to the rejection, the LSSA submitted extensive representations to the Commission in October 2011 (the 2011 representations).

A meeting was held with the Commission on 8 February 2012 during which the Commission provided the LSSA with its initial impressions on the 2011 representations. This was followed by a meeting with the LSSA's external attorneys to consider the way forward as well as the LSSA's various options. A further high-level meeting was held on 2 April 2012 between the Council of the LSSA (the Council) and the Commission where both parties agreed and committed themselves, as far as possible, to resolving all matters concerning the professional rules in a manner that will ensure the continued professionalism and integrity of the profession while addressing competition law concerns of the Commission. Further negotiations and engagement between the Commission and the LSSA relating to the rejection notice are, therefore, expected. It is also expected that interactions with the Department of Justice and Constitutional Development will take place in parallel to resolve the matter permanently.

There was initially some confusion regarding the impact of the Commission's rejection notice on the ongoing application of the professional rules. However, at the April 2012 meeting the Commission and the LSSA agreed that until the Legal Practice Bill has been concluded and new professional rules promulgated, the existing professional rules will continue to apply, but in a manner that is not offensive to competition law. For instance, with regard to professional fees, all minimum tariffs will not be enforced and attorneys may charge fees below (but not above) the prescribed tariffs. Also, the rules on reserved work will continue to apply for the time being. A process for cooperation in enforcement has been established between the Commission and the LSSA until the Legal Practice Bill is enacted. In cases of doubt as to whether any conduct offends against competition law principles, the provincial law societies will consult with the Commission.

Since the LSSA Council recently approved a final draft of new Uniform Rules for all provincial law societies (which are still to be approved by those societies), the Commission will once again have to be engaged to ensure that the Uniform Rules are in line with competition principles. Alternatively an application for their exemption (or some of them) may have to be lodged with the assistance of the Competition Law Committee. Ideally these should be considered together with the applicable provisions of the Legal Practice Bill.

A significant development in 2012 was the decision of the Western Cape High Court, Cape Town in a matter concerning an application by the Cape Law Society (CLS) to strike a member from the roll of attorneys because he allegedly engaged in touting for Road Accident Fund work. The decision was somewhat out of step with the cooperative engagement between the Commission and the LSSA described above. In his defence, the respondent raised doubt as to whether the

professional rules against touting were still enforceable in view of the Commission's rejection notice referred to above. As a result, the Court referred to the Competition Tribunal the question as to whether or not the touting rules and the CLS's finding against the respondent were prohibited in terms of the Competition Act. The matter was set down for hearing by the Tribunal in November 2012. At that hearing, the CLS raised, as a point *in limine*, whether the professional rules can ever constitute prohibited practices as they constitute 'public regulation'. The Tribunal then directed that the Commission and the LSSA be joined to the proceedings. The decision as to whether the point *in limine* is upheld may have far-reaching implications for the regulation of the profession and the Competition Law Committee will accordingly assist the Council in this regard.

With regard to the Consumer Protection Act, the Committee will give input to the LSSA exemption application when the new National Consumer Commissioner is appointed.

Members of the Committee also interacted in correspondence and by telephone.

Paul Coetser

Chairperson, Competition Law Committee

CONSTITUTIONAL AFFAIRS AND HUMAN RIGHTS COMMITTEE

Members: Busani Mabunda, (Chairperson), Darryl Burman, Max Boqwana, Saber Jazbhay, Rallp Jiyane, Sonya Labuschagne, Macdonald Moroka, Krish Naidoo, Xolile Ntshulana, Danie Olivier, Nic Swart and Barbara Whittle

Although the Constitutional Affairs and Human Rights Committee met only once during the year, many issues were dealt with by way of e-mail.

The Committee considered various pieces of legislation and policy documents from a constitutional point of view, among others,

- the Code of Judicial Conduct and the Regulations on Judges' Disclosure of Registrable Interest;
- the National Development Plan;
- Section 89(5) of the National Credit Act;
- the Prevention of Torture Bill;
- the Traditional Courts Bill and
- the Women Empowerment and Gender Equality Draft Bill.

Where appropriate, comments were submitted to the relevant authorities, in some instances in conjunction with other specialist committees of the LSSA.

The Chairperson of this Committee addressed Parliament on two occasions on behalf of the LSSA, namely on the Protection of State Information Bill and the Traditional Courts Bill, the latter in conjunction with the Gender and Family Law Committees of the LSSA.

Busani Mabunda

Chairperson, Constitutional Affairs and Human Rights Committee

COSTS COMMITTEE

Members: Asif Essa (Chairperson), Graham Bellairs, Strike Madiba, Lufuno Mathobo, Lunga Peter, Thoba Poyo-Dlwati, Morné Scheepers and Jan van Rensburg

The Costs Committee held a telecon in May 2012 and a meeting in June 2012.

The Committee was initially established to consider the issue of costs, focusing primarily on the statutory tariffs. The dual objective of the Committee was to prepare motivations for the increase in the statutory tariffs and to consider the simplification of the current tariffs.

The Committee focused on the simplification of the High Court tariff in 2012, having regard to the diverse manner in which the various taxing masters were giving effect to the tariff.

Having considered and traversed the individual items of the tariff, and with the assistance of an independent costs consultant, the Committee prepared a memorandum on the implementation of the tariff, which was unanimously approved and circulated to the provincial law societies.

The consistent application of the tariff will lead to expediency, consistency and harmonisation in respect of the taxation of bills of costs and is an important aspect of access to justice.

A response is being awaited from the Rules Board for Courts of Law pursuant to the motivation provided in respect of the proposed increase in the tariffs.

Assif Essa

Chairperson, Costs Committee

CRIMINAL LAW COMMITTEE

Members: William Booth (Chairperson), Ronnie Bokwa, Dr Llewelyn Curlewis, Johan Kramer, Strike Madiba, Sonti Maphoto, Mxolisi Nxasana and Eric Zaca

The Criminal Law Committee met twice during 2012 – in May and November – together with the Legal Aid Committee.

The Committee discussed various issues of importance to practitioners. The main issues included

- the administrative functioning of courts, including general conditions at all South African courts with regard to consultation and other facilities. Of particular concern were the poor conditions at the South Gauteng High Court;
- encouraging attorneys to become more involved with Case Flow Management Committee meetings involving all roleplayers in the justice system, in an attempt to rectify the problems highlighted at our courts;
- legal representation at parole hearings on behalf of both prisoners, victims and their families. It was necessary to consider launching a test case to ensure that the rights of those affected are protected;
- concerns raised that many attorneys may not have the skills to deal with forensic evidence during trials effectively. LEAD should be encouraged to present more seminars on this topic during 2013;
- more regular prison visits when workshops can be held to educate prisoners about plea bargaining and their constitutional rights; and
- the International Criminal Court, media coverage of trials and the issue of admission of guilt fines.

Llewellyn Curlewis and I, as Chairperson, met with the legal department of the South African Police Service in Pretoria and a delegation from the SAPS also attended our Committee meeting, where matters of mutual concern were discussed.

NICRO also conducted an extremely informative presentation, as did members of the Judicial Inspectorate of Prisons.

Our Committee, as always, considered new legislation, including the Protection from Harassment Act 17 of 2011.

I wish to thank all the Committee members and the staff of the LSSA for their input during 2012.

William Booth

Chairperson, Criminal Law Committee

DECEASED ESTATES, TRUSTS AND PLANNING COMMITTEE

Members: Hussan Goga (Chairperson), David Bekker, Ceris Field, Noxola Maduba, Mervyn Messias, Lutendo Sigogo, Don Thinane, Zenobia Wadee and Prof Willie van der Westhuizen

The Deceased Estates, Trust and Planning Committee met only once during the year under review. The meeting was held on 18 July 2012.

A delegation from the Office of the Chief Master of the High Court comprising Lester Basson (Chief Master), Tessie Bezuidenhout (Chief Director, Master of the High Court) and Tienie Cronjé (Principal State Law Adviser) attended the meeting.

Representatives from the South African Institute of Chartered Accountants (SAICA), the South African Insolvency Practitioners Society (SAIPS), the South African Restructuring and Insolvency Practitioners Association (SARIPA) – formerly AIPSA – and the Fiduciary Institute of South Africa (FISA) also joined the meeting for a briefing session by the Chief Master on the contents and implementation of Chief Master's Directive 5 of 2012 which dealt with the thorny issue of electronic fund transfers and other payments by estate representatives.

The following are some of the issues that were considered and discussed with the representatives from the Office of the Chief Master at the meeting:

- the Integrated Case Management System (ICMS);
- the cooperation agreement between Legal Aid South Africa and the Department of Justice and Constitutional Development;
- the validity of civil marriages concluded subsequent to entering into a customary marriage;
- proposed amendment of the Administration of Estates Act 66 of 1965 and the Intestate Succession Act 81 of 1987;

- nomination of executors;
- an increase in the remuneration and allowance of appraisers; and
- the administration of trusts and resignation of trustees.

The Paperless Estate Administration System (PEAS) is currently being piloted at the Nelspruit Master's Office. A volume test on the system will be done at the Pretoria Master's Office and, if successful, the system will be rolled out at all the other Master's offices during mid-2013. The submission of reporting documents, liquidation and distribution accounts and other documents to the Master, as well as communications to and from the Master in a secure electronic environment is long overdue.

The failure by the Department of Justice and Constitutional Development to make appropriate amendments to the Administration of Estates Act is of serious concern.

In the administration of a deceased estate it is important to determine at the outset whether a marriage was valid or a nullity, as this will invariably affect the devolution of the estate. A civil marriage concluded after 2 December 1988 is a nullity, where such marriage was concluded during the subsistence of an existing customary marriage, irrespective of whether the customary marriage was registered or not. This creates a major challenge for practitioners and for the Master's office. The Department of Home Affairs should consider compiling a register to record unregistered customary marriages and should implement controls and procedures to eliminate the potential risk of marriage officers registering marriages which are a nullity.

The establishment of Master's Liaison Committees by the provincial law societies provides an ideal forum to establish relationships and discuss operational issues with the Master. More importantly, it allows for the measuring of performance levels of both the Master and practitioners. Provincial law societies that have not yet established Master's Liaison Committees are urged to do so.

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

	Subject matter	Effective date
1 of 2012	Payment of fees due to the Master	12 March 2012
2 of 2012	Keeping of statistics	27 March 2012
3 of 2012	Uniformity in issuing Letters of Executorship and Letters of Authority in deceased estates	9 July 2012
4 of 2012	Assurance in respect of the effectiveness of risk management and control systems in the Guardian's Fund	11 July 2012
5 of 2012	Electronic fund transfers (EFT) and other payments by estate representatives	17 July 2012
6 of 2012	Prefixes for identification of offices in the Master of the High Court	1 November 2012

Hussan Goga

Chairperson, Deceased Estates, Trusts and Planning Committee

E - LAW COMMITTEE

Members: Gavin McLachlan (Chairperson), Peppy Kekana, Brendan Hughes, Ilan Lax, Ian McLaren, Wilfred Phalatsi, Anthony Pillay, Phinda Shembe, Sizwe Snail and Barbara Whittle

The Vice-chairperson of the Committee, Sizwe Snail, was appointed by the Minister of Communications to the newly constituted Information and Communications Technology (ICT) Policy Review Panel towards the end of 2012. This will enhance the profession's position and enable us to participate more meaningfully in advising the Minister on the development of a new national policy for the information and communications technology sector. We are waiting for the Department of Land Affairs to get its Project Vulindlela consultation process running and we will be involved in this, together with the Property Law Committee on behalf of the profession.

The Electronic Communications and Transactions Act 25 of 2002 will be amended soon to take account of various changes in the South African information technology (IT) landscape. The Committee has, with the extensive assistance and through the agency of IT lawyer Mark Heyink, submitted comments. Mr Heyink has also written some very good guidelines for better IT use for practitioners which are all freely accessible on the LSSA website under 'Resource documents for practitioners'.

Edward Nathan Sonnenberg has also made available a very good and useful free guide for the prevention of EFT fraud, also available in the resources section of the LSSA website.

2013 should see the enactment of the Protection of Personal Information Act, and the Committee will work with LEAD to inform practitioners of the implications of this Act which will transform the business and personal landscape in this country. It is again fortunate to have the assistance of Mr Heyink in this, as he has been very involved in the lengthy process of developing the Act.

We remain very aware of the need to enhance the IT capabilities and general knowledge of all practitioners and a survey of practitioners in this regard is being conducted. It has been developed by the Cape Law Society's IT committee and adapted for national use. It should provide useful information for the overall review of an IT strategy for the profession.

The Committee is also trying to expand the provision of low cost or even free services to the profession by existing vendors and the current free trial of the Sabinet Net Law product is an example which can be explored at www.lawsoc.co.za

Some 'cloud' service trials will be done in 2013 to explore these for the best advantage for practitioners. These will involve the use of proper locally developed advanced electronic signatures.

The Committee will work with LEAD and prominent vendors to identify acceptable products and services for practitioners, and to have further suitable services installed free for use by learners at the various centres of the School for Legal Practice.

The *Government Gazette* is finally available free online (www.gpwonline.co.za) and we will continue to push for all public domain information to be accessible freely and for proper e-government services accessible to all. In Africa, that largely means access via cellphones and not necessarily only via 'smart' phones. At least one local law society will offer SMS access to its 'Find a Lawyer' service and others.

Gavin McLaughlin

Chairperson, E-Law Committee

ENVIRONMENTAL AFFAIRS COMMITTEE

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

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

The Committee met once this year and discussed inter alia the key issues set out below.

- Significant legislative developments and current environmental issues such as acid mine drainage and rhino poaching.
- A report back was provided regarding the Climate Change Law Conference which was co-hosted by the Centre for International Sustainable Development Law (CISDL), the

International Development Law Organisation (IDLO), the Law Society of South Africa (LSSA) and Warburton Attorneys in December 2011.

- The possibility of provincial law societies establishing provincial environmental affairs committees was discussed.
- The Committee debated and discussed improvements that could be made with regard to water governance in South Africa and the effectiveness of Environmental Management Inspectors (EMIs).

At its annual meeting, the Committee agreed to adopt the following specific tasks or goals for 2012:

- Efforts should be made to initiate the establishment of environmental law committees at each of the provincial law societies;
- To investigate the possibility of arranging for a speaker at the LSSA AGM on an environmental legal topic such as the Green Scorpions;
- To liaise with LEAD regarding its environmental law training programmes; and
- To request assistance from the LSSA to develop an 'early warning system' for draft legislation which require comment by the Committee.

A follow-up meeting was planned for 1 August 2012. Regrettably, an insufficient number of members were available to attend the meeting and it was cancelled.

During the reporting period, the Committee also prepared and submitted substantive written comments on the Draft National Environmental Management: Integrated Coastal Management Amendment Bill, 2011 and on the Draft Rules and Regulations for the Planning Profession. A representative of the Committee also joined the Reference Group established by the Department of Water Affairs to provide input on behalf of the LSSA to the finalisation of the Waste Discharge Charge Strategy (WDCS). This involvement will continue into 2013 or until phase 4 of the WDCS has been finalised.

The Committee wishes to thank the Professional Affairs Secretariat of the LSSA for its ongoing support and assistance.

Catherine Warburton

Chairperson, Environmental Law Committee

ETHICS COMMITTEE

Members: Krish Govender (Chairperson), Johan Fourie, Bedver Irving, Percival Maseti, Linda Magaxeni, Deirdré Milton, Ed Southey and Butch van Blerk

The debates around the breakdown of ethics in practice rears its head from time to time. This is also prevalent in international legal bodies. Sadly, this debate is encouraged by a few among the vast numbers of lawyers in practice.

At the International Bar Association (IBA) Conference last year this issue was on the agenda in two sessions which were allocated the smallest meeting rooms. The first day's meeting attracted some 40 lawyers from around the world out of an attendance over 5 000. Whereas the IBA is well known to be the voice of corporate lawyers in countries with First World economies, it was expected that ethics would not attract the corporate lawyers, many of whom came from jurisdictions where ethics is not studied nor is it a requirement for any examination. If anything, ethics is optional, as more often than not this is a hindrance to the pursuit of wealth. This point was brought home in a session attended by about 20 lawyers from around the world, where a decision was taken to promote the teaching of ethics within legal education programmes and to persuade professional bodies and regulatory agencies to promote these ideas.

The first session on ethics with the higher attendance of 40, dealt with the question of money laundering by lawyers in relation to the ethical standards of practice. What was of concern is that there are large numbers of lawyers in major jurisdiction who are vehemently opposed to any regulation against money laundering by lawyers. The IBA reported that many of these lawyers also ignore regulations that have been passed against money laundering.

Nevertheless, our Committee in the LSSA takes ethics very seriously and would like to see ethics studied as a subject for the law degree. This is something that will be taken up with the Law Deans of universities this year.

Over the course of the year under review we have held one telephone conference and another full Committee meeting. The participation of all the Committee members in these discussions has been of the highest standard and the commitment to advancing ethical training and practices has been further entrenched.

The Committee discussed many matters, some of which are highlighted below.

- The practice of 'cold calling' under the guise of advertising was roundly condemned and was recognised as a source of concern for the future. This practice leant itself to the abuse of members of the public to the detriment of the reputation of the profession.

- The relationship with the Competition Commission, which has been successfully developed by the LSSA over the past year, was welcomed as this helped to demystify the best ethical practices of lawyers and reconcile them with competition law principles. The competition authorities have supported the ethical standards and practices of lawyers that protect citizens, while at the same time encouraging fair competition.

- The absence of attorneys from their offices when taking acting judicial appointments, especially in the lower courts, was dealt with and the existing rules which are in force were found to be clear and adequate and have to be followed.
- Discussions around the need for a national conference on ethics and the promotion of ethics within the SADC region were supported and will be followed up.
- Contingency fees and the manner in which they were charged is still a matter of concern and are linked to pending litigation.

The Committee hoped that these and other matters will receive proper attention at the annual general meeting of the LSSA in the light of the truncated format this year because of the Commonwealth Law Conference that takes precedence.

There is much work to be done to redeem the reputation of the attorneys' profession in the eyes of the public and the role of ethics becomes much more paramount as a result.

Krish Govender

Chairperson, Ethics Committee

FINANCIAL INTELLIGENCE CENTRE ACT (FICA) COMMITTEE

Members: David Bekker (Chairperson), Frank Dorey, Greg Duncan, Neville Dwarika, Angela Itzikowitz, Puleng Keetse, Maboku Mangena, Anthony Pillay, Leon Rousseau, Praveen Sham and Johan van Staden

The focus for the past year has been with the statutory provincial law societies who are the supervisory bodies for the profession. The FICA Committee has, therefore, met only once this year as a result of the changed focus.

The law societies have engaged with the Financial Intelligence Centre (FIC) on a range of activities including discussions on

- the roles and responsibilities of supervisory bodies;
- registration procedures for attorneys' firms (accountable institutions) with the FIC, with provincial law societies embarking on a communication exercise to encourage firms to register; and
- an enforcement forum, the development of a sanction matrix, implementation of review and appeal procedures.

In addition, the societies have been receiving notices from the FIC of specific instances where firms were to be investigated.

Engagement with the FIC is ongoing. The LSSA manages the interaction and facilitates meetings based on a positive and cooperative relationship. The Committee and the FIC also assisted and cooperated in the International Bar Association 'Anti-Corruption Workshop for Legal Professionals' held in Johannesburg, Durban and Cape Town during the year under review.

There are challenges facing the profession which are being dealt with. These include the Memorandum of Understanding (MOU) between the law societies and the FIC. The profession has agreed that a uniform MOU will be entered into with the FIC by the four statutory law societies. However, two of the four law societies have concerns entering into an MOU as their Councils have identified a lack of resources and financial considerations as being problematic. The FIC will be engaged to ensure mutual resolution of these concerns.

The Attorneys Fidelity Fund (AFF) has offered to conduct investigations at the behest of the law societies in terms of its

own risk aversion programmes, and some of the law societies are considering this offer.

Registration with the FIC by attorneys' firms remains low. Some of the provincial law societies have undertaken an initiative whereby registration with the FIC is a prerequisite for obtaining a Fidelity Fund certificate. The low registration figure with the FIC is seen as a serious risk to the image of the profession and the LSSA is committed to ensuring due registration by all members.

David Bekker

Chairperson, Financial Intelligence Centre Committee

GENDER AND FAMILY LAW COMMITTEES

Gender Committee members: Martha Mbhele (Chairperson), Kisha Candasamy, Amanda Catto, Dr Llewelyn Curlewis, Giusi Harper, Deirdré Milton, Khanyisa Mogale, Janine Myburgh, Annabelle Mhpahlele, Thoba Poyodlwati and Ashika Ramphal

Family Law Committee members: Susan Abro (Chairperson), Zenobia du Toit, Jeff Fobb, Deirdré Milton, Francois Mvundlela, Brian Segal, Nomaswazi Shabangu and Zenobia Wadee

During the year under review the Gender Committee held two face-to-face meetings – one of which was held jointly with the Family Law Committee – and one telephone conference.

The Family Law Committee held two face-to-face meetings – one jointly with the Gender Committee – and the first one alone, where it was decided that it has now become necessary to join forces with the Gender Committee, as the issues are largely compatible and the protection of the vulnerable members of society upmost on both committees' agendas.

It has also become important to prepare the LSSA for the Equality Act because, as things stand at present, the LSSA is wholly non-compliant, despite attempts to provide contrary perceptions. Most of the major public positions are delegated to men, and remain with the same candidate for years, despite decisions taken at LSSA level years ago not to do so.

During the course of the year, the Family Law and Gender Committees decided to become a joint unit, as both of the Committees have as their objectives a responsibility to consider issues promoting gender equality, protecting the vulnerable members of society and promoting the status of women in the attorneys' profession.

For years the Committees have been fighting for the recognition of women in the governance structures of the profession, but have been met with deaf ears.

The Gender and Family Law Committees will develop policies to uplift the status of women in the legal profession. Failure to afford women a chance to play a meaningful role in the decision-making bodies of the profession has a direct impact on the survival of women attorneys in practice. Women continue to fight for the recognition to practise their skills and to earn a decent living almost two decades into democracy. It is our view that the recognition of women lawyers as leaders by their colleagues will go a long way to boosting their individual profiles, which in turn will boost profiles of their respective practices. Women still largely practice as sole practitioners or in small practices, and are not exposed, generally speaking, to the large corporate practices. The profession will also have to consider different working practices adopted by other countries, such as, maternity leave, flexi-time, and working from home.

The Gender and Family Law Committees will be working with other relevant NGOs to achieve their goals and use the relevant current and new legislation to do so.

Transformation of the judiciary is directly linked to the transformation and empowerment of women practitioners. The pool for women judges will continue to shrink unless something radical is done to support female practitioners. The Judicial Service Commission needs more representation on it of practitioners and women, and this should be a combined target of the entire LSSA and profession. The process has become largely politicised and only a few brave individuals and Bar Councils have taken it on. We have an obligation to the public to ensure a strong independent judiciary. Members of the professions are not making themselves available for appointment because of the personal and irrelevant questioning process and political appointments – or lack of appointments – when the political appointee is not appropriate.

The direct effects of the crisis in the economy, labour market, financial market and social structures also have an impact on gender equality. Therefore, a systematic gender analysis of the current situation is essential in order to develop the correct policies and strategy.

To respond to the challenges above, the Committees have designed a research questionnaire that will enable them to gather views from women lawyers nationally, in order to develop a strategy that will respond to their needs.

During the year under review, the Family Law Committee, in conjunction with the Magistrate's Court and High Court Committees, made submissions to the Rules Board for Courts of Law with regard to the tariffs and format relating to Rule 43 (Uniform Rules) and Rule 58 (Magistrate's Court Rules). The proposals were, however, not accepted, but the Rules Board agreed to an increase in the existing tariff. The Committee is disappointed with the Rules Board's decision and further action will be considered. Perhaps the time has come to take the Rules Board and the Constitution and operation thereof to the Constitutional Court. The Family and Gender Law Committees will be considering this in conjunction with the other committees referred to, as well as with the General Council of the Bar. Please also refer to the report by the Chairperson of the Magistrate's Court Committee.

There has been a growing increase in complaints from attorneys in obtaining Domestic Violence Orders, and having them properly executed by members of the South African Police Service. South Africa ranks as one of the highest in the world in terms of domestic violence. The Family Law and Gender Committees, in an endeavour to fight domestic violence, has engaged with the South African Police Service with a view to investigating ways in which attorneys can be of assistance in providing training to police officers in various police stations across the country on the interpretation of the Domestic Violence Act. The engagement is continuous and we hope that this will present us with an opportunity to help reduce the level of gender-based and family violence in the country.

During the year, the two Committees submitted comments on various pieces of legislation affecting women and children. They also addressed Parliament on the Traditional Courts Bill.

Special thanks to the Family Law and the Gender Committees members and the LSSA staff for their support and hard work.

Martha Mbhele

Chairperson, Gender Committee

Susan Abro

Chairperson, Family Law Committee

HIGH COURT MATTERS COMMITTEE

Members: Adam Pitman (Chairperson), André Bloem, Anwar Bhayat, Graham Bellairs, Assif Essa, Peter Horn, Neil Joubert, Thoba Poyo-Dlwati, Dan Matlapeng, Thabo Mhlokonya and Eric Zaca

The Committee had two formal meetings during the year, one in July and the other in November 2012. Further exchanges on issues were dealt with telephonically and by e-mail.

The Committee had a very successful year in resolving backlogs compared to where we were last year

It appears that the proposed court-based mediation rules will take longer to be implemented than first envisaged by the Rules Board for Courts of Law.

An application for an increase in the High Court tariff was submitted to the Rules Board and a favourable response received from the Board. The proposal has been submitted to the Minister of Justice and Constitutional Development for consideration and approval.

The Committee gave input to the Costs Committee with regard to the simplification of the High Court tariff.

The Committee is working in conjunction with the Magistrate's Court Committee on proposals to the Rules Board for the harmonisation of the Uniform Rules and the Magistrate's Court Rules.

As Chairperson, I attended the Heads of Courts meetings chaired by the Chief Justice. At the last meeting in 2012, the Chief Justice invited the attorneys' profession to become more involved in the provincial case-flow management meetings. It appears that in some regions case-flow management committees are more active than in others. A request to that effect had been forwarded to the LSSA's constituents.

During the year the Committee submitted comments on various pieces of legislation, *inter alia* on the Code of Judicial Conduct and Regulations on Judges' Disclosure of Registrable Interests, and proposals for the amendment of the Supreme Court Act.

Lizette Burger continues to render invaluable assistance to the Committee.

Adam Pitman

Chairperson, High Court Committee

IMMIGRATION AND REFUGEE LAW COMMITTEE

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

The year under review has not been a particularly easy one for members specialising in immigration and refugee law. The year has been characterised by a steady decline in service delivery within these areas of expertise.

The High Court action to compel the reopening of the Refugee Reception Centre in Cape Town, which closed in 2012, has not borne fruit and that office remains closed.

The Standing Committee on Refugee Affairs had not been operational for some time and only recently recommenced rendering services.

The Refugee Appeal Board has an unmanageable backlog.

All of this does not bode well for refugees anticipating finalisation of any of the processes in which they are involved.

The National Immigration Branch (NIB) is still not showing results from its Turnaround Project and its Backlog Project.

Delays in the processing of work and business permits for highly skilled migrants and investors continue to take an inordinate length of time to be processed.

The Call Centre Operation, which came into operation as a part solution to dealing with clients of the Department of Home Affairs, proved ineffective within a very short time and it is believed that it collapsed under its own weight within a few months.

The initiative in terms of which South African National Defence Force members were assigned to the Department of Home Affairs to serve as immigration officers has run its course, and these individuals have been removed from the system and returned to their defence force positions.

Human resource under-capitalisation remains a serious problem within the Department of Home Affairs generally and all of this is certainly having an impact, in an indirect fashion, on the economy.

On a positive note, the processing of passports and identity documents has improved with the chip-embedded pass-

ports coming into circulation. The processing time for passports and for the green, bar-coded identity documents, has been reduced. It is hoped that the coming year will bring the new chip-embedded identity cards as well.

During the period under review, the Immigration and Refugee Law Committee met with the South African Qualifications Authority (SAQA) to deal with the interaction between immigration attorneys and SAQA on aspects of the evaluation of foreign qualifications for use with work and residence permits. A very useful discussion took place which once again reinforces the excellent relationship the Committee has had with SAQA for some years.

During the period under review, Committee members have acquitted themselves well in the broadcast and print media with interviews on television, regularly on radio and by contributing articles on an ongoing basis for publication. The deputy chairperson of the Committee, Chris Watters, conducted a series of workshops nationally for LEAD on immigration and refugee laws, as well as conducting presentations on the legislation for NADEL and the Black Lawyers Association.

As Chairperson, I delivered a workshop on aspects of the interface between labour lawyers and immigration law for the South African Society of Labour Law.

The Committee met twice during the year in order to discuss its business and continuity, but it interacts continually by e-mail and telephonically to discuss issues as they arise.

As part of the ongoing efforts to maintain a proactive relationship with the Department of Home Affairs' management at the highest level, a meeting was arranged with the then Acting Chief Director: Permitting, Jack Monedi. Regrettably, Mr Monedi became unavailable on the day and the Committee members met with Deputy Director Ronney Marhule and with the Legal Advisory Section of the Department, as well as representatives from the Enforcement Section.

The Committee expresses its concern about the state of affairs within the Department of Home Affairs at this time.

A congratulatory message was sent to the new Minister of Home Affairs, Naledi Pandor, wishing her well.

The Committee will endeavour in the forthcoming year to maintain an open-door policy with the Department of Home Affairs and pursue positive and proactive interaction with it.

Julian Pokroy

Chairperson, Immigration and Refugee Law Committee

INSOLVENCY COMMITTEE

Members: TV Matsepe (Acting Chairperson), Mpayana Ledwaba, Ebi Moolla, Thami Mshengu, Sally Roger, Peter Whelan and Constant Wilsenach

The Committee met in 2012 to discuss, *inter alia*, the policy on appointment of insolvency practitioners by the Master of the High Court. This is a very important document, intending to regulate the appointment of insolvency practitioners in terms of the Insolvency Act, the Companies Act and the Close Corporations Act. It also intends to form the basis of the transformation of the insolvency industry. The Committee submitted preliminary comments, which can be accessed on the LSSA website.

In October 2012, members of the Committee, together with other role players in the insolvency industry, attended a meeting with the Chief Master where the responsibilities of professional bodies with regard to the appointment of insolvency practitioners by the Master were discussed. The Master is essentially trying to put in place procedures which will protect the public from unscrupulous insolvency practitioners as well as cutting of multi-duplicity of appointment. This is linked to the policy mentioned above. The policy has not, as yet, been finalised and the process of consultation will continue.

We will continue to engage with all stakeholders in the insolvency industry.

TV Matsepe

Acting Chairperson, Insolvency Committee

INTELLECTUAL PROPERTY COMMITTEE

Members: Esmé du Plessis (Chairperson), Tshepo Shabangu (Co-Chairperson), Johnny Fiandeiro, Madoda Nxumalo, Lesane Sesele, Bennock Shabangu, Waheeda Shreef and André van der Merwe

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

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

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

In the light of the fact that the offices of the Companies and Intellectual Property Commission (CIPC), responsible for the registration and recordal of IP rights, are located in Pretoria, four Committee members are members of the Law Society of the Northern Provinces.

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

Although the LSSA, in appointing the Committee, designated me as the Chairperson, I support the principle that the members of the Committee should be given the opportunity of confirming the designation or electing another Chairperson or a Co-Chairperson. At the first meeting, the members confirmed my position as Chairperson and elected Ms Shabangu as Co-Chairperson.

Broad mandate

A broad mandate was initially given to the Committee. Since the Committee was satisfied that this mandate covered all contingencies in the area of IP law, or relevant to IP, the Committee agreed to conduct its work in accordance with this broad 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;
- to participate, as far as this is necessary or appropriate, on behalf of the LSSA in initiatives and projects having a bearing on intellectual property; and
- to meet, as and when required, to consider and assess issues within the area of or impacting on intellectual prop-

erty 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.

The Committee members also raised the lack of awareness, on the side of the public, in regard to the importance and potential value of intellectual property as an important aspect, and agreed to propose an extension of its mandate to cover this aspect.

Extended mandate

The Committee was requested by the LSSA to submit a broad work plan for 2012. As part of this submission, the Committee informed Council of its view that there is a lack of awareness, on the side of the public, of intellectual property in general, and of the value and opportunities available through IP, also as possible career options for lawyers.

The Committee also submitted to the Council that it would be better enabled to carry out its mandate of monitoring and keeping its members and the LSSA informed about developments in the field of IP, if its members were encouraged and indeed delegated to attend conferences and seminars on IP, both national and international, and to report back to the Committee and to the LSSA. Attendance would in many cases not have a cost implication for the LSSA. However, in some cases, particularly in the case of international conferences in other countries, the LSSA may be requested to provide funding to facilitate attendance. To this end, it would be prudent to provide in the annual budget for such a contingency.

Accordingly, the Committee proposed that its mandate be extended as follows:

- to participate in, or undertake on behalf of the LSSA, awareness initiatives in South Africa, eg at universities, of IP as an area of law and as a career option; and
- to attend and report back to the Committee and the LSSA, on conferences and seminars on intellectual property.

Activities of the Committee

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

intellectual property rights. Moreover, intellectual property law is a highly globalised and internationalised area of law, so that international developments and agreements would likewise have a far-reaching impact on national legal regimes on IP.

Work outline for 2012

The Committee submitted the following broad work plan for 2012:

- To monitor developments (legislative changes as well as other developments) on national level in the area of IP Law. More specifically the Committee will monitor and, to the extent possible, participate in
 - the development and finalisation of the comprehensive policy instrument, ie the Policy on Intellectual Property for South Africa, which is currently being developed by the DTI;
 - the review process of the IP legislation of South Africa that is being conducted by the DTI;
 - the proposed amendment of the Trade Marks Act, 1993 in order to implement the Madrid Protocol to which South Africa is to accede;
 - the proposed amendment of the Designs Act, 1993 in order to implement The Hague Agreement to which South Africa is to accede;
 - the promotion of IP awareness initiatives in South Africa, particularly at universities, to promote IP law in general and IP law as a career option for lawyers and law students;
- To attend, and to report back to the Committee and the LSSA, conferences and seminars on intellectual property.
- To monitor developments on international level in the area of IP, more specifically
 - the implementation of the WIPO Development Agenda, particularly in countries on the African Continent; and
 - the outcomes of the WTO Doha Round of talks, particularly in regard to the access to medicines and the role of patents in that context.

Developments at national level

The IP Laws Amendment Bill: As set out fully in the 2011 Report of the Committee, one of the most significant, yet controversial developments in recent years, has been the IP Laws Amendment Bill which sought to amend four IP statutes to introduce provisions for the protection of certain manifestations of Traditional/ Indigenous Knowledge (TK).

A revised version of the Bill was passed by both houses of Parliament at the end of 2011, and submitted to the President for assent. The assent of the Bill was again challenged and, therefore, the Bill has accordingly not yet been finally assented or implemented.

IP Indaba: The DTI has been engaged for some years in the process of compiling a comprehensive instrument entitled Policy on Intellectual Property of South Africa, and has also initiated a review process of the IP legislation of South Africa. To this end an IP Indaba was organised on 4 August 2011, to serve as a broad consultative forum and an opportunity for all interest groups to make submissions. The members of the IP Committee were invited to attend and to participate. The outcomes of this Indaba are still under consideration by the DTI and will be further considered by the Committee and recommendations on further action submitted to Council, once the DTI position is made available for public comment.

Developments at international level

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

- The legal bodies responsible for, and the ambit of provisions for, the seizure and detention of counterfeit and/or infringing goods, particularly generic drugs, at ports of importation. A proposal has been made by a group of countries for an Anti-Counterfeiting Trade Agreement (ACTA) to be concluded. This proposed instrument has not been implemented yet.
- The need for an international instrument to harmonise the protection of Traditional/Indigenous Knowledge in national laws. These discussions were of particular relevance in the context of the South African draft legislation which was before Parliament in 2011/2012.

Meetings of the Committee

Only one meeting of the Committee was held on 29 August 2012. The Committee considered

- progress with the IP Laws Amendment Bill to protect TK;

- the discussions at the IP Indaba, and specifically the need to identify shortcomings in and/or amendments of the current IP Acts, to be submitted to the DTI for consideration as part of the IP laws review process of the DTI;
- the need to arrange a meeting with the Minister of Trade and Industry, to explain the role and relevance of the LSSA and its specialist IP Committee;
- the report on the work done by the Copyright Commission once the report becomes available;
- the effect of the amendment to the Exchange Control Regulations on IP-related transactions;
- the possible effect of the Legal Practice Bill on the IP profession;
- the need to consider the finalised version of the IP policy instrument (when that becomes available), and to recommend aspects and principles to be addressed and/or incorporated in the instrument; and
- the importance of continued monitoring of and, where appropriate, participating in or providing input to international and national initiatives.

Future work

The Committee will continue to monitor developments (legislative changes as well as other developments) in the area of intellectual property. A number of draft Bills on IP are expected to move forward in due course, and the Committee will keep track of these. The anticipated Bills include the Trade Marks Amendment Bill (to introduce the Madrid Protocol system) and the Designs Amendment Bill (to introduce The Hague Agreement system).

The Committee will also monitor, and where appropriate, recommend submissions regarding the IP laws review process, as well as the IP policy instrument.

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

Esmé du Plessis

Chairperson: Intellectual Property Committee

JOINT ATTORNEYS' AND ACCOUNTANTS' COMMITTEE (JAAC)

Members: Iqbal Ganie (Chairperson), Frank Dorey, Assif Essa, Glenn Flatwell, Etienne Horn, Clayton Manxiwa, Brian Mashile, Anthony Pillay, Revisha Singh, Andrew Stansfield, Jan van Rensburg and Johan van Staden

The first meeting of the Committee was held on 4 April 2012 and the second on 26 September 2012.

The attorney members met immediately prior to each joint meeting where matters raised by the LSSA constituents and the agenda of the Joint Attorneys and Accountants Committee were discussed.

The Independent Regulatory Board for Auditors (IRBA) met with the LSSA on the accreditation of auditors, where the accreditation procedure followed by the Council for Medical Schemes was recommended to the LSSA.

The report of the Attorneys Fidelity Fund (AFF) presented at the meeting in April 2012 was noted and concern was raised at the increase in claims lodged with the AFF. Jan de Beer of the AFF's Audit Inspection Programme (AIP) Committee indicated in his report that the AFF was following a forensic approach to enable it to detect fraud at an earlier stage. The dedicated inspection team's objective was to ensure that there are processes in place to address the volume of claims submitted.

Foreign currency held in trust by attorneys is the subject of ongoing discussion and the latest position is that it is housed in a separate account in terms of s 78(2A) of the Attorneys Act, 1979. The interest generated on foreign accounts is the subject of investigation by the Treasury Committee of the AFF.

A presentation was made in relation to the issue of security and audit trail with regard to cellphone banking transactions.

A report was given to the accountants in respect of the latest developments regarding the Legal Practice Bill.

The AFF'S submissions on the Legal Practice Bill were also reported on and the auditors were informed that submissions have been made to include a provision for an appropriate portion of interest earned on s 78(2A) investments to accrue to the AFF.

Developments relating to the draft Uniform Rules have been forwarded to the LSSA's constituent members and all outstanding issues on the finalisation of the rules are being considered.

Pursuant to an enquiry from the South African Institute of Chartered Accountants (SAICA) and IRBA, a memorandum was submitted to them to the effect that law firms would not have to be audited in terms of Regulation 28(2(a) of the Companies Act regarding the holding of assets in a fiduciary capacity. In any event, the rules of each provincial law society covered this.

The purpose and objectives of the Committee were considered and submitted to the LSSA.

Iqbal Ganie

Chairperson, Joint Attorneys and Accountants Committee

JOINT LSSA/AFF GATS COMMITTEE

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

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

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

It will be noted that the membership of the Committee exceeds the generally accepted number. This is due to the diversity and complexity of the stakeholder interests and issues to be taken into account by the Committee in carrying out its mandate. As indicated above, the Committee was re-constituted as a joint LSSA/AFF Committee. Mr Molefe represents the AFF and Ms Poyo-Dlwati and Mr Boqwana represent the SADC Lawyers Association (SADCLA).

Since the meetings often involve issues related to foreign legal qualifications, Mr Grobler and Ms Jeaven from the LSSA Committee on Foreign Qualifications also serve on the GATS Committee.

Finally, both the Department of Trade and Industry and the Department of Justice and Constitutional Development; as well as the General Council of the Bar (GCB) 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 also impact on the professional services of the GCB. Representatives of these departments would be invited to attend meetings, as and when required.

It is with sadness that I have to record the passing away during 2012 of our esteemed committee member Edward Mvuseeni Ngubane. Mr Ngubane was not only a senior and highly esteemed member of the legal profession, he was also a long-standing, respected and much appreciated member of our Committee. Moreover, Edward was our colleague and friend. On behalf of the GATS Committee I wish to record the LSSA's sincere appreciation for the contribution made by Mr Ngubane to the work of the Committee.

Broad mandate

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

- to make a study of the WTO's GATS agreement;
- 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 the 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 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.

Extended mandate

The LSSA Council also considered the issue of cross-border practice rights in the Southern African Development Community (SADC) region, and specifically in the context of South Africa's rights and obligations in terms of the GATS Agreement. As a consequence of a decision taken by the LSSA Council, the Committee's mandate was extended to require it to investigate the feasibility of introducing cross-border practising rights in the SADC region, and to propose an outline of the steps to be taken, the legislative amendments to be effected, and the legal structures to be created in order to achieve this, taking into account the new dispensation under the Legal Practice Bill.

Activities of the Committee

In view of the fact that little has happened in recent years on the WTO front which impacted on legal services, the Committee focused, during 2012, on the issue of the feasibility of cross-border practice rights within SADC. The task in regard to cross-border practice rights is in fact a daunting task, requiring not only an assessment of the principles of GATS and the applicable legal provisions and professional structures in South Africa, but requiring also an investigation of the applicable legal principles and structures in all 14 other member countries of SADC. In this regard, deliberations within the SADCLA are most important and have to be taken into account, as must the provisions of the Legal Practice Bill.

In order to deal with this, a special Task Team was designated, composed of the following members of the Committee: Esmé du Plessis, Thoba Poyo-Dlwati, Motlatsi Molefe, Wilfred Phalatsi as well as Lizette Burger and Andrew Sebapu, the latter two *ex officio* from the LSSA Professional Affairs division.

The Task Team reported to Manco and Council in 2012. This report and the information on the admission requirements in the SADC countries assembled by Mr Sebapu are available on the LSSA website (Legal practitioners; Policy and information documents).

Work outline for 2012

The LSSA CEO requested all committees to submit a broad work plan for 2012. The GATS Committee submitted the following broad outlines:

- to continue to investigate and assess the feasibility of introducing cross-border practice rights within the SADC region;

- to await the outcome of its proposal to the LSSA Council, which has been raised with the DoJ&CD, namely to make use of the assessment model as applied in the Recognition of Foreign Legal Qualifications and Practice Act 114 of 1993 to grant cross-border practice rights to individual practitioners;
- to develop in more detail the structuring of such an assessment and recognition model for use in the context of cross-border practice rights;
- to assist the LSSA and AFF in promoting acceptance and implementation of the model in South Africa and in the other SADC countries.
- to continue to monitor developments in the WTO negotiations in so far as they impact on the provision of legal services; and
- finally, as progress is made with the Legal Practice Bill, the Committee will monitor developments to ensure that the issue of the recognition of foreign qualifications and the access to local practice of foreign practitioners, and other aspects impacting on domestic practice (such as Fidelity Fund cover), are dealt with adequately and appropriately.

In view of the demands on the time and personnel of the LSSA by the finalisation of the Legal Practice Bill, and taking into account that the Legal Practice Bill is likely to have provisions relevant to the regulation of cross-border practice rights, it was agreed that a full Committee meeting would be postponed until after the finalised version of the Legal Practice Bill became available.

Future work

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

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

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

Esmé du Plessis

Chairperson: Joint LSSA/AFF Gats Committee

LABOUR LAW COMMITTEE

Members: Jerome Mthembu (Chairperson), Lloyd Fortuin, Philani Jafta, Motseki Morobane, Melatang Ramashu, Jan Stemmett and Jason Whyte

The Committee held three meetings during 2012.

Although the Committee had missed the deadline for submissions, it was resolved that it would, in any event, make submissions when the Bills on the amendments to the Labour Relations Act and Basic Conditions of Employment Act: are referred back to the Portfolio Committee.

Comments were submitted on the broad-based Black Economic Empowerment Amendment Bill.

Liaison with the CCMA: A delegation of the Committee, together with the Labour Law Committee of the Law Society of the Northern Provinces (LSNP), met with the Director of the Commission for Conciliation Mediation and Arbitration (CCMA) and had a fruitful introductory meeting with her. The parties agreed to meet at least twice a year to discuss matters of mutual interest.

Legal representation at the CCMA: The LSNP launched a successful application in the North Gauteng High Court, Pretoria where the prohibition of legal representation at the CCMA was held to be unconstitutional. The CCMA has lodged an appeal. However, the parties have agreed that the matter be escalated to the Constitutional Court.

Meeting with the Judge President of the Labour Court: A meeting with the Judge President of the Labour Court will be held during the new year, as a new Judge President was appointed recently.

Network building: Identification of organisations and institutions that the Committee can contact and work with in execution of its mandate: The position was adopted that the Committee would focus on the meeting with the CCMA and the South African Society of Labour Lawyers. In 2013 the Committee would pursue the meetings with the South African Society of Labour Lawyers and the Judge President of the Labour Court.

The Committee also agreed to consider arranging a seminar or panel discussion where the Minister of Labour or experts in the field, such as COSATU, could be invited.

Jerome Mthembu

Chairperson, Labour Law Committee

LIQUOR MATTERS COMMITTEE

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

The Committee's annual meeting took place on 19 September 2012 and was well attended by representatives of almost all the constituents.

On 1 April 2012 the Western Cape Liquor Act 4 of 2008 came into effect. It has been reported that the Act functions well and that the Western Cape Liquor Board has approved applications in terms of the new Act, although some applications that were lodged in terms of the old Liquor Act 27 of 1989 are still outstanding. KwaZulu-Natal now has its own provincial liquor Act known as the KwaZulu-Natal Liquor Licensing Act 6 of 2010. However, it should be noted that only chapters 1 to 5 came into effect during February 2012, and that new applications must still be lodged in terms of Act 27 of 1989. At this stage the Eastern Cape, Western Cape, Northern Cape, Gauteng, Free State and KwaZulu-Natal have implemented their own provincial liquor legislation. All the other provinces still function under Act 27 of 1989.

It was clear at the Committee's meeting that the majority of Liquor Boards are not functioning as they should, and more specifically the administration thereof. Apart from the new Liquor Board of the Western Cape and the administration of the Eastern Cape Liquor Board, the other provinces battle to complete new applications within a year and sometimes even longer.

The same also applies to the National Liquor Authority which deals with the manufacturing and distribution of liquor.

It was decided at the Committee's meeting that committee members will submit comprehensive reports to the chairperson regarding the functioning of the various Liquor Boards and that the LSSA will then correspond with the MECs of the respective provinces in an effort to improve turnaround times and service delivery. It was further decided that the correspondence will then also be forwarded to the Minister of Trade and Industry.

Jacobus Burger

Chairperson, Liquor Matters Committee

MAGISTRATE'S COURT COMMITTEE

Members: Graham Bellairs (Chairperson), Johan Fourie, Vanessa Graham, Gerhard Painter, Thoba Poyo-Dlwati, Niclas Mabuze, Praveen Sham, Thami Tembe, Praveen Thejpal, Jan van Rensburg and Zenobia Wadee

The Committee met on two occasions during the year under review, on 30 May and 24 October 2012. The important issues dealt with by the Committee were the following:

The Magistrate's Court and High Court survey

Survey reports from the Cape, Northern Provinces and Free State law societies have been received and are being consolidated into a report for submission to the National Efficiency Enhancement Committee chaired by Judge Nathan Erasmus, and which has representation from both the General Council of the Bar and the LSSA. This committee has been set up to determine and implement measures for the improvement of court services. A copy of the survey results will be forwarded to the Department of Justice and Constitutional Development. The KwaZulu-Natal survey report was yet to be received at the time of writing, and steps are being taken to obtain it.

The consolidated report will seek to highlight specific problems at specific courts, and summarise general problems which are prevalent at all courts.

Civil Justice Reform Project

The Civil Justice Reform Project is in the process of being set up by the Department of Justice and Constitutional Development. The purpose is to review the entire judicial process with a view to making courts and the justice system more affordable and accessible. Two areas of focus will be the incorporation of mediation into the judicial process and also working on means to improve the execution of judgments.

The Committee has written to the Justice Department to establish the progress made and what involvement it will have in this process. It is anticipated that representatives of the Committee would attend a workshop with the Rules Board for Courts of Law early in 2013 to consider execution proceedings.

Increase in tariffs

Through the LSSA Costs Committee, the Committee made representations to the Rules Board for an increase of fees, the introduction of a scale D in respect of civil matters heard in the Regional Court, the reduction of the ceiling of application of scale A to R7 000, and for the application of the general tariff to applications in terms of Rule 43 (Uniform Rules) and Rule 58 (Magistrate's Court Rules). A response has been received from the Rules Board to the effect that the representations in respect of the first three matters have been received favourably by the Board and increases have been submitted to the Justice Minister for consideration and approval. The Board is not agreeable to allowing a general application of the tariff in respect of Rule 43 and Rule 58, but has agreed to an increase of the existing fee items provided for in these rules.

Amendment to Rule 43 (Uniform Rules) and Rule 58 (Magistrate's Court Rules)

Not only have submission been made for the general tariff to be applied to the bringing of these applications, but also to allow these applications to be more extensive and brought in the same way as any other application brought to court. Such applications in the present limited format provided for in the Rules do not result in a full ventilation of issues and can prejudice the outcome of divorce actions. The response from the Rules Board is that it is not prepared to change the format of the applications. Therefore, further action will be considered by the Magistrate's Court Committee in conjunction with the High Court and Family Law Committees.

Amendments to the Magistrate's Court Act

The committee has given consideration to amendments to the Magistrates' Courts Act and are submitting proposals with regard to the following:

1. Section 45: consents to magistrate's court's jurisdiction in contracts concluded after October 2012: The Committee is of the opinion that a clause in a contract providing for consent to Magistrate's Court jurisdiction in respect of litigation arising out of the agreement should be deemed to refer to the district and not the regional courts, as the purpose of such a clause was by and large to reduce the costs of litigation. However, it was agreed that parties should have the choice to nominate the Regional Court in the contract, but where there was no such nomination, it would be deemed to be the district

court. An amendment to the Magistrates' Courts Act to implement this view is being proposed.

2. Section 65M: transfer of judgments from Regional Courts to District Courts for financial enquiries and other execution procedures: Whereas there is debate as to whether Regional Courts should or should not be dealing with their own execution procedures, the Committee is of the view that execution proceedings should be conducted in the District Courts given, in particular, the limited resources available to the Regional Courts and secondly, the fact that District Courts are more conveniently located within the areas of residence and employment of judgment debtors. An amendment along these lines is being proposed.
3. Section 51: witnesses to produce documents for inspection prior to hearing to avoid necessity of postponement: The section dealing with subpoenas issued to witnesses to produce documents at trial should be amended to allow inspection thereof prior to trial in order to avoid postponements and the wasted costs occasioned by such postponements.
4. Section 66(5): automatic lapsing of attachments over immovable property after a year and movable goods after four months: The issue as to whether there should be automatic lapsing of an attachment after a given period was debated. The Committee concluded that lapsing of attachments should be retained, but that the period of attachments over movable goods should be extended to one year. The proposal of an automatic lapsing of attachments over immovable property after a year under the Uniform Rules is to be referred to the High Court Committee for its consideration.
5. Lack of concurrent jurisdiction in the Regional Civil Court: As the jurisdiction of the Regional Court has been determined for claims in excess of R100 000 but subject to a limit of R300 000, a problem arises where a plaintiff has two claims, one within that range and the other below the amount of R100 000. Two actions would have to be instituted, namely, one out of the District Court for the claim less than R100 000 and the other for the claim in excess of that amount out of the Regional Court. The Committee proposes that the Regional Court's jurisdiction be amended to include all claims up to R300 000. However, any party instituting a claim which could have been brought before the District Court, could be penalised by awarding costs limited to the scale applicable in the District Courts.
6. Transfer of actions from the Magistrate's Court to either the Regional Court or High Court: In the light of the decision of *Oosthuizen v Road Accident Fund* 2011 (6) SA 31 (SCA) the Committee considered that it would be fair to

practitioners and claimants against the Road Accident Fund (RAF) to be allowed to transfer an action to a court of greater jurisdiction where it subsequently transpired that the claim should be increased to an amount beyond the jurisdiction of the court in which the action was originally instituted. The matter is being referred to the High Court committee and the Personal Injury Committee for their views.

Rules Board

The Chairperson of the Magistrate's Court Committee is a member of the Rules Board. He is also a member of the Magistrate's Court, Costs and PAJA sub-committees of the Board.

As Chairperson, I attended the International Sheriff's Conference held in Cape Town on behalf of the LSSA. Points of interest which arose at the conference included the following:

- The right of sheriffs in France to minute statements of fact which are used to facilitate early resolution of disputes by mediation and thereby avoiding expensive and time-consuming formal litigation. This process does not appear to be used anywhere else in Europe.
- Sheriffs in European jurisdictions perform an audit function under the control of lotteries and gaming.
- A highly organised system for conducting sales in the execution of judgments by auction of immovable property in Thailand has been developed. These auctions are attended by large volumes of bidders and take place in centralised buildings comprising various large auction halls with large television screens which display pictures of the properties for auction. In order to participate in an auction the bidder must put down a substantial deposit either in cash or a bank-guaranteed cheque. The system allows for competitive market-related prices to be achieved;
- The sheriffs' profession in England and Wales is governed by an English statute of 1887 which affords the profession independence from government. This independence is fiercely guarded. They take pride in the standards of their work through proper screening systems and training, as well as by allowing a number of independent sheriffs to compete for work in the various jurisdictions.

Should practitioners have any issues which they require to be considered, they are invited to submit these through their provincial law societies to the Committee for its consideration.

Graham Bellairs

Chairperson, Magistrate's Court Committee

PERSONAL INJURY COMMITTEE

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

Road Accident Fund Amendment Act, 2005 and the Regulations

The law continues to be developed, with the latest cases being the recent decisions of the Supreme Court of Appeal in the matters of the *Road Accident Fund v Lebeko* decided on 15 November 2012 and the four consolidated appeals decided on 27 November 2012, in the matters of *Road Accident Fund v Duma, Kubeka, Meyer and Mokoena* with the Health Professions Council of South Africa as *amicus curiae*.

The judgment in *Duma and Others* is far reaching and definitive of many aspects of the Amendment Act and Regulations that have formed the subject of several decisions of the High Court, mostly in South Gauteng.

In particular, the court found that the sole arbiter of a dispute as to whether an injury is 'serious' or not, is the appeal tribunal and that it is for the RAF – and not a court – to 'be satisfied' that the injury is serious. In other words, it found that its jurisdiction to arbitrate on such disputes has been ousted.

That is not to say that a claimant is not without remedies from a court, but those lie in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) and that before a court can be approached for relief (by way of a review or *mandamus*) all internal remedies need to be exhausted

The facts of the *Duma* cases were all very similar in that the plaintiffs in all those cases had submitted RAF 4 forms, which, although signed by a doctor had, in fact, been completed by an occupational therapist. The claimant had not been physically examined by the doctor, who based his opinion on the examination by the occupational therapist and medical and other records perused by him.

This, the court found, to be contrary to the clear wording of both the Road Accident Fund Act, 1996 as amended ('the Act') and the 2008 Regulations, which stipulate that an assessment should be performed by a medical practitioner registered as such under the Health Professions Act 56 of 1974. This does not include an occupational therapist. Furthermore, the word 'assessment', in the context of the Regulations, envisaged a physical, clinical examination.

When considering whether the RAF was subject to any time limits in rejecting an assessment in terms of reg 3(1), the court found that s 24(5) could not be used, either to impose a 60-day time period, or even as a guide as to what would constitute a reasonable period. This finding confirmed the earlier finding of Satchwell J in *Mthetwa v Road Accident Fund*.

The court in *Duma's* case went on to find that, because reg 3(3)(d) itself does not specifically stipulate a time period within which the RAF must either reject the serious injury assessment report or direct that the third party submit to a further assessment, the time period afforded to the RAF to do either is open-ended. It found this silence in reg 3(3)(d) significant, as in other aspects the Regulations did prescribe time limits and the consequences of failing to comply with those limits. This, the court interpreted as an appreciation by the 'legislative authority' that it was not possible to apply a 'one size fits all approach' in prescribing a time period within which the RAF must make a decision.

In arriving at this decision it appears as if the court viewed reg 3(3) in isolation and formed the view that the provisions of reg 3(4) had no application to the *original assessment* submitted by a claimant to the RAF in terms of reg 3(1).

It is not clear from the judgment how this aspect was fully argued. In particular it is not known if the following construction was considered, namely:

Regulation 3(1) states:

'(a) A Third Party who wishes to claim compensation for non-pecuniary loss shall submit himself or herself to *an assessment by a medical practitioner in accordance with these Regulations*.'

Regulation 3(4) states:

'If a Third Party wishes to dispute the rejection of the serious injury assessment report, or in the event of *either the Third Party or the Fund or the Agent disputing the assessment performed by a medical practitioner in terms of these Regulations*, the disputant shall:-

- a) within 90 days of being informed of the rejection or *the assessment*, notify the Registrar that the rejection or *the assessment* is disputed by lodging a dispute resolution form with the Registrar ...'

Regulation 3(5) provides:

'(5) (a) if the Registrar is not notified that the rejection or *assessment* is disputed in a manner and within a time

period provided for in Sub-Regulation (4) the rejection or assessment shall become final and binding unless an application for condonation is lodged with the Registrar as well as sent or delivered to the other party to the dispute.' [My emphasis.]

There is nothing, specifically, in reg 3(4) or 3(5) which limits its provisions to a 'further' assessment or an assessment in terms of reg 3(3)(d)(ii), rather than all assessments, including an initial assessment in terms of reg 3(1).

In fact, one could argue that the words 'either the Third Party or the Fund ... disputing *the assessment performed by a medical practitioner in terms of these Regulations*' in reg 3(4) would cover any assessment performed in terms of the Regulations, and if it were intended to restrict the 90-day time period to a *further assessment* performed at the RAF's behest in terms of reg 3(3)(d)(ii), this would have had to be spelt out.

When dealing with this aspect the court stated:

'As to what *then* happens Regulation (3)(4) provides that if the Third Party disputes the Fund's rejection of the RAF 4 form (under Regulation (3)(3)(d) (i) - *or if either the Third Party or the Fund wishes to challenge the assessment by the medical practitioner designated by the Fund (under Regulation 3(3)(d)(ii) - the aggrieved party must formally declare a dispute by lodging a prescribed dispute resolution form (RAF 5) with the Registrar of the Health Professions Council within 90 days of being informed of the rejection or the impugned assessment. Regulation 3(5) (a) then goes on to say that if this is not done the rejection of the RAF 4 form or the assessment by the Fund's designated medical practitioner, as the case may be shall become final and binding.*

Satchwell J, when describing the scheme of medical assessment as set out in reg 3 in *Mthetwa's* case did seem to support the construction that reg 3 (4) applies to all assessments. At para 28 of the judgment the following was said:

'28. The scheme of assessment set out in Regulation 3 appears to have a number of stages. The first required and essential step is that the plaintiff is to go to his or her choice of medical practitioner, undergo examination and the medical practitioner shall complete the RAF 4 Form. Secondly, the RAF, if not satisfied that the claimant's medical practitioner has correctly assessed the injury as serious, is empowered to refer the claimant for further assessment by the RAF's own medical practitioners.

The third stage is the procedure invoked where either the claimant or the RAF disputes the Serious Injury Assessment Report and the Registrar of the Health Professions Council refers the dispute for consideration by an Appeal Tribunal.'

In a footnote qualifying the italicised portion, reference is made to reg 3(4) – (13) of which regs 3 (4) and (5) (quoted above) are relevant. However, there was no finding in this regard and in considering a reasonable period for a response to the serious injury assessment report filed by the plaintiff, neither party referred to reg 3 (5) and nor did the court refer to it either.

On another important aspect, in *Duma's* case, the court emphasised that, even if the RAF's rejection of a claim is unreasonably late or without medical or other foundation, it remains a rejection, and a claimant thus cannot satisfy a jurisdictional requirement, namely that the RAF 'is satisfied' that the injury is 'serious' as provided for in reg 3 (3)(c). In that event the plaintiff cannot continue with his claim for general damages in court.

It went on to say that if the RAF fails or refuses to make a decision an application must be brought in terms of PAJA for 'judicial review of the failure to take the decision'.

The court also noted that a wide-ranging constitutional challenge to the provisions of reg 3(1) which had been raised at the appeal stage was abandoned. In an appropriate matter consideration could be given to revisiting this aspect, despite the fact that it was not taken on appeal by the Law Society of South Africa (LSSA).

Further consideration might also be given to an argument that certain aspects of the Regulations (which were prescribed by the Minister of Transport under the powers conferred in terms of s 26 of the Act as read with s 17) might be beyond his powers and vulnerable to being struck down as *ultra vires* or unauthorised. In this regard the remarks made by Satchwell J in the *Van Zyl v Road Accident Fund* case are particularly relevant, namely:

'[51] It is trite that regulations are subordinate to the statute under which such subordinate legislation has been made and we therefore approach the interpretation of regulations by reference to the interpretation of the relevant statute. The Act and regulations do not form and should not be treated as a single piece of legislation and accordingly we cannot and do not use the RAF regulations to interpret the RAF Act.'

Practitioners should pay close attention to both *Lebeko* and *Duma's* cases, as there are several important aspects in both that require careful consideration in the future prosecution of claims.

Passenger claims prior to 1 August 2008

During the course of this year, a further Transitional Bill was published for comment in the *Government Gazette* of 6 June 2012 following approval by Cabinet at its meeting on 30 May 2012.

The LSSA offered further comment pointing out that, in its view, the fundamental issue remained unresolved, namely that the current Bill (as with the previous version) perpetuated discrimination against a certain class of passengers by retaining the cap of R25 000 for non-pecuniary loss (general damages) unless the claimant can meet the stringent threshold imposed in terms of the Road Accident Fund Amendment Act and the 2008 Regulations, and in particular reg 3. It was pointed out that the threshold of a 'serious injury' would exclude some 92% of claimants from receiving compensation for general damages, although the current version of the Bill would go some way towards providing relief by allowing capped compensation of R25 000 for general damages for all affected passengers, including those who would not have qualified for any compensation at all under the old Act (inter alia so-called social passengers and passengers in unregistered taxis). It was submitted that, if it was necessary to impose any type of limit on compensation for that class of passengers, the proposed cap on loss of earnings would suffice and would be fair in all the circumstances.

It was also pointed out that the necessity to obtain a serious injury assessment report, (RAF 4) to qualify for general damages would further delay finalisation of matters which have already been in limbo for two years (as at June 2012). A further potential delay would arise if the Road Accident Fund filed a special plea in an existing case to the effect that the jurisdiction of the Court had been ousted by the Amendment Act and the 2008 Regulations in order to resolve any dispute as to whether the injuries are serious or not which would mean a referral to the Appeal Tribunal with concomitant further delay in finalizing the action. This is in line with the recent findings of the Supreme Court of Appeal referred to above.

On 7 August 2012 the LSSA appeared before the Parliamentary Portfolio Committee on Transport in Cape Town in response to an invitation to make verbal submissions to the committee regarding the Transitional Bill. The Department of Transport was also represented. On 15 August 2012 the

Portfolio Committee met again for the purposes of adopting the Road Accident Fund Transitional Provisions Bill, subject to a minor amendment, and the Bill was so adopted.

Prior thereto an application had been brought in order to extend the time limits set by the Constitutional Court for the passing of legislation to 'cure the defect'. Although initially a three-month extension was sought, after debate before the Constitutional Court, it ruled that the time period be extended for six months, to mid-February 2013.

First and second amendments to the 2008 Regulations

The first amendment to the Road Accident Fund Regulations was published for comment in the *Government Gazette* on 8 June 2012 proposing, inter alia, a limitation on the contribution towards payment of costs of a serious injury assessment to R2 500 plus VAT; the introduction of a provision in reg 3 (3)(d) (ii) of a time period of 120 days within which the RAF is to object to a serious injury assessment, failing which it is deemed to have accepted same; and an amendment to reg 6 (3) regarding the payment direct to the person preparing a serious injury assessment injury report (RAF 4).

The LSSA made submissions pointing out that the proposed limit of R2 500 plus VAT for the RAF 4 assessment report was unreasonable and unrealistic, having regard to what such a report actually costs. The LSSA also motivated a reduced time period for objections to serious injury assessment reports to 60 days, bearing in mind that the RAF was already afforded a 120 days from the date of lodgment of the RAF 1 form to investigate the claim.

In the light of the above recent Supreme Court of Appeal judgments, it is uncertain whether the RAF will proceed with the proposed amendment in relation to the time period.

On 22 August 2012 a further notice was published calling for comments on the Road Accident Fund Second Amendment Regulations, 2012. That proposed amendment, in essence, promulgated a list of injuries, which for the purposes of s 17 of the Act, should not be regarded as 'serious injury'.

Extensive comment was offered by the LSSA both on the principle and on the specific injuries, with comment from medical practitioners annexed. Both the proposed amendment and the comment by can be viewed on the LSSA website.

Proposed amendment to Rule 36(9) of the High Court Rules and 24(9) of the Magistrate's Court Rules

The LSSA was invited to comment on representations made by the RAF to the Rules Board for Courts of Law for amendments to the above rules. In its submission the LSSA pointed out that the proposed Amendment would have a profound effect on litigation across the board and accordingly, before any changes could be considered, high consultation would need to take place with all classes of litigants. It further commented that the present time limits have stood the test of time over many years without complaint from other classes of litigants and that the time limits provided for in these rules are applicable to all forms of litigation in which experts are involved, including family law. Protracted delays are undesirable, particularly where the rights of children are involved. It did not appear appropriate that rules be amended to accommodate one litigant. The full comment can also be found on the LSSA website.

The Contingency Fees Act and contingency fee agreements

Two judgments were delivered in the South Gauteng High Court in 2012, declaring 'common law' contingency fees agreements invalid and unenforceable, and stipulating the procedure to be followed as well as the content of the affidavits to be filed in terms of s 4 of the Act.

The first was *Mofokeng and Others v Road Accident Fund* which, in addition to analysing and setting out, precisely, what should be recorded in the Contingency Fees Agreement itself, as prescribed in s 3 of the Act, it also spelt out what should be dealt with in the s 4 affidavits by practitioner and plaintiff. At the same time the practice manual of the South Gauteng High Court was amended to reflect these findings. The practice manual is now in line with the North Gauteng High Court practice manual.

The second decision was that of *Tjatji K E and Others v Road Accident Fund*, where the court struck down contingency fees agreements – that had been entered into shortly before the matters were settled – as invalid on two grounds, namely that although the agreements entered into appeared valid as the prescribed form had been used, in substance they were invalid by virtue of the parties' failure to observe the requirements of the Act.

The court also found that because the intention in entering into the agreement at a late stage in the proceedings was to validate previously invalid arrangements retrospectively, that this could not be done.

The court also ordered that, in all matters, the plaintiffs' attorneys are, in terms of the common law, entitled to reasonable attorney and client fees as taxed or assessed on an attorney and own client basis, in relation to work performed by them (that is, no success fee). A further rider was added to the effect that such reasonable attorney and client fees may not exceed 25% of the amount awarded or recovered by the plaintiffs.

It was not specifically set out what would happen in those matters where the costs recovered exceeded the capital and the party and party fees (on the High Court tariff) exceeded 25% of the capital. One would assume that the limitation on fees was aimed at ensuring that the plaintiff recovers at least, 75% of the capital of his award and that, to the extent that it was necessary to achieve this, 'normal' reasonable attorney and client fees would have to be reduced. No success or higher than normal fee is allowed, as the contingency fees agreement was struck down. However, in terms of the judgment any disbursements not recovered or paid by the RAF could be recovered from the plaintiffs

It is understood that certain of the cases covered in the above judgments have been appealed.

Jacqui Sohn
Chairperson, Personal Injury Committee

PRACTICE DEVELOPMENT COMMITTEE

Members: Praveen Sham (Chairperson), Koos Alberts, David Bekker, Ann Bertelsmann, Dr Llewelyn Curlewis, Leon Els, Glenn Flatwell, Jeff Mathabatha, Motlatsi Molefe, Cynthia Naidoo, Ogilvie Ramoshaba, Claudia Shalala, Nic Swart and Johan van Staden

The Practice Development Committee (PDC) supported the presentation of practice management (PM) related seminars. Business Development Managers (BDMs) at law societies were approached with a view to determining the main challenges faced by attorneys who had recently commenced practising for their own accounts.

The following topics were recommended:

- Effective risk management
- The advantages of practising in partnership as compared to being a sole practitioner
- Sharing of resources for small-firm practitioners
- Marketing your law firm and services
- Office administration: How to maximise efficiency of your 'back office' environment
- Human resource issues
- Understanding financial statements, management financial reports and value of internal controls
- Investment principles and practice
- Use of information technology to enhance your practice and managing change/adaptation.

The first seminar on 'Effective risk management' was presented in Midrand and will be presented in other centres early in 2013.

The Practice Management Training (PMT) course was reviewed and a third compulsory assignment was introduced in 2012. PMT students now have to submit compulsory assignments on the following three topics:

- Risk Management and Insurance
- Law Business Finance
- Strategic Management (Submission of a business plan).

The Chairperson of the PDC attends all meetings of the Attorneys Development Fund (ADF). As a result issues common to the PDC and the ADF are dealt with expeditiously.

The PDC has recognised the importance of mentorship as an effective tool of practice development. We would like to roll out mentorship in 2013 and appeal to experienced members of the profession to share their expertise with their junior colleagues by agreeing to become mentors.

Attendance statistics

	First intake: 320	Second intake: 456
Attendance: Total	104	113
Johannesburg	31	38
Cape Town	26	21
Durban	7	17
Pretoria	40	41
Distance: Total	209	300
Johannesburg	68	85
Cape Town		38
Durban	21	47
Pretoria	90	100
East London	7	14
Port Elizabeth	6	15
Exempt	7	43

2012 has seen the highest number of registrations – a total of 776 – for the PMT course since it became mandatory.

Praveen Sham
Chairperson, Practice Development Committee

PRO BONO COMMITTEE

Members: Ricardo Wyngaard (Chairperson), Poobie Govindasamy, TV Matsepe, Giusi Harper, Bongzi Mpitso, Mfundiso Mavonya, Riona Gunpath, Alfred Hona, Alida Obbes and Marissa van Niekerk

The role of the *Pro Bono* Committee remains important in promoting *pro bono* services for the poor and marginalised members of society. *Pro bono* services have grown since the inception of the concept and the statutory provincial law societies have started to enter into more structured relationships with role players like Legal Aid South Africa and other recognised structures. Reports from the law societies show that *pro bono* applications remain substantial, but opportunities to expand *pro bono* services in various fields remain.

Chairperson

The Chairperson of the *Pro Bono* Committee, Norman Moabi, was nominated to serve on the Arms Procurement Commission in 2012 and stepped down from his role as chairperson. In July 2012 the Committee resolved to elect Ricardo Wyn-

gaard, who represents the Cape Law Society, as Chairperson. Mr Moabi's contribution to the Committee has been invaluable and the Committee members congratulated him on his appointment to the Commission.

Pro bono at provincial law societies

Law Society of the Free State: The FSLs and Legal Aid South Africa have entered into an informal arrangement to promote *pro bono* services. The FSLs's *Pro Bono* Committee reported that attorneys in the province are committed to providing *pro bono* services and a total of 286 *pro bono* applications had been received in 2012.

Cape Law Society: The CLS has entered into agreements with over fifty recognised *pro bono* structures that are assisting the CLS to refer *pro bono* matters to appropriate attorneys. The CLS received 2 185 applications during 2012. The CLS has not entered into an agreement with Legal Aid South Africa as it recommended that an agreement between the national structures would be a more suitable option. The *Pro Bono* Committee of the CLS also recommended an increase to its *pro bono* means test.

KwaZulu-Natal Law Society: *Pro bono* services at KZNLS have been published widely. As at July 2012, the KZNLS had about 200 *pro bono* matters pending. The KZNLS has negotiated an agreement to promote *pro bono* services with Legal Aid South Africa. It has also finalised an agreement with ProBono.org to extend *pro bono* services.

Law Society of the Northern Provinces: In 2012 the LSNP received 1 853 *pro bono* applications. The *Pro Bono* section at the LSNP also manages the First Interview Scheme and Contingency Fee Scheme whereby referrals are made on behalf of members of the public. Joint venture agreements were entered into with Legal Aid South Africa and ProBono.Org, and various non-profit organisations are assisted by the *pro bono* scheme.

Judicial Inspectorate for Correctional Services

The Committee engaged with the Judicial Inspectorate for Correctional Services (JICS) on various occasions during 2012 with a view of ascertaining how *pro bono* services could be optimised in prisons. Members of the Committee subsequently attended the joint session of the Criminal and Family Law Committees where the JICS recommended the continuation of prison visits by attorneys for purposes of, among other, providing training to prisoners on their rights.

Mentorship / Small Claims Court Commissioners / Projects

The *Pro Bono* Committee held a telephone conference on 21 November 2012 where a number of issues were discussed, including the potential of recognising both mentorship of young attorneys and service as a commissioner of the Small Claims Court as *pro bono* service. It also discussed potential *pro bono* projects for 2013 and beyond.

Conclusion

It is clear that *pro bono* services by attorneys have evolved significantly since the inception of the concept in South Africa. The *Pro Bono* Committee has played an important role in trying to streamline *pro bono* services at a national level. Despite this, the legal profession is still faced with *pro bono* services that are managed and coordinated at regional level and not at national level. Provincial law societies each have their own rules. Perhaps the next challenge for *pro bono* in South Africa is to have a uniform national *pro bono* rule and programme with a dedicated *pro bono* clearing house at all the provincial law societies.

Ricardo Wyngaard

Chairperson, Pro Bono Committee

PROPERTY LAW COMMITTEE

Members: Selemeng Mokose (Chairperson), John Christie, John Gomes, John Anderson, Dave Bennett, Hussan Goga, Mpostoli Twala, Kanyi Peter, Ken Mustard, Wilfred Phalatsi, Martin Ferreira, Charl Theron and Xolani Mpeto

Despite only two meetings having been held during 2012, the Committee has been as busy as usual.

Dialogue between the organised profession and the role players in the industry continued. Notably, the Committee had several meetings with the South African Revenue Service (SARS), the Department of Rural Development and Land Reform, the Department of Human Settlements, the National Home Builders Registration Council (NHBRC) and the office of the Chief Registrar of Deeds.

The Project Vulindlela National Working Committee dealing with the development of electronic deeds registration

is proceeding well. Meetings are held with members of the profession where they are being advised of progress, are participating in the various committees and are giving input into the proposals on an ongoing basis. Seven members of the profession are presently participating in the various working committees.

During October 2012 changes were made to the SARS e-filing process in which the LSSA was requested to give input. The transition was much smoother than the previous changes, as there had been ongoing meetings with the profession pertaining to the proposed changes. The Committee continues to engage with SARS on developments affecting the industry.

Concerns continue to be raised by the Committee about the low pass rate in the conveyancing exams. Discussions take place with stakeholders in response to the concerns as to how to improve the general standard of conveyancing as well as the conveyancing examination pass rate.

The conveyancing fee guidelines have been published and apply to instructions received from 1 March 2013. It was felt that the fees should be considered every year and not when there is pressure on the Committee by members of the profession to consider them.

The members of the Committee have made contributions to the industry by participating actively in the Deeds Registries Regulation Board, the Sectional Titles Regulation Board and, most of all, by attending the Registrars' Conference. In 2012 a representative from each of the constituents attended the conference. Suggestions to changes and amendments to conveyancing practice were welcomed.

Selemeng Mokose

Chairperson, Property Law Committee

SMALL CLAIMS COURTS COMMITTEE

Members: Johann Gresse (Chairperson), Etienne Barnard, Crystal Cambanis, Siva Chetty, Stembiso Kunene, Joseph Mhlambi, Nomacule Oliphant and Butch van Blerk

The Small Claims Courts Committee has continued to act in conjunction with the Steering Committee for the Small Claims Court Project of the Department of Justice and Constitutional Development.

A number of meetings took place at the offices of the Department, mostly under the chairmanship of Deputy Justice Minister, Andries Nel.

The following matters were dealt with during the course of the year:

Extension of the South Africa– Swiss Agreement

The Swiss Government continues to support the Small Claims Court programme in South Africa and a generous donation was received from the Swiss Government. Representatives of the Swiss Government regularly attend meetings of the joint LSSA Small Claims Courts Committee and the Steering Committee of the Justice Department.

Establishment of new Small Claims Courts

The Deputy Minister reported that during the previous year a large number of new Small Claims Courts was established and nearly 200 new Small Claims Courts commissioners were appointed. The Deputy Minister expressed his appreciation for the services rendered by practitioners in manning the Small Claims Courts. He appealed to more practitioners to make themselves available for appointment as commissioners.

Pieter du Rand, Chief Director: Court Services at the Justice Department, was invited to address the annual general meeting of the Law Society of Northern Provinces at Sun City in November 2012. He again expressed the Department's appreciation for the services rendered by practitioners and also, once again, appealed to the practitioners to make themselves available for appointment as commissioners.

Training of commissioners

Mr Du Rand reported on the fact that offers had been received from university law faculties and from other organisations to assist in the training of commissioners. The Justice Department had also indicated that the Justice Training College in Pretoria is prepared to assist with the training of commissioners, but this would entail commissioners having to attend a short course in Pretoria. Senior commissioners who attended the meetings indicated that the best way to train new commissioners is to request senior commissioners to give short lectures on the way in which the courts function and it was agreed that, wherever possible, senior commissioners would be recruited to assist in the training of new commissioners.

Right of appeal

Current legislation does not provide for a right of appeal against a decision of a commissioner, although a so-called review procedure exists. Senior commissioners have repeatedly proposed that a simplified appeal procedure be introduced in the system so that litigants can take a decision of a commissioner on appeal to a panel of two or three senior commissioners who will then review the procedure adopted by the commissioner against whose decision the litigant is appealing. If the panel is of the opinion that the decision was incorrect, it can set aside the finding and substitute it with the panel's own decision.

The Justice Department has requested members of the LSSA Small Claims Courts Committee to furnish it with proposals regarding the possible amendment of the current legislation so as to introduce a simplified system of appeal and/or review of a decision of a Small Claims Court commissioner.

Effect of restrictive legislation

The Committee has taken note of the impact of restrictive legislation such as the Consumer Protection Act, the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act and the National Credit Act on the functioning of the Small Claims Courts. Both the commissioners and the Clerks of the Court must be alerted to the requirements of these Acts when dealing with claims which may be affected by the provisions of these Acts.

In conclusion it must be said that the introduction of the Small Claims Courts procedure in the legal system of the country has had a very beneficial effect as far as the access to justice for the public in general. On the whole, the courts are functioning in a very satisfactory manner.

Johann Gresse

Chairperson, Small Claims Courts Committee

TAX MATTERS AND EXCHANGE CONTROL COMMITTEE

Members: Prof Daniel Erasmus (Chairperson), Anver Bhayat, Johan Fouché, Robert Gad, Iqbal Ganie, Rafiq Khan, Nano Matlala, Yolifile Ndzabela and Prof Henry Vorster

During the year under review the Committee continued monitoring important revenue legislation and engaged the authorities thereon. The most important of the revenue statutes remained the Tax Administration Act which came into force on 1 October 2012.

For the year ahead (under the newly elected chairperson, Prof Daniel Erasmus for the year 2013) the Committee has initiated and plans to initiate the following:

- LinkedIn has been used to create a group to invite comments from the profession and the public on exchange control and tax issues, problems and complaints for the Committee to review.
- A meeting will be arranged with the Governor of the Reserve Bank and with the Commissioner of the South African Revenue Service (SARS), to discuss issues, problems and complaints.
- A series of Tax 101 lectures have been motivated and initiated through the LSSA's Legal Education and Development division, LEAD, to invite members of the profession to learn more about tax.
- A series of Tax Administration Act seminars will be conducted in 2013 to teach members of the profession about this new important legislation, based on extensive lectures conducted by the Committee chairperson to the South African Institute of Tax Practitioners.

A matter of some concern remains the indiscriminate manner in which financially incentivised SARS officials exercise their statutory powers to achieve collection targets. This is a matter which the LSSA has attempted to monitor on a national basis and the Committee will collaborate with other professional organisations in order to collate available data. This matter will also be raised at the Commissioner's annual meeting.

Prof Daniel Erasmus

Chairperson, Tax Matters and Exchange Control Committee



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