



LAW SOCIETY
OF SOUTH AFRICA

2013/2014

ANNUAL REPORT



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



LAW SOCIETY OF SOUTH AFRICA

ANNUAL REPORT April 2013 to March 2014



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THE LAW SOCIETY OF SOUTH AFRICA

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

(From the constitution of the LSSA)

MISSION

The Law Society of South Africa

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

AIMS AND OBJECTIVES

The Law Society of South Africa (LSSA) has the following fundamental, enduring and long-term aims and objectives, namely to

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

- secure throughout the Republic of South Africa, in so far as it is practicable, uniformity, simplicity and efficiency in the practice of law, in legal procedure and in the administration of justice;
- strive towards the achievement of a system of law that is fair, just, equitable, certain and free from unfair discrimination;
- represent generally the views of the profession on a national basis;
- nominate, elect, appoint or delegate persons to represent the profession or any part or division thereof at any conference or meeting or on any commission, advisory body, committee, commission of inquiry or similar body or proceeding established, convened or instituted by any government or other authority, institution or organisation, whether of a public or private character, for the purpose of considering any matter relating to law, practice, procedure or the administration of justice or any other matter, of whatever nature falling within the aims and objectives of LSSA;
- cooperate or liaise with any fund or other body established for the purpose of guaranteeing the fidelity of practitioners of the profession;
- deal with any matter referred to it by the council or governing body of any constituent member; and
- take up membership of or otherwise to cooperate with any other organisation or body whether within or outside the Republic of South Africa, including organisations or bodies of an international character and, without derogating from the generality of the foregoing, to combine, affiliate or merge with any other organisation or body of similar nature to its own and having objects similar to and reconcilable with its own, whether or not its field of operations extends beyond the borders of the Republic of South Africa as they may from time to time be established.

(From the constitution of the LSSA)

CONSTITUENT MEMBERS OF THE LAW SOCIETY OF SOUTH AFRICA

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Cape Law Society

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Law Society of the Free State

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Law Society of the Northern Provinces

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REPORT BY THE CO-CHAIRPERSONS

In April last year, when we took office, the profession had already come to grips with the Legal Practice Bill, 2012. The Portfolio Committee on Justice and Constitutional Development had held oral hearings in February 2013, and the LSSA was one of the eleven institutions invited to address the Portfolio Committee. This was done by the Task Team set up by the LSSA to deal specifically with the Bill. The LSSA made substantial written and oral submissions.

Since then, and at the time of writing this report in February 2014, the LSSA was involved in making submissions to provincial legislatures as part of the National Council of Provinces (NCOP) engagement on the Bill. In these submissions we dealt with numerous technical anomalies in the Bill. However, we also focused on some substantive issues which would have an impact both on the profession and on the public, whom the profession serves.

In our substantive submissions, among other issues, we dealt with

- the fact that the objects of the Legal Practice Council should also strive to protect the interests of the legal profession to promote a profession that serves the public with integrity, the highest standard of service delivery and ethics;
- the imperative that independence of the legal profession be protected at all times by ensuring that the majority of the members of the interim National Forum are legal practitioners;
- the fact that, in opening the practice of law to foreign legal practitioners, the Minister should be cognisant of the saturation of the market in South Africa and the need to protect the interest of the South African practitioner, while at the same time protecting the public;
- the issue of fees against the context of access to justice; the commitment by the attorneys' profession to engage fully in investigations by the South African Law Reform Commission, and that in the interim, the National Forum possesses sufficient expertise and



Kathleen Matolo-Dlepu and David Bekker

practical experience to design fair, just and equitable fee guidelines rather than outsource the setting of non-litigious fees to the Rules Board for Courts of Law.

The LSSA offered its support in particular to the National Forum in respect of such expertise and human resources as it may require to facilitate a smooth transition to the new dispensation. The submissions and substantial background information on the Bill are available on the LSSA website at www.LSSA.org.za.

Prior to the NCOP process and before the Bill was adopted by the National Assembly in November 2013, the LSSA engaged with the Portfolio Committee on Justice and Constitutional Development through two sets of submissions made in February and May 2013.

The LSSA also convened meetings during 2013 with the Attorneys Fidelity Fund, the General Council of the Bar and the Association of Independent Advocates (now called the National Bar Council of South Africa) to attempt to find consensus on matters raised by the Portfolio Committee during its nine months of deliberations on the Bill, from February to November 2013.

One of the major changes that was introduced to by the Portfolio Committee is that advocates can accept direct instructions from the public provided they have trust accounts. The LSSA has indicated in its submissions that the protection of the public is paramount and that all legal practitioners taking moneys from the public must have trust accounts. The LSSA also noted in a letter to the Portfolio Committee, that allowing advocates to be briefed direct may not necessarily reduce costs for the public as the Portfolio Committee envisages, since advocates taking direct instructions would be obligated to have Fidelity Fund certificates and they would require the practice and staff infrastructure necessary to operate and monitor trust accounts. They would also require training in bookkeeping, which advocates are not traditionally required to obtain.

In our submissions to the NCOP we stressed that legal practitioners in the future dispensation should display clear identifications at their premises as to whether they are attorneys or advocates with Fidelity Fund certificates, so that members of the public are not confused as to whom they are retaining for their matters.

We are confident that the LSSA has dealt with the Bill at all times balancing the interests of the profession with those of the public, and has engaged with the Portfolio Committee and the provincial legislatures at all available opportunities.

While the parliamentary process has taken its course, the Bill has started to provide indications of the landscape of the profession once the transitional process begins. This is envisaged as a three-year transition during which time the nuts and bolts of the Legal Practice Council and the regulation of the profession in future will be determined. The LSSA has begun to work on models for the future regulatory structure, including the costs, which will have to be carried by practitioners and the Legal Practitioners Fidelity Fund.

The LSSA has started to investigate the transitional phase which will proceed under the National Forum and the possible cost effect of the new structures.

Although the Legal Practice Bill has been at the top of the LSSA's agenda this year, other matters have required similar attention.

The death of Nelson Mandela

On 5 December 2013, the LSSA and its six constituent members joined the rest of the world in mourning the death of former President Nelson Mandela and celebrating his life and innumerable interventions in bringing true democracy to South Africa.

In a tribute press release on 6 December 2013, we noted:

'To the world he was an icon, to his family and our nation, a father, but to the attorneys' profession he was the embodiment of the principles that all in the profession aspire to: reconciliation, social justice and respect for the values enshrined in the Bill of Rights. As a profession we are honoured that Mr Mandela chose to serve in our ranks. He, along with Oliver Tambo, opened the first black attorneys' firm in the country, providing hope and dignity to a people given to despair, leading the way for our current generation of attorneys.'

As Co-Chairpersons we were honoured to lead a delegation of attorneys to represent the attorneys' profession at the final send-off function for Mr Mandela at Air Force Base Waterkloof in Pretoria on the morning of 14 December 2013. In honour of Mr Mandela having been an admitted attorney in his professional life, we wore our gowns and court dress to the function.



The LSSA delegation at the final send-off for Nelson Mandela: Krish Govender, Martha Mbhele, Joseph Mhlambi, Kathleen Matolto-Dlepu, Poobi Govindasamy, David Bekker, Ettienne Barnard, Sandile Beauchamp, Giusi Harper, Mohamed Husain and Sabeeha Husain.

National initiatives

Uniform rules

After a number of years of consultation, a representative task team of the LSSA constituent members prioritised the finalisation of a uniform set of rules for consideration at the annual general meetings of the provincial law societies. The Free State and KwaZulu-Natal law societies adopted the uniform rules. The Law Society of the Northern Provinces adopted the rules except for some rules dealing mostly with accounting aspects and the Cape Law Society rejected the draft rules in toto, referring them to a subcommittee for re-consideration.

A joint meeting of law societies' representatives was held at the end of January 2014 to deal with the outstanding issues and good progress was made. If approved, the Uniform Rules will serve as a basis for both certainty about national uniformity and as a working document for the future Legal Practice Council.

Electronic signatures

The LSSA has started with the implementation of an e-law project for the purposes of enabling and establishing a framework in the attorneys' profession for the use of electronic signatures in terms of the Electronic Communications and Transactions Act 25 of 2002. This Act requires that attorneys' firms' information (IT) systems and independent accreditation service providers must be able to authenticate the identity of originators of communications. Some examples include e-service and e-filing in the courts, the e-cadastre and other electronic communications with government and private institutions where the signatures of attorneys, conveyancers and notaries may be required. The organised attorneys' profession will seek to be the registration authority, as admission and registration data vests with the profession.

Financial Intelligence Centre: MoU with law societies

We are aware that attorneys' trust accounts are vulnerable to the possibility of being used by criminal elements, particularly for the laundering of money. As a result, attorneys have been designated as reporting institutions in terms of the Financial Intelligence Centre Act 38 of 2001 (FICA) and are thus required to register with the Financial Intelligence Centre (FIC) in terms of s 43B of FICA. Attorneys are obligated to report any business activity that appears to be suspicious. We urge any attorney that has not registered with the FIC as yet, to do so expeditiously.

In July, the four statutory provincial law societies signed memoranda of understanding (MoUs) with the FIC in terms

of s 45(1D) of FICA. The MoUs are a significant step for the legal profession in South Africa as the provincial law societies have now taken on the additional mantle of supervisory bodies in terms of FICA, which increases their regulatory functions over attorneys. This is indicative of a commitment to professionalism and ethical behaviour among practising attorneys

LLB Summit

In May 2013 the LSSA hosted the LLB Summit with the South African Law Deans Association (SALDA) and which included various stakeholders in the profession. The summit debated the content of the current LLB degree and the concerns raised by the judiciary and the profession regarding the fact that LLB graduates appear to be unprepared to enter the profession on completing the current four-year degree. It was resolved to request the Council for Higher Education (CHE) to conduct a standard-setting process for the LLB degree to be concluded by 30 June 2014. The CHE should conduct this exercise by consulting widely with the LLB Summit Steering Committee which represents all the stakeholders who attended the LLB Summit. The standard-setting process should take into account

- the required attributes for graduates identified at the LLB Summit, such as
 - knowledge of substantive law;
 - generic skills (language, literacy, numeracy, research, analytical, IT);
 - ethics;
 - a commitment towards social justice;
- the requirements of the workplace; and
- resources.

In August 2013 the LSSA Task Team dealing with the LLB met under the chairmanship of LSSA Council member Krish Govender and resolved to

- monitor LLB-standard setting by the CHE;
- invite the judiciary to attend and endeavour to include the departments of Justice and Higher Education;
- to elaborate on the profession's needs relating to the LLB through LEAD's participation in the national conference of the Society of Law Teachers in January 2014, and
- arrange a workshop where law teachers will be guided in the integration of IT-related law in legal subjects.

The Task Team agreed that the summit had expressed substantial consensus on the extension of the LLB degree from four to five years; however the structure and content required further research and debate.

Anti-corruption and the image of the profession

In September 2013, the LSSA (including its six constituent members) and the Attorneys Fidelity Fund (AFF) launched the Trustline campaign. The campaign has arisen from the knowledge that we are a proud, service-oriented and ethical profession, but also the acknowledgement that there are members of our profession – very few in the overall scheme – who fall short of the ethical norms that define us as a profession. We are constantly reminded of this through court judgments, media reports – often sensationalist – and complaints to the law societies, as well as the number of claims being settled by the AFF for misappropriation of moneys by attorneys.

The Trustline campaign has been designed to function on two levels:

- on the one hand the campaign invites trust in attorneys,
- on the other, it urges anyone to report suspected theft from trust accounts and other unethical behaviour by an attorney through Trustline.

The message is a positive one, inviting trust, rather than focusing solely on the 'whistle-blower' aspect. Trustline is operated independently as part of the Deloitte Tip-Offs Anonymous system which allows for confidentiality and anonymity where appropriate.

Also in September 2013, the LSSA met with the management and some Board members of the Road Accident Fund (RAF) to open communication channels between the two organisations. In a joint statement following the meeting, the LSSA and RAF stressed that both organisations have a joint obligation to root out fraud and corruption, which has had dire consequences to the reputations of the RAF and attorneys' profession. A joint strategy to deal with criminal elements in and outside of both organisations would be considered. Both parties committed themselves to sharing information with each other promptly.

National Efficiency Enhancement Committee

A National Efficiency Enhancement Committee (NEEC) was established at the Heads of Courts meeting on 13 October 2012 under the chairmanship of Chief Justice Mogoeng Mogoeng, in an effort to enhance the efficiency and effectiveness of the judicial system. Various key stakeholders in the judicial system are represented on this committee, including the organised legal profession, the South African Police Service, the Department of Justice and Constitutional Development, the Department of Social Services, the National Prosecuting Authority and the Department of Health. The NEEC established a National Operations Committee to assist with the implementation of the objectives of the NEEC.

Three task teams (the Governance and Court management team; the Court and Case management team; the Court Performance and Monitoring team) have developed proposals and implementation plans, which include in-house training, monitoring of court performance and a needs analysis in respect of courts. Provincial Efficiency Enhancement Committees were launched in November 2013.

The LSSA reaffirmed its commitment to the NEEC and provincial committees at a meeting with the Chief Justice. The Chief Justice and the LSSA delegation also discussed

- the importance of modernising the court system and the role of the Office of the Chief Justice and the profession. This included the proper implementation of judicial case management, the investigation of electronic filing and video conferencing for witnesses, as well as an overhaul of court rules;
- more active participation by South African legal practitioners in international tribunals and courts (such as the African Court on Human and Peoples' Rights, the International Criminal Court, the International Court of Arbitration and the International Court of Justice), including nominations to serve as judicial officers and representing claimants on a *pro bono* basis in human rights abuse cases;
- the role of the profession in exerting pressure within the Southern African Development Community (SADC) regarding the re-establishment of the SADC Tribunal;



Chief Justice Mogoeng Mogoeng (front centre) with LSSA Co-Chairpersons David Bekker and Kathleen Matolo-Dlepu at the meeting between the Office of the Chief Justice and the LSSA at the end of November 2013. Back, LSSA Manco members Krish Govender and Max Boqwana; Meme Sejosengwe, Secretary-General of the Office of the Chief Justice and Dr Gomolemo Moshoeu, CEO of the South African Judicial Education Institute.

- the need to prepare, train and mentor legal practitioners for judicial office so that they are properly equipped and prepared when being interviewed by the Judicial Service Commission; and
- the need to mentor women candidates in particular, was stressed, as was the need to ensure that historically disadvantaged practitioners are briefed to appear in the higher courts, including the Constitutional Court.

Legal Process Outsourcing

The LSSA has set up a task team to investigate Legal Process Outsourcing as a possible new area of work for attorneys. In this respect, we envisage cooperating with the Department of Trade and Industry to promote South African attorneys as an outsource destination for legal work.

Synergy Link empowerment initiative

The Synergy Link empowerment initiative started by former Co-Chairpersons, Praveen Sham and Nano Matlala, now has a number of firms which are linked to growing firms to transfer skills to empower the growing firms to access new areas of practice. The transferring firms include Bowman Gilfillan, Christodoulou & Mavrikis Inc, Fairbridges, Fluxmans, Mahons, Maponya Inc, Norton Rose Fulbright, Rooth & Wessels, Roodt Inc, Rossouws, Stegmanns, Tomlinson Mnguni James and Webber Wentzel. We thank these firms for their commitment and are pleased to note the number of medium-sized and smaller firms that are keen to share their skills and knowledge.

Matters being dealt with by the LSSA

The LSSA regularly comments on draft legislation and policy documents through its specialist committees. Comments submitted by the LSSA are available on its website. The LSSA also facilitates and attends numerous meetings with key strategic stakeholders, including various government departments and state entities, to make an input on developments from the side of the profession. Of importance was the meeting of the outgoing Co-Chairpersons with Public Protector Thuli Madonsela. The profession has publically supported the work of the Office of the Public Protector.

We single out merely a fraction of the issues that are being dealt with by the LSSA on behalf of the profession. The extensive work done by the operational and specialist committees of the LSSA on behalf of the attorneys' profession is outlined more fully later in this report.

Debt collection: Certain debt collectors are abusing the debt-collection process provided for in ss 57 and 58 of

the Magistrates' Courts Act, 1944 where they are getting debtors to agree to garnishee orders against their salaries in amounts they cannot really afford. These debt collectors are not just restricted to attorneys. Another aspect of abuse is that courts that do not have jurisdiction are granting these orders. The LSSA has made representations to the Department of Justice and Constitutional Development to have these issues addressed and also participated in a credit industry task team to formulate a proper code of conduct to regulate these practices.

Tariffs: The increase in the tariffs was implemented in November 2013, but fell short of what the LSSA believed to be adequate. The LSSA will attend an indaba on costs which is being arranged by the Rules Board on the issue of costs generally. We have submitted that the frequency and amount of increases should be discussed at the indaba, as well as the cost structure of interim maintenance and access applications in terms of Uniform Rule 43 and Magistrate's Court Rule 58.

Mediation rules: There are indications that the Minister will soon publish the mediation rules. Court-annexed mediation will be introduced as a pilot in certain identified areas. The LSSA submitted comments on the draft rules when they were published for comment.

Arbitration: The LSSA is pleased that our outdated arbitration legislation is receiving attention. The LSSA attended an experts' meeting on proposed International and Domestic Arbitration Bills, facilitated by the South African Law Reform Commission. Comments on the Bills will be submitted at the appropriate time.

Competition: At the direction of the Competition Tribunal, the LSSA and the Competition Commission have been joined in complaint-referral proceedings. The matter, relating to the issue of touting, was before the Competition Tribunal on 20 August 2013 and the outcome is discussed on page 30.

Tax matters: There are many developments in the tax field. The LSSA has regular meetings with the South African Revenue Service on various issues, such as the regulation of tax practitioners, the submission of IT3 returns on investments and the ongoing e-filing problems.

Domestic violence initiative: We would like to single out the joint initiative launched by the LSSA's Gender and Family Law committees with the South African Police Service (SAPS) in terms of which attorneys will sensitise and supplement the training of station commanders and SAPS trainers on assisting women and children in terms of the Domestic Violence Act.

De Rebus

De Rebus continues to serve the profession as one of the most important premier communication and educational channels. This was confirmed by a reader survey held earlier this year which received substantial response. Over 93% of respondents rated the journal as excellent or good; 93% were of the opinion that *De Rebus* was well written, researched and presented. Readers rated the feature articles, news articles, practice and case notes, as well as the Law Reports and New Legislation columns among the most valuable sections of the journal, in terms of regular reading and relevancy. One third (33,6%) of respondents preferred *De Rebus* in digital format, compared to the 66,4% who preferred the printed format. Nearly half of the respondents (42,3%) indicated that they would not be prepared to pay for *De Rebus* should it no longer be free in future. Attorneys have been in the fortunate position that they have been able to receive *De Rebus* free of charge courtesy of the Attorneys Fidelity Fund. Not many are aware of this as most attorneys believe it is linked to their law societies' subscriptions – which it is not. This is an important fact to be noted, particularly as all budgets are under pressure, with the AFF itself having experienced reduced levels of income over the past few years.

We were sorry to take leave of *De Rebus* Editor Kim Hawkey who left the LSSA in June 2013 to implement a law media hub at the Times Media group. Although we were sad to lose Kim's professional input, we support better reporting of legal issues and court matters in the media and wish her well with this initiative. *De Rebus* is now in the capable hands of Editor Mapula Thebe supported by the *De Rebus* team.

Finance

The LSSA continues to exercise strict financial discipline over its budgets. This will assist it to absorb some of the impact of the Attorneys Fidelity Fund's decision to limit the LSSA budget at the 2013 level for the 2014 to 2016 financial years.

Attorneys Development Fund

Mackenzie Mukansi joined the Attorneys Development Fund (ADF) as manager in July 2013. In 2013 the ADF made loans in the form of infrastructural equipment to 11 attorneys, and to date five loans are in the process of being approved. It is envisaged that, under Mr Mukansi's management and with the guidance of the Board, the ADF will broaden its assistance to young practitioners and attorneys who wish to start their own practices. They are urged to make contact with Mr Mukansi at the offices of the LSSA in Pretoria.

The Board members of the ADF paid tribute to their colleague Jeff Mathabatha from Polokwane who passed away in 2013.

Communication

The LSSA continues to speak publically through regular press releases on matters of national relevance. Besides *De Rebus* in print and digital format, practitioners also receive the monthly LSSA e-newsletter and weekly *Legalbrief LSSA Weekly*. There is also regular electronic marketing of LEAD training initiatives.

Legal education

The LSSA's Legal Education and Development division, LEAD, presented a record number of seminars and workshops for practitioners and the report later in this Annual Report indicates that more than 11 000 persons attended LEAD training events during the year. These range from training on overarching legislation such as the Protection of Personal Information Act which will impact on all firms, to updates on areas of practice such as wills and testamentary trusts, labour law, constitutional litigation, contracts and the Companies Act. Its other activities, including practice management training and training for candidate attorneys and the ten centres of the School for Legal Practice, continue.

LEAD's Sunnyside office has been equipped with a recording studio which will allow it to produce audio-visual educational material for practitioners. The e-learning products continue to grow in popularity as users become more comfortable with the online training format and also appreciate the convenience that it provides. Meetings are being held to explore the possibility of expanding e-learning facilities to the SADC region.

Again this year, LEAD has presented the commercial law training project in cooperation with the Law Society of Ireland and Irish Aid. A new initiative with the International Senior Lawyers Programme was launched aimed at building the capacity of small law firm to service commercial transactions.

International relations

Commonwealth Lawyers Association: 18th Commonwealth Law Conference

The LSSA co-hosted the successful 18th Commonwealth Law Conference with the Commonwealth Lawyers Association (CLA) in Cape Town in April last year. This was the first time this prestigious international law conference was held in South Africa in the sixty-year history of Commonwealth law conferences, and we were delighted to be able to welcome some 1 000 judges, lawyers and academics from across the Commonwealth to our country. The conference featured more than 150 international speakers in 48 sessions with South African speakers featuring in every session. The LSSA ensured that the conference provided a platform to showcase the skill and views of our own practitioners. Keynote addresses were delivered by United Nations High

Commissioner for Human Rights, Navi Pillay, as well as our Chief Justice Mogoeng Mogoeng, former Constitutional Court Justice Kate O'Regan and Lord Judge, the Lord Chief Justice of England and Wales.

David Bekker has been elected to represent the LSSA on the CLA Council.

SADC Lawyers Association

We, together with a large delegation of South African attorneys, attended the 14th SADC Lawyers Association (SADCLA) Conference and AGM held from 2 to 3 August 2013 in Lilongwe, Malawi under the theme of 'Constitution-Making and Constitutionalism in the SADC Region: Opportunity or Illusion for Justice, Peace and Shared Values?'

During the two-day deliberations, SADC legal practitioners

- acknowledged that serious challenges continue to prevail in the region concerning closed legal reform processes; limitations on and interference with the separation of powers; and knowledge gaps within the legal profession concerning fundamental policy and legal developments in the region, which impede ongoing regional integration efforts;
- recognised that the recently ended and ongoing constitution-making and review processes in the region present viable opportunities for articulating shared values, and promoting justice and peace;
- re-committed to promoting and upholding the Rule of Law within the SADC region and beyond;
- re-ascribed to the common vision, belief and aspiration of promoting and protecting human rights and fundamental liberties without fear or favour;
- re-stated that independent, efficient and effective judiciaries and Bars are the bedrock of just, peaceful and democratic societies.

On the SADC Tribunal, delegates noted with concern that the continued suspension of the Tribunal impacts negatively on the rights of SADC citizens not only to access justice but to seek effective legal remedies. It was also noted that the resolution by the SADC Heads of State Summit in Maputo to bar non-state actors from accessing the Tribunal and to restrict applicable law to that provided only in the SADC Treaty and SADC Protocols should be strongly condemned by all well-meaning citizens. The limitations on the powers of the Tribunal impacts not only on human rights but also on the trends towards regional courts, the SADC integration agenda and investor confidence.

The LSSA continues to support the activities and initiatives

of the SADCLA. Our nominees to the SADCLA Council are Thoba Poyo-Dlwati and Max Boqwana.

International Bar Association

As Co-Chairpersons we attended the International Bar Association (IBA) Bar Leaders Conference and the IBA annual conference respectively.

The Bar Leaders Conference in Zurich in May 2013, attended by Co-Chairperson David Bekker, provided valuable insight into international trends on governance of the profession and steps taken by the various law societies and Bar associations all over the world to address the needs of their members. It was clear that our professional structures are in some ways ahead of international structures. It was quite clear that the world over the profession is struggling with government interference in the profession.

The absence of involvement of representatives from South Africa and Africa in many structures of the IBA is a concern and should be addressed to ensure that other jurisdictions are informed of our unique circumstances.

Co-Chairperson Kathleen Matolo-Dlepu attended the IBA annual conference in Boston. Percival Maseti represents the LSSA on the IBA Council.

Conclusion

We wish to thank the Management Committee (Manco) of the LSSA which meets on a monthly basis and our fellow Councillors who have supported us during our term as Co-Chairpersons.

We also wish to thank our families as well as our firms, Molefe Dlepu Incorporated and Cloete & Neveling Incorporated, for having allowed us the time away from other responsibilities to serve the profession throughout our term of office.

No Co-Chairperson can deal with all the challenges of the position without the extensive back office support of the competent, friendly and trained management and staff of the LSSA. We wish to thank each and every member of the management and staff for their input. It was noted and sincerely appreciated.

Kathleen Matolo-Dlepu and David Bekker

Co-Chairpersons, Law Society of South Africa



THE COUNCIL

3

'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
Kathleen Matolo-Dlepu*	Co-Chairperson	05, 07, 09, 11, 02
David Bekker*	Co-Chairperson	05, 07, 09, 11, 02
Koos Alberts ¹	CLS	07
Ettienne Barnard	CLS	05, 07, 09, 02
Dave Bennett	LSNP	05, 07, 09, 11, 02
Max Boqwana*	Nadel	07, 09, 11, 02
Llewelyn Curlewis	LSNP	05, 07, 09, 11, 02
David Geard	CLS	05, 07, 09, 11
Krish Govender*	Nadel	05, 07, 11, 02
Mohamed Husain	Nadel	02
Peter Horn*	CLS	05, 09, 11
Jan Janse van Rensburg	LSNP	05, 07, 09, 11, 02
Maake Kganyago	Nadel	07, 09, 11
Jan Maree	LSFS	05, 07, 09, 11, 02
Percival Maseti*	BLA	05, 09, 11, 02
Davies Mculu	BLA	05, 07, 09, 11, 02
Mimie Memka	BLA	05, 09
Ben Niehaus ²	CLS	11
Segopotje Sheila Mphahlele ³	Nadel	
Lesane Sesele ⁴	BLA	09
Praveen Sham*	KZNLS	05, 07, 09, 11, 02
Jan Stemmett*	LSNP	05, 07, 09, 11, 02

Key:

- 05 – May 2013
- 07 – July 2013
- 09 – September 2013
- 11 – November 2013
- 02 – February 2014
- BLA – Black Lawyers Association
- CLS – Cape Law Society
- KZNLS – KwaZulu-Natal Law Society
- LSFS – Law Society of the Free State
- LSNP – Law Society of the Northern Provinces
- Nadel – National Association of Democratic Lawyers

1. Mr Alberts was the alternate for Mr Horn at the July 2013 meeting.
2. Mr Niehaus was the alternate for Mr Barnard at the November 2013 meeting.
3. Ms Mphahlele was an acting judge on the North Gauteng High Court during the reporting period. She was appointed as a permanent judge at the end of 2013.
4. Mr Sesele was an acting judge during the reporting period.

* Member of the Management Committee (Manco).

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REPORT BY THE CHIEF EXECUTIVE OFFICER

Strategically, 2013 was a year of significance.

I wish to pay tribute to everyone in our leadership and operational structures who focused on the core objectives of the LSSA.

I was again impressed by the dynamism in our profession, in particular those we co-operate with. Many did more than expected, often without any compensation or formal recognition.

Hosting the 18th Commonwealth Law Conference in April 2013 made us proud. Both the presentations and the running of the conference were of an exceptional standard. More than a thousand lawyers from Commonwealth jurisdictions attended.

The submissions on the Legal Practice Bill have been another highlight. The LSSA is served by an exceptionally dedicated Task Team whose members have made several submissions to the Portfolio Committee on Justice and Constitutional Development and to the National Council of Provinces. We were pleased to note that several suggestions by the LSSA have been accepted.

The LLB summit, which focused on the quality of academic education, was a most successful event. Discussion was extremely constructive and resolutions were adopted unanimously. A Task Team will monitor the review of standards by the Council for Higher Education and make other necessary suggestions.

The circulation for the *De Rebus Digital* has increased from 2 398 to 16 859. The results of a reader survey in 2013 provide valuable guidance on how the journal can excel even further.

The LSSA has engaged very constructively with a diversity of stakeholders and others who impact on the role of the profession. The South African Revenue Service, the Road Accident Fund, the Health Professions Council and Competition Commission are but a few with whom the LSSA has engaged.

We worked well with the constituents of the LSSA. Regular meetings of the constituents' directors increased the value of interaction and inspired combined actions.

We enjoyed new useful exchanges with the profession in other jurisdictions, established relations and learned from experiences elsewhere.

Our involvement with the International Institute of Law Association Chief Executives has again proven to be of great value to the profession.

Our Legal Education and Development division (LEAD) has continued its service to attorneys and candidates attorneys. Attendance figures are satisfactory. The division cooperated with Irish Rule of Law and the International Senior Lawyers Project from the USA in maximising training opportunities in commercial law.

Reports will show that the LSSA performed well in terms of financial expectations.

I thank the management and staff members of the LSSA who went the extra mile despite being constrained in terms of resources. It remains our task to serve the profession while awaiting the introduction of a new dispensation.

Nic Swart

Chief Executive Officer



COMMUNICATION

Members: David Bekker (Chairperson), Hester Bezuidenhout, Max Boqwana, Gavin John, Rampela Mokoena, Azwifaneli Matodzi, Alida Obbes, Mapula Sedutla, Nic Swart and Barbara Whittle

The LSSA's Communication Committee cooperated with the Attorneys Fidelity Fund (AFF) to launch the Trustline initiative in September 2013. This was a public image campaign and designed to function on two levels:

- on the one hand the campaign invited trust in attorneys,
- on the other, it urged anyone to report suspected theft from trust accounts and other unethical behaviour by an attorney through Trustline.

From the side of the LSSA, the campaign was promoted to address the LSSA Council's serious concern over the increasing negative perception and publicity surrounding the attorneys' profession, particularly in the media, and through court judgments. In addition, the AFF has highlighted the escalation of claims being settled by the Fund for misappropriation of moneys by attorneys.

The National Wills Week was held in October 2013 and again drew a growing number of participating attorneys' firms from across the country. This initiative has become very popular with the public, media and other stakeholders such as municipalities and parastatals, and the extensive media coverage generates much-needed goodwill for the profession.

A new brochure for public information on 'Claiming from the Road Accident Fund: Why use an Attorney' was produced and is available in English, isiZulu, seSotho, Afrikaans and isiXhosa.

The Committee was working on launching the First Interview Scheme nationally. This scheme was previously available only for members of the public that had access to attorneys in Gauteng, Mpumalanga, North West and Limpopo. This initiative, together with the *pro bono* services provided by attorneys, will be publicised widely so that the social responsibility initiatives by the profession receive coverage, while providing greater access to justice for members of the public.

The LSSA's Communication Committee periodically reviews the communication-related risks on the LSSA's Risk Register.

The low-level risk of insufficient communication between LSSA and practitioners and between the LSSA and the public 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 pri-

ority information, such as that relating to the Legal Practice Bill. The LSSA Co-chairpersons issue regular press releases on relevant issues and responded in the print and broadcast media when required and also when invited to do so.

The negative – and often sensationalist – media reports, particularly on theft and misappropriation by practitioners, as well as slow and un-transparent disciplinary processes continue to be a high risk area for reputational damage for both the LSSA and the profession.

David Bekker,

Chairperson, Communication Committee

Barbara Whittle,

Communication Manager

DE REBUS

The SA Attorneys' Journal

Editorial Committee: Danie Olivier (Chairperson), Peter Horn, Sithembele Mgxaji 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 the sharing of opinions on matters relating to their profession.

In an effort to improve the quality of the journal, a survey was conducted in 2013 to gauge the journal's importance towards its readers. The survey results showed that the journal was important to its readers with over 93% of respondents rating the journal as excellent or good, and over 93% rating its content as well written, researched and presented. The survey also provided valuable information on readers' reading habits and preferences and their willingness to pay for the hard copy and digital versions.

Circulation

By December 2013, *De Rebus'* circulation was 24 987, which is made up of 18 754 attorneys, 4 096 candidate attorneys, 1 144 paying subscribers and 943 complimentary recipients, as well as the sale of individual copies.

Statistics indicate that *De Rebus* is read (mainly 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 *De Rebus Digital* 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 a large increase in the number of readers on the *De Rebus Digital* mailing list, which at the end of December consisted of 16 859 active subscribers (last year the list stood at 2 600). Apart from the sources mentioned above, *De Rebus Digital* is also available on the websites of 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. In January 2013 the *De Rebus Digital* portal also started providing a searchable archived section, which goes back to 2008.

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. 2013 was a fruitful year for *De Rebus*' advertising sales with a net income of R5 395 000 (unaudited figures) generated for both the journal and the classifieds supplement, which is an increase of R897 000 from the income of R4 498 000 generated in the previous year, and is also in excess of the budgeted amount of R4 411 000.

De Rebus and the classifieds supplement saved approximately R783 000 (unaudited figure) on its printing budget. This saving was mainly 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.

It is anticipated that, as a result of its increased advertising income and savings, *De Rebus* will have a surplus of R1.3 million, which will be rolled over into the 2014 budget.

Editorial matters

In the period under review, *De Rebus* reported on a number of noteworthy events that affected the profession. This included up-to-date developments in respect of the Legal Practice Bill (B20 of 2012) and the obituaries of legal legends – former President Nelson Rolihlahla Mandela and former

Chief Justices Arthur Chaskalson and Pius Langa. In addition, *De Rebus* carried topical reports on a number of landmark judgments that were handed down by the courts in 2013.

The increasing number of submitted articles saw the journal printing more than five feature articles per issue while able to stay within its budgeted 64 pages per issue. The journal also saw a submission of shorter, to-the-point articles as the word count limit was reduced to 2 000. The *De Rebus* team has been able to ensure that articles submitted are printed within three months of submission.

Feature articles in the journal during the period covered a variety of topics, such as garnishee and emoluments attachment orders, the Legal Practice Bill, acknowledgments of debt and the 18th Commonwealth Law Conference.

Kim Hawkey, who was Editor from February 2011, left in June 2013 to rejoin the Times Media Group. Her professionalism and the improvements she made to *De Rebus* during her tenure are greatly acknowledged.

Mapula Thebe was appointed Editor on 1 March 2014. During the absence of the news editor, while she was on maternity leave, the *De Rebus* staff was all given an opportunity to attend law-related events and write news articles. This ensured that the news section was self-generated and continued to cover topical articles.

After 38 years of contributing to the 'Recent articles and research' column, Prof Henk Delpont retired as author of the feature. The 'Recent articles' column was first published in July 1975, when *De Rebus* was still known as *De Rebus Procuratoriis* and printed in A5 format. His contribution to the journal in providing valuable information to readers is acknowledged.

2013 prizewinners

Two practitioners were recognised in 2013 for their contributions to *De Rebus* during 2012. Pretoria attorney Tshepo Confidence Mashile won the 2012 LexisNexis Prize for Legal Practitioners for the best article by a practising attorney published in *De Rebus* for his article titled 'Parental rights and responsibilities, guardianship and same-sex parents', published in 2012 (Aug) *DR* 32. The article unpacked the High Court judgment in *CM v NG* [2012] 3 All SA 104 (WCC), which dealt with guardianship and parental rights and responsibilities in the context of a same-sex relationship. Mr Mashile won an iPad and one year's free access of his choice to five online titles from LexisNexis.

In addition, candidate attorney Edrick Roux won the 2012 Juta Prize for Candidate Attorneys for his article titled 'Testators should be careful what they wish for', published in 2012 (Sept) *DR* 30. In his article, Mr Roux, who was a candidate

attorney at MacRobert Inc in Pretoria at the time he penned the article, considers the question of whether it is sufficient for testators attempting to protect a bequest to insert a clause in their will providing that, should the beneficiary be married in community of property, the benefit received will form part of a separate estate. He won book vouchers to the value of R8 500 from Juta.

The *De Rebus* team members are acknowledged for their excellent work during 2013 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.

Danie Olivier,

Chairperson, Editorial Committee

Mapula Thebe,

Editor

FINANCE

The financial report covers the period from January to December 2013. The audited financial statements were finalised after the 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
Jan van Rensburg (Vice Chairperson)	5
Vincent Faris (independent expert)	4
Mohamed Husain	4
Igna Klynsmith	5
Jan Maree	5
Roland Meyer	1
Matshego Ramagaga	1
Paul Ranamane	0

The LSSA Co-Chairpersons are *ex officio* members of ARC.

The above excludes the following meetings:

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

The Audit and Remuneration Committee (ARC) reports directly and independently to the LSSA Council.

The Internal Audit Sub-committee (IAS) is chaired by Igna Klynsmith and reports via ARC.

The Remuneration Sub-committee (Remco) is chaired by Mohamed Husain and reports via ARC.

The Budget Sub-committee is chaired by Jan van Rensburg 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 and the preparation of accurate financial statements. It makes recommendations for approval by Council and/or the Management Committee (Manco).

ARC dealt with a number of governance matters, including the recommendations of the Budget Sub-committee; IAS and Remco.

Over and above its normal activities during 2013, ARC

- increased its focus on cost containment and rationalisation of processes to increase savings further on budget due to capping by the Attorneys Fidelity Fund (AFF) on s 46(b) funding and the decision by the provincial law societies' to fix capitation levies at the same level since 2010;
- addressed the AFF Finance Committee and the AFF Board of Control on the budget capping to seek inflationary linked increases (CPI) for legal education activities and salaries. The AFF Board revised the capping policy and agreed that, should the LSSA experience compelling changed financial circumstances, and on good cause shown, depending on affordability, the Board may be approached to reconsider its stance;
- reviewed and recommended the salary benchmarking exercise that was commissioned by Remco;
- ensured that the financial policy of the LSSA is appropriate in terms of best-practice standards;
- via the IAS, ensured the Council evaluation process was completed by Council members; and
- reviewed and implemented the risks update from the IAS and reported on this to the LSSA Council.

A number of general finance matters were considered and referred to the LSSA Council.

ARC recommended the replacement of two members who did not attend the minimum agreed number of meetings.

Governance statement

The LSSA has carefully considered governance best practice and, taking into account the unique nature and activities of the LSSA, has agreed that for governance purposes any key principles of the King III Code on Corporate Governance not adopted by the LSSA will be explained.

The LSSA does not have a formal internal audit function, and during the course of reviews of risks and internal controls by the IAS, external auditors and management, the LSSA out-sources specific internal audit interventions on an ad hoc basis.

The external audit for 2013 included an IT audit to ensure IT risks are identified and appropriate mitigation measures are put in place.

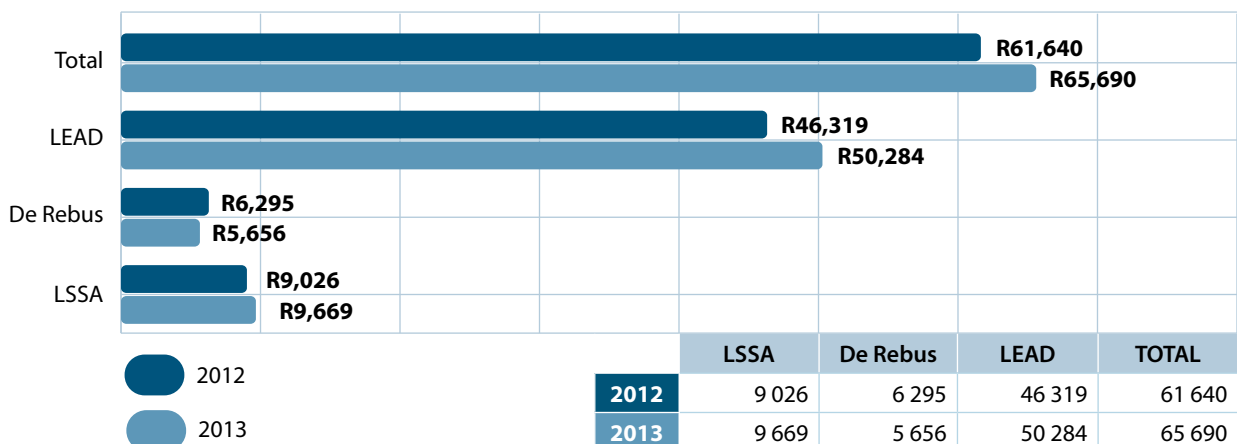
In view of the lack of a formal internal audit function, as per the prior year, an interim audit was undertaken to focus on the LSSA's control environment.

The LSSA risk management processes and register were enhanced, including the adoption and implementation of a risk calendar.

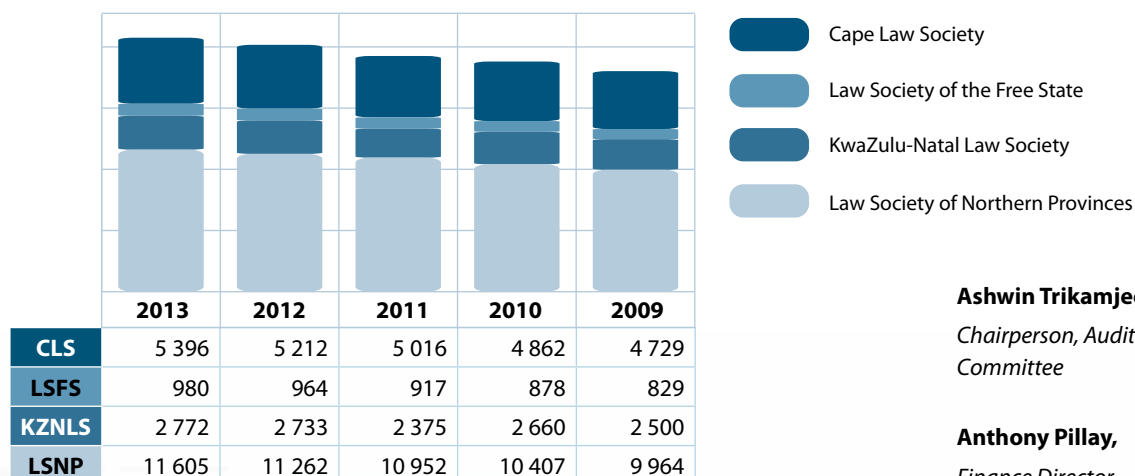
Main funding streams for the LSSA

The main funding streams for the LSSA are Attorneys Fidelity Fund honoraria in terms of s 46(b) of the Attorneys Act, 1979, and capitation levies from the four statutory provincial law societies.

AFF budget honoraria R000's



Capitation levies 5-year historical membership



Ashwin Trikamjee,

Chairperson, Audit and Remuneration Committee

Anthony Pillay,

Finance Director

HUMAN RESOURCES

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

This report covers the period 1 January to 31 December 2013. Various change management activities were embarked on during 2013. This was to ensure that staff is aware of the constant developments brought about by the Legal Practice Bill and change in general. Emphasis was placed on ensuring that employees learn how to prepare and cope with changes in the workplace.

Leadership development was prioritised. All junior managers and supervisors had a set development programme in 2013.

A salary benchmark survey was commissioned and conducted during the year. A detailed report was considered by the Remuneration Committee and its recommendations were approved by the LSSA Council.

The Employee Self-Service (ESS) system was introduced within the LSSA. The system allows employees to access their personal details on the VIP system without going through the Human Resources department. Employees can update their personal details, access their salary payslips and IRP5 forms, as well as submitting leave applications online. All staff members have been trained to use the system.

Human resources plan for 2014

Plans will be put in place to address the issue of succession within the organisation.

At least 40% of training in 2014 should be NQF-aligned to ensure that staff members are not just skilled in their craft, but are also qualified.

Continuing change management initiatives will be prioritised to ensure staff are equipped to deal with and manage change.

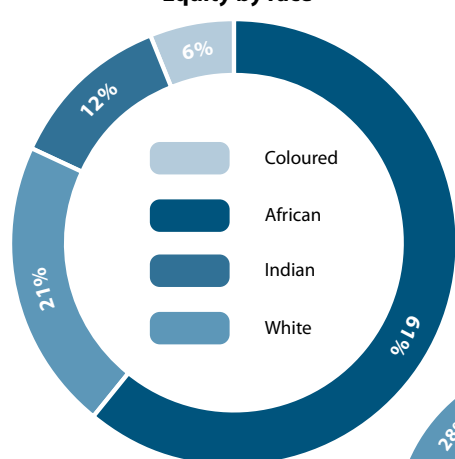
Rigorous training on human resources policy and procedures and guidelines is ongoing.

Staff numbers : 2013

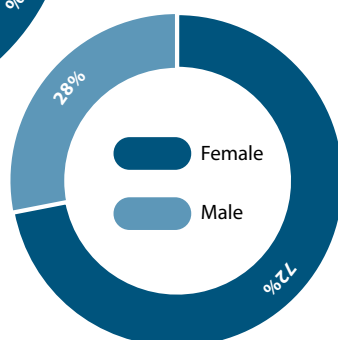
Permanent post resignations are replaced with fixed-term contracts

Consolidated staff numbers	Total as at 31/12/2012	Budget	Less Resignations	Add Appointments	Total as at 31/12/2013
LSSA	30	33	5	5	30
De Rebus	6	6	1	-	5
LEAD	55	57	10	8	53
Total: actual	91	96	16	13	88

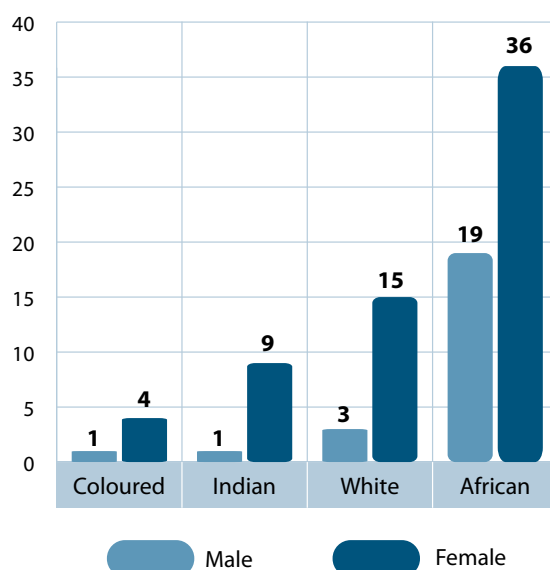
Equity by race



Equity by gender



Equity by gender and race



Staff movement

Appointments

Title	Name	Section	Post	Date	Equity
Mr	Phumelelani Mayongo	LEAD: Practice Management	Senior Training Coordinator	1 April 2013	A
Ms	Fahreen Kader	LEAD	Director (School for Legal Practice: Durban)	1 April 2013	I
Ms	Michelle Harypursat	LEAD	Administrator (School for Legal Practice: Johannesburg)	25 April 2013	C
Ms	Eugenia Sookane	LEAD	Administrator (School for Legal Practice: Bloemfontein)	1 June 2013	A
Ms	Julliet Mphasha	LEAD: Practice Management	Assistant Training Coordinator	1 June 2013	A
Ms	Boitumelo Maluleka	LEAD: Information Services	Admin Assistant / Reception Reliever	1 September 2013	A
Ms	Melanie Reddy	LEAD	Administrator (School for Legal Practice: Johannesburg)	4 September 2013	I
Mr	Norman Khudi	LEAD: Support Services	Admin Assistant / Reception Reliever	16 September 2013	A
Mr	Zimasa Mtwecu	LSSA Finance	Management Accountant	17 September 2013	A
Ms	Vijay Reddy	LSSA Finance	Senior Finance Officer	1 October 2013	I
Ms	Zaida Hoosen	LSSA Finance	Finance Officer	1 October 2013	I
Mr	Esau Mpila	LSSA Finance	Finance Officer	7 October 2013	A
Ms	Palesa Maphanga	LSSA Finance	Finance Officer	15 October 2013	A

Terminations

Title	Name	Section	Post	Date	Reason for Termination
Ms	Olga Shaba	Support Services	Cleaner	4 January 2013	End of Contract
Ms	Vaneetha Dhanjee	LEAD	Director (School for Legal Practice: Durban)	31 March 2013	Resigned
Ms	Thandeka Msiza	LEAD: Practice Management	Training Coordinator	1 April 2013	Dismissed
Mr	Jonathan Maseko	LEAD: Support Services	Administrator	11 April 2013	Dismissed
Ms	Marietjie van der Westhuizen	LEAD	Coordinator (School for Legal Practice: Bloemfontein)	30 April 2013	Resigned
Ms	Kim Hawkey	<i>De Rebus</i>	Editor	15 June 2013	Resigned
Ms	Joy Mosito	LEAD: Information Services	Admin Assistant / Reception Reliever	18 June 2013	Deceased
Ms	Thabiso Moyo	LSSA Finance	Finance Officer	1 July 2013	Resigned
Mr	Leonard Nyoni	LSSA Finance	Management Accountant	12 July 2013	Resigned
Ms	Michelle Harypursat	LEAD	Administrator (School for Legal Practice: Johannesburg)	31 July 2013	Resigned
Ms	Kamogelo Letsoalo	LSSA Finance	Finance Officer	16 August 2013	Resigned
Mr	Ashley Sibanda	LSSA IT	IT Support Technician	30 September 2013	Resigned
Ms	Belinda Povey	LEAD: Quality Assurance	Coordinator – Learning Resources	24 October 2013	Resigned
Ms	Jowie Ramaripa	LEAD: Quality Assurance	QA Assistant	31 October 2013	Resigned
Ms	Ntokozo Manzi	LEAD	Secretary to the Director of LEAD	31 October 2013	Resigned
Ms	Mokgadi Mabilo	LEAD	Director (School for Legal Practice: Polokwane)	19 December 2013	Resigned

Vacant positions as at 31 December 2013

- Director: School for Legal Practice: Polokwane
- IT Administrator
- IT Support Technician
- *De Rebus* Editor
- Coordinator – Learning Resources
- QA Assistant

Training

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

Training	Attendance by staff members
First aid	2
Accpac accounts payable and cashbook	1
Advanced computer training	1
Advanced sub-editing	1
Adobe Illustrator CS5 level 1	1
Arbitration	1
Assessor training	9
Certificate in business administration	1
Computer training	2
Confidence and assertiveness	1
Corporate governance	1
Course design	1
Customer care	1
Customised photography	3
Database training	2
Developing your leadership	1
Effective business and report writing	6
Effectively managing budgets	1
E-Leader training	3
E-Learning workshop	1
E-Learning and internet marketing	1
Electronic management system	2
E-mail marketing training	1
Emotional intelligence	15
English writing skills	6
Evacuation training	8
Event design workshop	3
Excel	5
Health and safety for representatives	5
Introduction to tax	1

Training	Attendance by staff members
Instructional design	3
Judicial training	1
Layout and graphic design	1
Leadership training	14
Magic makers for tea ladies	1
Maintenance	1
Marketing and branding	1
MCSE	1
Minute-taking	1
Moderator training	4
Office administration	5
Personal development	1
Premier advanced payroll (VIP)	1
Production training (e-learning)	1
Project management	3
Quality assurance	2
Qualification, standards and curriculum design	1
Reception training	1
Safety in the workplace	1
Short skills programme in computers	1
Time and stress management	8
Training in admin assistance skills	1
Training in catering	1
Train the trainer	1
Women in business	2
Total cost of training for 2013 was R347 993 across all departments.	

Nkhensane Nthane,
Human Resources Manager

LEGAL EDUCATION AND DEVELOPMENT

Members of the Standing Committee on Legal Education (SCLE): Raj Badal (Chairperson), Michelle Beatson, Dave Bennett, Taunyana Hlapolosa, Peter Horn, Jan Maree, Abe Mathebula, Janine Myburgh, Bulelwa Ndzondo, Ogilvie Ramoshaba, Nic Swart and Ashwin Trikamjee

The Legal Education and Development (LEAD) division of the LSSA 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 2013.
- 1 407 graduates attended the School for Legal Practice - more than ever before.
- Major progress has been made with regard to e-learning through the provision of fully online courses in bookkeeping, legal office administration and legal writing. Online customary law and company law courses were designed.
- A five-day course was designed to equip practitioners for court-annexed mediation.
- Tax and Insolvency courses were introduced.
- A very successful LLB Summit was held. The review of standards and the structure of the LLB degree is being undertaken as the result of the summit. LEAD coordinates the work of the Task Team.
- A decision was taken to arrange a summit on ethics.

Location

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

Finance

It appears that there has been a substantial saving on the 2013 budget without curtailing delivery of services. Savings are the result of an ongoing disciplined spending approach and discounts negotiated in respect of books purchased from publishers. Additional income came from SASSETA grants and the offering of courses for external entities. Schools also obtained sponsorships in terms of prizes and books.

Staff: Employment equity and quality of service

LEAD has made a significant input towards 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, Anriette Nel (from 27 January 2014), Anthony Matimbe, Barbara Makhanda, Belinda Povey (until 15 December 2013), Bettie Lubbe, Beverly Chueu, Boitumelo Maluleka (from 1 August 2013), Dodo Dubazane, Dianne Angelopulo, Gail Mason, Grace Mukuru, Jackson Ndlovu, Jowie Ramaripa, (until 31 October 2013), Julliet Mphasha (from 1 June 2013 until 7 January 2014), Kezzy Chauraya, Lolita Pieterse, Maria Mokwape, Martha Baloyi, Modi Vinger, Moses Sikombe (from 1 February 2014), Nic Swart, Nomfundo Mbinambina, Norman Khudi (from 16 August 2013), Ntokozo Manzi (until 31 October 2013), Nomsa Sethosa, Phumi Mayongo (from 1 April 2013), Phyllis Mphasha (from 1 September 2013), Ogilvie Ramoshaba, Ria Mahlangu, Selina Ramano, Sharon Lee, Stephne Pieterse, Tamara Sihlangu, Tasha Roestoff and William Khunou.

Bloemfontein: Willem Spangenberg, and Eugenia Sookane (from 1 June 2013)

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

Durban*: Fahreen Kader (from 1 April 2013), Nadira Sewnarain and Ntokozo Buthelezi

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

Johannesburg: Chandika Singh, Titus Mbatha, Connie Malinga, Melanie Reddy (from 4 September 2013) and Dorah Dumane

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

Pretoria: Ursula Hartzenberg, Zukiswa Kala and Ali Haji

Potchefstroom*: Marlene Steyn and Helanie Jonker

Port Elizabeth*: Lionel Lindoor and Anita Strydom.

LSSA-UNISA distance learning school: Dilshaad Gani, Parma Govender, Dorcas Hamido, Ntokozo Manzi (until October 2013) and Inida Nofotyela (from 27 January 2014).

*Coordinators at these centres are appointed by universities.

General developments in 2013

Commercial law training: Twenty attorneys received training in commercial law. As part of the programme, courses were presented in Pretoria by Irish and South African lawyers. The programme included a UNISA certificate course, a drafting course, a practical commercial course and mentorship. Irish Aid provided the funding for the training.

Mandatory practice management training: 715 attorneys attended the 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 Senior Manager of LEAD attended the SADC Lawyers Association's conference in Malawi in August 2013.

The Director attended the annual conference of the International Institute of Law Association Chief Executives (IILACE) in Berlin in October 2013.

A course in commercial law was offered in cooperation with the International Senior Lawyers Project (ISLP).

Papers delivered: The Director delivered a paper at the IILACE conference in Berlin.

SASSETA grants: The SASSETA made R308 000 available for training in 2013.

New business development (ACT): A total of 1 037 persons received training in 2013. The following courses were offered:

- Legal support staff training
- Business rescue course
- Other courses, for example, to the Department of Justice and Constitutional Development (women lawyers in seven provinces).

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

Ongoing education and development activities

Conveyancing and notarial training: 426 persons participated in 2013.

Seminars: 4 043 persons attended LEAD seminars in 2013. The following topics were offered:

- Civil mediation
- Constitutional law update
- Consumer Protection Act

- Conveyancing: New developments
- Conveyancing: Skills to make a difference
- Court-aligned mediation
- Debt collection
- Drafting of contracts
- Drafting of wills (emphasis on testamentary trusts)
- Evictions and rental recovery
- Insolvency law update
- Labour law update and CCMA appearances
- Legal interpretation
- Litigate to win
- Mediation: Train the trainer
- National Credit Act
- New Companies Act
- Pension law update
- Protection of Personal Information (POPI) Act
- Road Accident Fund Amendment Act
- Sectional Titles, township developments and bonds
- Tax Administration Act

Course for candidate attorneys (25 days): This course was offered at 10 centres throughout the country. Except for two, all courses are offered on university campuses. The course is offered part-time, full-time and in one centre after hours. 2 222 candidate attorneys attended in 2013.

Instructors and presenters involved in LEAD activities: More than 700 practitioners and other experts were involved in the activities of LEAD in 2013.

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. 1 407 persons attended the day, night and distance programmes in 2013.

Statistical information: LEAD collected demographic information on attorneys, candidate attorneys, law graduates and those attending LEAD training. This information gives a clear indication of how many persons study for and graduate with LLB degrees, and what the demographic trends are with regard to admission to, as well as practice and training in the attorneys' profession.

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

Selling of documentation: LEAD has sold a substantial quantity of its publications in hard copy and electronic format in 2013. These publications included practice manuals, e-PLT CDs, training DVDs and seminar material.

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.

Social responsibility at School for Legal Practice

The School for Legal Practice has decided to expose its students to community projects. The purpose of this is to sensitise students to the needs of the poor and vulnerable.

Cape Town School: A two-legged approach was adopted for students and staff to become involved in charity events in giving back to the community and programmes to provide legal aid. These included the following:

- A Mandela Day event when a children's home on the Cape flats was sponsored.
- Sunflower Bandana Day fundraiser.
- Initiated a new campaign called Law Leaders For Literacy to collect books to be distributed via the Bookery to local disadvantaged community libraries. This is a legacy project which all students will follow up on and support.
- Students represented UCT students in the UCT Tribunal.
- Continued participation in the Department of Justice and Constitutional Development's Wills Week.
- Continued discussion with the Constitutional Literacy and Service Project of South Africa (Clasi) for student participation.

East London School: In February 2013 the School received a letter from the Border Squash Development coaches making it aware that the children being coached in the development programme had no shoes and had to share racquets. The coaches were supplying the balls and the money for lights, as well as coaching for free. The School decided to donate proper squash shoes, balls and paid for a year's worth of lights. The School felt that by donating to a sporting code, it had enriched the children's lives from both health and mental aspects, and above all, the initiative contributed towards keeping the children off the streets.

Johannesburg School: The students do *pro bono* work at the Wits Law Clinic for a minimum of 10 hours per student per semester. This is good practice in conducting consultations and applying the law. Biannually students donate blood at the local blood services offices. As part of their social responsibility, students choose a charity and donate

clothing, canned and dry foods, shoes etc. This is done per semester. During 2013 students demonstrated with placards on rape awareness. This was reported in the local newspapers. Handbags with toiletries were donated to an abused women's shelter. Clothing and food were also donated during both semesters.

Durban School: The School and students organised two events in 2013, in the first and second semesters respectively. Both events were hosted at children's homes in Durban and Malvern. The first event in Durban was a birthday party attended by all the children who were provided with a meal and drinks, as well as a big bag of presents. The School students did activities with the children such as ball games, bubble blowing and face painting. The second event in Malvern was a stationery collection drive and an interaction session between School students and the children. Children were treated to snacks and activities.

Polokwane School: The School students participated in the CANSA Relay for Life at Peter Mokaba Stadium on 11 October 2013. The students donned court robes with pink posters: Lawyers Caring About Cancer. The robes were kindly provided by the Justice Centre: Polokwane and Maboku Mangena Attorneys sponsored the team entry. The event raised awareness and funding for cancer patients and research.

Potchefstroom School: In July 2013 the School students partnered with Anglo Gold and the NG Church Bult, Potchefstroom, to provide for two pre-schools in Ikageng, namely Little Soldiers and Thembelithle. The parents and children of both schools were entertained by the students, who engaged with the parents and children on children's rights. Donations were made in the form of blankets and first aid kits for the pre-schools, care packages and winter clothing for the children. Food was provided for the children and their parents for the day.

Bloemfontein School: The School's social responsibility initiative was linked to its *Pro Bono* Project and was held on 30 November 2013 as an outreach to a homeless shelter which houses young people, children and families. The event was held at the Bloemfontein Zoo and transport and food, as well as goody bags were provided. A magistrate was a motivational guest speaker and provided information on different government departments and how people could utilise the services provided to their advantage.

Pretoria School: Kingdom Life Children Centre in Saulsville, Pretoria, accommodates more than 100 orphaned children. The 2013 (1) Night School donated blankets to the centre. The 2013 (2) Night School bought toiletries which were donated to the Centre. The Day School cooked a meal for the Cross Roads Coffee House Shelter for people living on the street.

Port Elizabeth School: School students visited the Maranatha Shelter early in the year and took ownership of *pro bono* and social responsibility projects. The students arranged a successful golf day on 10 June 2013, the proceeds of which were divided between the Maranatha Shelter and Hillside High School.

Summary of attendance of all LEAD programmes

	2013	2012
School for Legal Practice	1 407	1 380
Conveyancing and notarial training	426	378
25-day courses for candidate attorneys	2 222	1 879
Diplomas and certificates (distance)	195	134
Practice management training	715	822
Practice development seminars	513	27
Seminars	4 043	5 388
Other training	1 318	1 800
<i>Irish commercial law</i>	20	
<i>Insolvency</i>	28	
<i>E-learning</i>	401	
<i>International Senior Lawyers Project</i>	42	
<i>Tax</i>	30	
<i>Support staff</i>	493	
<i>Business rescue</i>	304	
Other external training	240	
Total	11 079	11 808

Raj Badal,

Chairperson, Standing Committee on Legal Education

Nic Swart,

Director of Legal Education and Development

LSSA Management

Nic Swart	Chief Executive Officer and Director: Legal Education and Development
Lizette Burger	Manager: Professional Affairs
Zimasa Mtwecu	Management Accountant
Nkhensane Nthane	Manager: Human Resources
Anthony Pillay	Director: Finance
Ogilvie Ramoshaba	Senior Manager: Legal Education and Development
Mapula Thebe	Editor: <i>De Rebus</i>
Barbara Whittle	Manager: Communication

PROFESSIONAL AFFAIRS

The Professional Affairs department of the LSSA coordinates and supports the activities of its 29 specialist committees, as well as ad hoc committees and task teams, such as the Competition Committee and Legal Practice Bill Task Teams. We are also involved in task teams set up by external stakeholders, such as the Garnishee Task Team under the chairpersonship of the Credit Ombud.

2013 was a busy and challenging year. Over and above the normal committee meetings, we set up lines of communication and cooperation with several external stakeholders.

This year there was, inter alia, liaison with the Judge President of the Labour Court, the South African Revenue Service, the South African Board for Sheriffs, the Rules Board for Courts of Law, the Road Accident Fund, the Office of the Registrar of Deeds, the South African Reserve Bank, the Banking Association of South Africa, the South African Banking Risk Information Centre and various banks.

It is of paramount importance for the profession to engage with stakeholders where it is in the interest of the profession and/or the public, whose interests the profession has a duty to protect. The LSSA is now consistently being approached by other organisations for comment or input on a variety of issues.

In many instances, problems are resolved at committee level through close co-operation and engagement with stakeholders, before they could have a negative impact on the profession or the public.

The LSSA continued to make submissions on various pieces of legislation and policy documents through its committees. These comments can be accessed on the LSSA website.

The activities of the committees are reported on under 'Specialist Committee Reports' in this Annual Report.

I would like to express my sincere gratitude to our committee members for their immense contributions. Thank you for your continued support and guidance.

I also want to thank the Professional Affairs team, Kris Devan (Personal Assistant), Edward Kafesu (Committee Secretary), Andrew Sebapu (Legal Official) and Nonhlanhla Chanza (Parliamentary Liaison Officer).

Lizette Burger,

Professional Affairs Manager

ATTORNEYS DEVELOPMENT FUND

Board of Directors: Thoba Poyo-Dlwati (Chairperson), Michelle Beatson, David Bekker, Etienne Horn, Pumzile Majeke, the late Jeff Mathabatha, Segopotje Mphahlele (to be replaced as she has been appointed a Judge of the South Gauteng High Court) and Xolile Ntshulana

Summarised report for the period ended 31 December 2013

It gives me pleasure on behalf of the Board of Directors of the Attorneys Development Fund (ADF) to present the annual general meeting report to the LSSA and to the constituent members of the ADF. The aim of this report is to provide an overview of the activities of the ADF in 2013, and also highlight the strategic direction of the ADF.

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 to improve the public's access to justice and legal services, and also to improve access to the profession.

Governance

The ADF is an independent body registered as a Section 21 non-profit company managed by a Board of Directors made up of representatives from the constituent partners, and a Manager contracted for its day-to-day operational requirements.

Four Board meetings are scheduled each year and three of those meetings took place in 2013, namely on 21 February, 16 May and 16 August 2013. The fourth meeting scheduled for November 2013 was replaced by a management operational report of the activities of the last four months of the year.

For the Board to function, committees are constituted by members as follows:

Executive Committee: Ms T Poyo-Dlwati, D Bekker, E Horn, Ms S Mphahlele

Human Resources Committee: P Majeke (Chairperson), X Ntshulana and Ms T Poyo-Dlwati

Legal Committee: P Majeke (Chairperson), D Bekker, Ms S Mphahlele and Ms T Poyo-Dlwati

Loans Committee: Ms M Beatson (Chairperson), E Horn and L Godla

Investment/Finance Committee: E Horn (Chairperson), L Godla and P Sham

Procurement and Infrastructure Committee: X Ntshulana (Chairperson), P Sham and P Majeke

Operational model

The needs of each applying law firm (or proposed law firm) are assessed by the ADF Manager and, on completion of the assessment, a recommendation is sent to the Loans Committee for final assessment and approval. The entire Board is copied on each step for additional input and oversight.

On approval, the law firm is informed, and the procurement stage commences. This stage entails the engagement with suppliers upon which quotations are requested, evaluated and a recommendation sent to the Procurement Committee for final assessment and approval. The final stage constitutes delivery of the goods to the recipient law firm.

Should an application be declined for any reason, the applicant is informed of the reasons and is advised to re-apply once the disqualifying factor has been remedied.

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. The maximum amount that may be approved for resources is currently R40 000 (VAT included). This amount excludes a grant amount of R2 000 for books and 3G data or telephone to a maximum value of R150 per month.

Applicants are encouraged to nominate possible mentors and approach them before applying for assistance.

Cognisance has been taken of the fact that since the ADF lacks capacity to own and manage a mentorship capability coupled with avoiding duplication of effort, a strategic relationship has been forged with the LSSA LEAD division whereby requests for mentorship directed to the ADF will be channelled to LEAD.

Operational report

The ADF appointed a Manager, Mackenzie Mukansi, in July 2013. The Board ensured that this appointment took place by instituting the necessary recruitment processes.

In the first and second quarters of 2013, Anthony Pillay from the LSSA, supported by the Board and Ms Zaida Hoosen, managed the affairs and operations of the ADF.

Fourteen applications were received by the ADF between July and December 2013 and 11 of these were approved.

Various marketing initiatives were instituted by way of bulk e-mails, electronic brochures and, importantly, attending annual general meetings of the law societies and the Black Lawyers Association, provided the opportunity to interact with shareholders and prospective clients in members of the organised profession in general.

The future

The future of the ADF is depended on constant engagement with stakeholders and ensuring that its value proposition is relevant to the organised profession and continually evolves with the demand of law firms.

It is still the Board's steadfast view that the ADF should remain a going concern after the adoption of the Legal Practice Bill. The sustainability of the ADF is epitomised by the existence of a need and the vision of men and women that gave rise to this noble cause.

Constant communication through available media and platforms where legal practitioners plough their trade will ensure accessibility to a preferred business partner to the profession as a whole.

The relationships fostered through interactions with suppliers of legal wares and tools allow the ADF constant engage-

ment that seeks to broker valuable access to tools at reasonable cost, thereby ensuring an efficient legal force which results in a fair and equitable access to justice.

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.

Lastly, I would also like to thank our Manager who is working tirelessly to ensure that the ADF is known and delivers the much needed resources to the legal fraternity.

Thoba Poyo-Dlwati,

Chairperson of the Board of Directors, Attorneys Development Fund

LEGAL PROVIDENT FUND

Trustees: Andrew Stansfield (Chairperson), David Bekker, Thinus Grobler, Gavin John, Ilan Lax, Jacques Malan, Martha Mbhele and Anthony Pillay

Independent trustees: Vincent Faris, Edwin Letty and Michael Pinnock

The Legal Provident Fund's (LPF) function is to provide retirement and risk benefits to employees, partners and directors of law firms, including advocates' groups. The bulk of the membership comprises law firm support staff. 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. During 2014 the trustees will devise a structure for members to elect the board of trustees, in line with governance principles. Once this exercise has been completed the structure will be presented to the LSSA and thereafter to the Financial Services Board.

The LPF has managed to sustain its membership numbers during 2013, despite the ongoing effects of the economic slowdown. In industry terms, the LPF remains a medium-sized umbrella-type retirement fund, with approximately 450 participating employers and 4 500 members.

Administration of the LPF is outsourced to Alexander Forbes Financial Services. The trustees maintain oversight over service quality, assisted by the principal officer. The members continue to enjoy economies of scale with regard to the LPF cost structure; a review conducted in 2013 revealed that the cost per member is competitive in relation to the market.

Investment performance has been good in 2013, with most portfolio options delivering performance well in excess of inflation. An exception is the low-risk cash portfolio which delivered a return to match inflation. The portfolios are positioned in the mid to upper quartile in terms of performance when compared to other products in the market. It follows that the portfolio choices available to members remain appropriate. Investment performance is under constant scrutiny.

2013 was a busy year with the trustees meeting on three occasions for formal Board meetings. The Executive Committee met four times.

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. With the support of all stakeholders, the 2014 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: Daryl Burman (Chairperson), Fazel Bulbulia, Charles Cohen, Maribe Mamabolo, Jerome Mthembu, John O'Leary, Ebrahim Patelia, Sue Pillay and Letuba Mampuru

The Committee dealt with some very important issues during the course of the year.

On 16 May 2013, a joint meeting was held between the LSSA Committees for Alternative Dispute Resolution, Family Law, Gender, High Court, Magistrate's Court and Costs to discuss and prepare submissions to the Rules Board for Courts of Law on the Court-Annexed Mediation Rules. The deadline for comment was extremely short, but the Committees managed to submit comprehensive comments. The LSSA also made submissions regarding the standards and qualifications of mediators.

It is of concern that, notwithstanding indications that the rules would have been published around July 2013, we are still awaiting finalisation. It is uncertain as to when further developments will take place.

A forty-hour mediation course has in the meantime been developed to prepare attorneys for court-annexed mediation.

I am pleased to report that the mediation training course has provisionally been accredited by the Dispute Settlement Accreditation Council (DISAC). At this stage, DiSAC accredits training courses only provisionally, as they are in the process of finalising a more detailed assessment process.

The LSSA was invited to attend an experts' meeting on 12 August 2013, facilitated by the SA Law Reform Commission, to discuss proposed amendments to the international and domestic Arbitration Bills (as originally submitted to the Department of Justice and Constitutional Development in 2001). The meeting was chaired by Judge Hiemstra and attended by several stakeholders, including the General Council of the Bar. Charles Cohen represented the Committee. He drew particular attention to s 2 of the 1965 Arbitration Act,

which prohibits arbitration in any matrimonial cause or matter incidental to such cause, the intention being that arbitration should be permitted in matrimonial actions. This could potentially open new opportunities for attorneys to act as arbitrators in such cases.

There was lively debate and many constructive suggestions put forward regarding the proposed amendments. Thus far nothing further has been heard from the Commission.

The Committee also considered various other pieces of legislation and discussion documents, inter alia, the SA Law Reform Commission Discussion Paper 129 and the National Environmental Management Amendment Bill.

Daryl Burman,

Chairperson, Alternative Dispute Resolution Committee

COMPANY LAW COMMITTEE

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

The Company Law Committee operates on an ad hoc basis as and when considered necessary. The Committee did not have occasion to meet during the period covered by this report.

The Committee was invited to attend a symposium arranged by the Department of Trade and Industry on company law in March 2013. As Chairperson, I attended, inter alia, representing the LSSA. The symposium was attended by some 400 delegates. Two American lawyers gave keynote presentations. Philip Mindlin from Wachtell Lipton Rosen & Katz gave a fascinating presentation doing a detailed comparison between the US Bankruptcy Code and the business rescue procedure under the Companies Act, 2008, and Trevor Norwitz, from the same firm, dealt with the US experience on statutory mergers which was of great interest to South African practitioners who might undertake a statutory merger under s 113 of the Companies Act, 2008.

Unfortunately the time allowed to these two presenters was too short, which meant that there really was very little time for questions and a more detailed understanding of how the US dealt with both these novel introductions to South Africa. Prof Delport gave a very detailed exposition of what ss 113 and 116 of the South African Companies Act, 2008 provide, but again had to rush through his presentation. Prof Cassim did a very interesting presentation on company law and small business. There were also presentations by various CIPC officials, the Takeover Regulation Panel Director and the Tribunal Chairman. Some of the presentations (including those of the US lawyers) are available on the website of the DTI.

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 met to discuss the General Council of the Bar (GCB) exemption application to the Competition Commission in respect of the disciplinary rules applicable to advocates belonging to the voluntary bar associations of the GCB. The Committee recommended to the LSSA Council that the LSSA should support the exemption of certain rules, but that certain other rules are not necessary for the ordinary functioning of the legal profession and should, therefore, not be exempted. At the time of this report, the Commission had not yet ruled on the GCB's application.

A significant matter for the profession in 2013 was the joinder of the LSSA and the Competition Commission in the Competition Tribunal matter of the *Cape Law Society v Venter*. The matter arose from an application in the Western Cape High Court: Cape Town to strike the respondent, Mr Venter, from the roll of attorneys for allegedly engaging in touting for Road Accident Fund work. In his defence in that application, the respondent raised doubt as to whether the professional rules against touting were still enforceable in view of the Commission's rejection of the LSSA's exemption application relating to the disciplinary rules applicable to attorneys (which the Committee reported on in previous annual reports). As a result, the court referred to the Competition Tribunal the question as to whether or not the CLS's anti-touting rules and the CLS's finding against Mr Venter were prohibited in terms of the Competition Act 89 of 1998.

At the Competition Tribunal hearing, Mr Venter and the Competition Commission argued that the anti-touting rules restrict free competition between attorneys. The LSSA disagreed with this view and argued that the rules are in the form of public regulations which are necessary to ensure that the public is protected from unscrupulous attorneys. The LSSA also pointed out that the rules are approved by the Chief Justice and should, therefore, fall outside the prohibitions contained in the Competition Act. In the Tribunal's judgment, which was delivered on 14 October 2013, it was, however, held that professional rules are not immunised from scrutiny under anti-trust laws. Accordingly, all rules and decisions of the statutory law societies are subject to the provisions of s 4(1) of the Competition Act. It held that when it comes to rules relating to advertising, it is by no means obvious that the prevention of one form of marketing entails a substantial lessening or prevention of competition. Although advertising can be pro-competitive (as it can assist consumers to make more informed decisions), direct solicitation does not necessarily have these elements to it and may well act anti-competitively. The Competition authorities must, therefore, in a careful balancing exercise based on all the facts, decide which considerations weigh more.

The Tribunal found that Mr Venter did not present *prima facie* evidence that the CLS's anti-touting rule had prevented or significantly inhibited firms competing in the market for the provision of Road Accident Fund legal services. Accordingly, his application was dismissed. In passing, the Tribunal pointed out that there is a need for the LSSA and the Competition Commission to bring to certainty the fate of the LSSA's exemption application.

The Committee carefully considered this decision in a meeting and advised the LSSA Council that the matter was very limited in scope and evidence-specific, and one should, therefore, not be tempted to draw general inferences from it. However, it was important to have established that the law societies' professional rules cannot per se be regarded as a contravention of the Competition Act, and the situation of each rule will have to be decided on its own facts. This is significant for other disciplinary proceedings which the law societies may undertake against their members when the law societies' professional rules are breached.

In a meeting between the Competition Commission and the LSSA's Task Team – which was held subsequent to the *Venter* decision – at which the Committee was represented through its chairperson, it was agreed that the Commission would study the LSSA's new proposed Uniform Rules and engage with the profession to ensure that they are in line with competition principles. In the unlikely event that common ground cannot be found between the LSSA and the Commission on the wording of the new proposed rules, a new application for their exemption may have to be lodged in respect of those rules which the LSSA believes are necessary

for the ordinary functioning and maintenance of standards in the legal profession. Ideally, this will have to be considered together with the wording of the Legal Practice Bill, when it becomes law.

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

Paul Coetser,

Chairperson, Competition Law Committee

CONTINGENCY FEES COMMITTEE

Members: Poobie Govindasamy, Peppy Kekana, Howard Maimela, George van Niekerk, Jan van Rensburg, Henri van Rooyen and Yusuf Wadee

The law in relation to contingency fees was confirmed with the judgments of the full bench of the North Gauteng High Court: Pretoria in the matters of *South African Association of Personal Injury Lawyers v Minister of Justice and Constitutional Development* 2013 (2) SA 583 (GNP) and *De La Guerre v Ronald Bobroff & Partners Inc and Others* [2013] ZAGPPHC 33 respectively. The courts held that the only permissible contingency fee agreement is one in terms of the Contingency Fees Act 66 of 1997.

The notion of so-called common law contingency fee agreements was rejected. Both judgments were appealed. The appeal was dismissed by the Constitutional Court in February 2014.

The Committee had a meeting on 11 December 2013 after a hiatus of several years. It agreed that it is necessary to educate members of the profession about the requirements of the Contingency Fees Act. It is clear that none of the law societies has made rules as envisaged in s 6 of the Act

The Committee also recognised the need to review the way in which the Act works in practice and, secondly, the proper implementation of the Act, particularly to avoid abuse. The Committee noted that the South African Law Reform Commission would take at least eighteen months to make recommendations. The Committee will also look at similar regimes in other jurisdictions.

The Committee anticipates that further consideration should be given to matters other than personal injury cases where attorneys act on a contingency basis.

The Committee notes with regret the death of Cape Town attorney Clem Druker, who was chairperson of the Committee for a number of years.

George van Niekerk,

Contingency Fees Committee

COSTS COMMITTEE

Members: Asif Essa (Chairperson), Graham Bellairs, Strike Madiba, Lufuno Mathobo, Lunga Peter, Morné Scheepers, Jan van Rensburg and Charles Zietsman

The Costs Committee held a meeting on 9 September 2013, as well as a joint meeting with the High Court, Magistrate's Court and Family Law Committees on 4 November 2013.

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 a regular increase in the statutory tariffs and to consider the simplification of the current tariffs. Both these issues were considered during the year, although the Committee focused on the increase in the tariffs which was implemented on 15 November 2013.

The increase in the statutory tariffs fell short of what the Committee believed was adequate, having regard to the detailed motivations presented to the Rules Board for Courts of Law. The Committee resolved to engage with stakeholders in order to discuss issues of concern. It will also participate in the Legal Costs Indaba scheduled to be convened by the Rules Board in 2014.

It is clear that the increase in the statutory tariffs appears to be a challenge for the profession. There appears to be a misconception as to the purpose of statutory tariffs, which are primarily utilised for the recovery of costs by a successful party from an unsuccessful party. The disparity between attorney and client charges and the party and party tariff is a factor that inhibits access to justice.

The provisions in the Legal Practice Bill relating to costs require discussion and debate and it will be necessary to participate in any process, so as to ensure that the interests of the profession are considered and implemented.

The challenges to the profession are in the context of the Legal Practice Bill, further submissions for increases in the statutory tariffs and the simplification and harmonisation of the tariffs.

Asif Essa,

Chairperson, Costs Committee

CRIMINAL LAW AND PROCEDURE COMMITTEE

Members: William Booth (Chairperson), Llewelyn Curlewis, Johan Kramer, Strike Madiba and Sonti Maphoto

It is with some concern that I write this report as, despite attempts by many, we were not able to arrange a single meeting for this very important committee during the 2013 year.

A meeting was arranged on 18 November 2013 and I had set out the agenda for the meeting, only to be told at the last minute on Friday, 15 November 2013, late in the afternoon, that the meeting was being cancelled as we could not get a quorum of Committee members. Despite this, I suggested that a teleconference be held on 18 November, but this also did not materialise.

I would urge all members of this Committee to make a concerted effort to have at least two meetings in 2014.

At Cape Law Society level, I also chair the Criminal Law Committee. We have had numerous seminars. These included running a day workshop for candidate attorneys, as well as a workshop dealing with the Domestic Violence Act, 1998. At the Office of the Director of Public Prosecutions, Western Cape, a seminar was held with regard to the Sexual Offences and Related Matters Amendment Act, 2007 where various speakers, including a magistrate and a member of the Director of Public Prosecutions' Office, presented papers on the Act. This event was organised by the Cape Law Society.

At various meetings of the Cape committee throughout the year, members of the South African Police Legal Services were invited to participate in discussions, as were members of the Department of Correctional Services.

At a workshop/seminar held at the Cape Law Society annual general meeting in November 2013, members of the Department of Correctional Services, Judicial Inspectorate of Prisons and a lecturer from the University of the Western Cape spoke on and dealt with prisoners' rights and conditions in prisons. The thorny issue of parole was also touched on and the representation of prisoners and victims at parole hearings was discussed.

I am aware that the Law Society of the Northern Provinces has also invited members of the South African Police Service and other role players to attend their committee meetings.

It is suggested that the LSSA regularly engage the South African Police Service and Department of Correctional Services so that we can discuss issues of mutual concern.

Members of the various law societies attend Case Flow Man-

agement meetings in their various provinces where concerns of practitioners are raised.

At a recent meeting in Cape Town, I attended the launch of the Provincial Efficiency Enhancement Committee. This initiative was spearheaded by Chief Justice Mogoeng Mogoeng. It is on these committees that the LSSA can play a meaningful role in trying to solve the problems that beset the criminal justice system, including encouraging the more efficient running of all our courts.

William Booth,

Chairperson, Criminal Law and Procedure Committee

DECEASED ESTATES, TRUSTS AND PLANNING COMMITTEE

Members: Hussan Goga (Chairperson), David Bekker, Ceris Field, Mervyn Messias, Willie van der Westhuizen, Zenobia Wadee, Paul Hay, Lutendo Sigogo and Noxolo Maduba

The Deceased Estates, Trust and Planning Committee had two face-to-face meetings during the year under review. The first meeting was held on 22 February 2013 and the second on 21 November 2013.

The following are some of the issues that were considered and discussed by the Committee:

- The Paperless Estate Administration System (PEAS).
- The Paperless Estate Administration System for Trusts (PEAST).
- The directive issued by the Payments Association of South Africa prohibiting the issue of cheques exceeding the amount of R500 000.
- Computerised estates package.
- Nomination of executors in intestate estates.
- Increase in the remuneration and allowance of appraisers.
- The administration of trusts and resignation of trustees.
- SARS compliance and registration requirements in respect of deceased estates.

PEAS has been implemented at various Master's offices. This estate administration system is certainly not 'paperless' as

the name suggests. Documents have to be submitted to the Master's office in the usual manner. The information on the documents is then physically captured on the Master's system and after such capture has been completed all the documents are scanned and stored digitally. This is quite useful where the Master's file cannot be located. Ideally this should be replaced by an electronic system where there is an interface between the practitioner and the Master and all information and documents are uploaded at the click of a button. PEAST is a trust module currently being implemented at certain Master's offices only and its overall integrity has not yet been determined. The new application forms are available electronically at the following link <http://www.justice.gov.za/master/forms.html>

The establishment of Master's Liaison Committees by all the provincial law societies will soon be accomplished. This will be a significant milestone. The establishment of these committees will provide a platform to establish relationships and discuss operational issues with the Master. It will also allow for the performance levels of the various Master's offices to be measured and compared with each other in order to establish performance trends.

The Committee made written submissions to the South African Law Reform Commission on Discussion Paper 129 regarding the proposed amendments to the Wills Act 7 of 1953, the Administration of Estates Act 66 of 1965, the Intestate Succession Act 81 of 1987 and the Trust Property Control Act 57 of 1988.

The prevention and detection of forged wills is a major challenge and must be addressed in the proposed amendments to the Wills Act. It is submitted that the Wills Act should also be amended to provide for the compulsory fee disclosure information to a testator where a bank or other institution draws a will on behalf of such testator in which the bank or other institution or its nominee is appointed as the executor in the estate. The testator is entitled to be informed of the fee to be charged by the nominated executor to attend to the winding up of his/her estate in order to make an informed decision.

It is also submitted that the Intestate Succession Act should be amended for surviving parents to inherit where a deceased person is survived by a spouse or spouses or by both spouses and descendants. The parents of the deceased and a child of the deceased are both related to the deceased in the first degree. There appears to be no logical reason why a surviving parent should not inherit from his or her child in the first instance and should only inherit where the deceased is not survived by a spouse or a descendent. The exclusion of surviving parents to inherit at an old and vulnerable age is manifestly unfair.

The failure by the Department of Justice and Constitutional

Development to make appropriate amendments to the Administration of Estates Act still remains a matter of great concern.

No Chief Master's directives were issued during the year under review.

Hussan Goga,

Chairperson, Deceased Estates, Trusts and Planning Committee

E - LAW COMMITTEE

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

The Committee has remained in contact with the Department of Justice and Constitutional Development, the Office of the Chief Master and the Department of Rural Development and Land Reform as they move towards greater electronic interaction with the profession and others.

The Committee is now involved, together with the Property Law Committee, in the Department of Rural Affairs' Project Vulindlela, involving its e-Cadastre and, ultimately, electronic deeds registration.

We, together with the land survey profession, are the only groups now being consulted directly on the processes that will be used, although other stakeholders will be involved as and when necessary. We were able to influence the Department to set aside its initial proposals, which we believe would have been unworkable in practice. We have been asked to help guide it in the redesign of the process; some of us have spent some time with the developer and will be involved at intervals during the next year or so. We will be able to keep our profession updated about progress towards the E-Deeds Registration System and will work with LEAD to arrange training to ensure no practitioner is left behind.

Representatives from the Property Law Committee and this Committee will participate and are also needed to drive the parallel process of amending, repealing or adjusting statutes to allow for e-conveyancing. We will be working with the legal section of the Department in that regard.

We are also participating in the process as the Chief Master develops online interaction, and encouraging progress is already apparent since trusts can now be created quickly online, although, for the moment, one still needs to collect a hard copy once registered. The Chief Master is advancing e-government and we will see a lot more development, which we will remain involved in on behalf of the profession.

General e-competence is vital for practitioners, as e-government gathers momentum and we will continue to work with LEAD to empower lawyers in this regard. Knowledge of digital forensics is also important and we will be arranging seminars in this field.

The recently enacted Protection of Personal Information Act (POPI) will significantly affect lawyers and we arranged some workshops through LEAD which were presented by Mark Heyink during the latter part of 2013. We believe it will be necessary to repeat these workshops in 2014 once the regulations are published and the Information Commissioner has been appointed, as a new world of information management will begin in earnest.

The profession must also draft its own code of practice, rather than having a generic one thrust upon it, so we will have to work on that.

I as Chairperson and Sizwe Snail, Deputy Chairperson, have also been involved in advisory panels for the Department of Communications on e-commerce and cyber security. Mr Snail has now been appointed to the newly established National Cyber Security Committee, which will perform a vital role in future. It is encouraging to see that, as Mr Heyink was also appointed to this committee, the State is drawing on the reservoir of skilled and specialised e-practitioners within our profession.

Online authentication of users is becoming very important and we will be running on a proper digital certificate for the profession, in conjunction with local technology groups. It is now clear that the State will have to look to the profession to provide a suitable way to interact safely with it and others so the profession can set an example for all others. We have arranged participation by some State departments, as well as at least one lending institution, and will be running trials in Gauteng and KwaZulu-Natal, in conjunction with the South African Post Office and LawTrust.

We will continue to provide input as needed for the Attorneys Development Fund about improving practitioners' e-skills and use of technology and can help bring vendors into that process.

In addition, we will continue to work with LEAD to increase the profession's visibility in the local e-law environment, as well as to provide meaningful input to the general e-government processes which are finally beginning to gain momentum, with particular emphasis on e-filing and e-litigation.

Gavin McLachlan,

Chairperson, E-law Committee

ENVIRONMENTAL AFFAIRS COMMITTEE

Members: Catherine Warburton (Chairperson), Zukisani Bobotyana, Norman Brauteseth, Ilan Lax, Jerome Mthembu, Zoleka Ponoane 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 legal practitioners regarding environmental law.

The Committee met for its annual meeting on 23 July 2013 and discussed significant legislative developments such as the Draft Rules and Regulations for the Planning Profession, the pending National Environment Management Act (NEMA) amendments and the environmental amendments to the Mineral and Petroleum Resources Development Act. Recent environmental case law, and current environmental issues such as acid mine drainage and rhino poaching, were also discussed.

At the meeting, the Committee reaffirmed its commitment to commenting on key legislative developments relevant to environmental issues and responsibilities for drafting comments were allocated to particular members. The Committee also followed up on the establishment of environmental law committees at each of the provincial law societies, and reaffirmed its intention to arrange for a speaker at the LSSA annual general meeting on an environmental legal topic such as the Green Scorpions.

During the reporting period, the Committee prepared and submitted substantive written comments on the National Environmental Management Amendment Bill [B26–2013] the National Environmental Management: Air Quality Amendment Bill [B27–2013]; and the National Environmental Management: Protected Areas Amendment Bill [B28–2013].

Detailed comments on the Draft Rules and Regulations for the Planning Profession were also prepared and submitted.

Some of these comments can be viewed on the LSSA website (www.LSSA.org.za).

A representative of the Committee continued to serve on the Department of Water Affairs' Reference Group to provide input on behalf of the LSSA to the finalisation of the Waste Discharge Charge Strategy (WDCCS). This involvement will continue into 2014 or until the WDCCS has been implemented in pilot phase.

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), Butch van Blerk, Johan Fourie, Bedver Irving, Linda Magaxeni, Percival Maseti, Deirdré Milton and Ed Southey

Our Committee continues to grapple with ongoing ethical questions that confront the profession. These challenges increase with the pressure placed on the law societies by attorneys who draw a fine line between ethical and unethical conduct. Disciplinary actions by the law societies in the Cape and Gauteng are being challenged vigorously using competition law principles, among other arguments, to continue with dubious practices. These matters are far from finality as the Competition Commission is also drawn into these cases for the purpose of obtaining rulings in terms of competition legislation.

Over the course of the year under review, we have held one telephone conference and a full committee meeting was scheduled for 14 February 2014 to discuss many matters arising from the teleconference and related matters. 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 is steadfast.

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

- The practice of 'cold calling' under the guise of advertising continues to receive attention. The champertous practise of certain attorneys engaged in medical negligence claims is under discussion and is recognised as a source of concern. This practice lends itself to the potential abuse of members of the public, to the detriment of the reputation of the profession. At the same time, the need to increase access to justice for the indigent or those who may be unsuspecting victims of negligence by professional medical specialists and doctors, who are backed by powerful corporate lawyers and insurers, needs to be balanced in an honest, ethical and scrupulous manner without the claimant losing another 'leg' to the attorney and advocate.
- The relationship with the Competition Commission, which has been successfully developed by the LSSA, continues to strengthen and the debates around best ethical practices of lawyers and open-ended competition law principles continue. The competition authorities will support the attorneys' ethical standards and practices that protect citizens, provided they do not undermine fair competition. This is the challenge that all the parties must meet in the national interest of all our people.
- Discussions around the need for a national conference on ethics have been successful and a national summit on ethics organised under the auspices of LEAD and the CEO, Nic Swart, was due to be held at the end of February 2014. This

is linked to the discussions that emerged from a national conference on legal education and the inadequacies of the LLB degree, organised by the LSSA last year, where serious concerns were raised about the drop in ethical standards by lawyers and the lack of a proper teaching of examination courses or modules at university level. Our Committee will be involved fully in this summit. It is hoped that this summit will raise the debate around ethics and its importance to the profession and more especially to the public at large. Moreover, it is important to see the promotion of ethics within the SADC region through this conference.

- Contingency fees and the manner in which indigent clients are subjected to these controversial practises is a matter of ongoing concern.

The passing of the Legal Practice Bill, which is nearing the end of its arduous course, will give our profession the opportunity to address ethical rules and practices with fresh impetus via the Legal Practice Council.

In this regard, our recently appointed Deputy Minister of Justice and Constitutional Development lambasted the profession in his addresses around the country at the annual general meetings of various law societies and other fora late last year. It is clear that the Deputy Minister has set his sights on the unscrupulous conduct and exploitative practices of a section of the profession that result in losses for the poor and the unsuspecting. The consequential and slow processes to address complaints against attorneys via disciplinary procedures and the large number of unresolved complaints are among many of the matters that he has indicated will receive his attention. The Deputy Minister has highlighted

- the prohibitively high fees for legal services which prevents access to justice for all;
- the disciplinary procedures followed by the law societies with its perceptions of protectionism of its members;
- the lack of transparency around these processes;
- the cumbersome procedures for members of the public to lodge complaints, and
- the public's lack of faith and trust in the legal profession.

This must be welcomed in the best interests of the reputation of our profession. It is also an early reminder to all in the profession to work much to redeem the reputation of attorneys as a whole; otherwise the State might take a hand in protecting vulnerable members of the public.

There is much work to be done and the role of ethics within the profession and this Committee becomes more paramount as a result.

Krish Govender,
Chairperson, Ethics Committee

FAMILY LAW COMMITTEE

Members: Susan Abro (Chairperson), Zenobia du Toit, Deirdré Milton, Francois Mvundlela, Brian Segal, Nomawazi Shabangu and Zenobia Wadee

The Family Law Committee is, as always, involved with numerous and complex issues which affect the very fabric of society.

The Committee's agenda is dominated by the following issues:

- the manner in which matters are dealt with in the High Court with regard to interim maintenance, interim care and custody and interim contact, and interim contribution to costs, known as Rule 43 Applications;
- the Children's Act 38 of 2005 and amendments, and attending workshops with the Department of Social Development and the Department of Justice and Constitutional Development;
- the Regional Courts;
- issues of mediation and arbitration in relation to domestic matters;
- domestic violence;
- domestic partnership and cohabitation;
- Muslim marriages;
- the Traditional Courts Bills and traditional leaders;
- the South African Law Reform Commission's Project 25 review of legislation as administered by the Justice Department in relation to family law and marriage;
- attendance at and addressing international family law conferences and Miller Du Toit Cloete's Family Law Conference.

In addition, the Family Law and Gender Law Committees held joint meetings, where the following issues were raised:

- National Council against Gender Based Violence;
- domestic violence;
- Family and Gender Court;
- Muslim marriages;
- reduction of sentences on appeal in relation to violent crimes, such as rape;
- women empowerment and gender equality draft legislation;
- the 16 days of activism;
- gender representation on various bodies;
- co-operation with NGOs;
- co-operation between the South African Police Service (SAPS) and the LSSA.

LSSA cooperation with SAPS for domestic violence training

The Gender and Family Law Committees held a workshop with Provincial Commissioners, and relevant National Legal and Public Visibility SAPS officials in Johannesburg on 25 June 2013, where it was agreed that the LSSA Family and Gender Law Committees, together with SAPS, would embark on a joint initiative which aims to better support the victims of domestic violence, who report crimes against women and children to the SAPS.

The LSSA intends to strengthen the message that domestic violence will not be tolerated and to assist SAPS officers in dealing with victims of domestic violence.

The joint initiative envisages attorneys, with the support of relevant NGOs, supplementing and complementing the current training provided to members of SAPS, on how to deal with domestic violence matters appropriately, and with the victims of domestic violence who approach the SAPS to report acts of domestic violence. This will be done through sessions with SAPS station commanders, trainers and other senior police officials.

Those in leadership positions will then be best placed to sensitise those who deal with domestic violence issues at grass-roots level, where the victims report the abuse to the SAPS.

After the workshop on 25 June 2013, a joint press statement was issued by the LSSA and SAPS about the project to improve the treatment of domestic violence victims.

The SAPS recently reverted to the LSSA with potential dates for the training to commence. The committees will now try to move the project forward.

Amendment to the Arbitration Act

The LSSA's ADR, Family and Gender Law Committees made submissions to the South African Law Reform Commission on amendments to the Arbitration Act to make provision for arbitration in relation to family law to be permitted, which it currently prohibits. This will provide access to justice and will considerably shorten the length of time it takes for family law matters to come before the courts as well as reduce the costs of such matters.

Compulsory mediation

The LSSA's Family and Gender Law Committees, Alternative Dispute Resolution, High Court, Magistrate's Court and Costs Committees met on 16 May 2013 to deal with the draft rules for proposed compulsory mediation. Formal comments

were made to the Department of Justice and Constitutional Development.

Legal Practice Bill and Rules Board costs indaba

The LSSA's High Court, Magistrate's Court, Costs and Family Law Committees met on 4 November 2013 to discuss the fees aspects in the Legal Practice Bill as well as the proposed costs indaba mooted in order for the Rules Board for Courts of Law to determine the costs which should be charged by members of the profession. The indaba is scheduled for 22 February 2014 and members of the profession will be attending.

Rules Board: Rule 43 Applications for interim maintenance, care and custody, contact and contribution to costs

Members of this Committee met with the Rules Board on 8 November 2013 to make submissions with regard to the manner in which Rule 43 Applications should be dealt with. The meeting was positive and the Rules Board invited the Committee to make further submissions in writing after those discussions.

Susan Abro,

Chairperson, Family Law Committee

FINANCIAL INTELLIGENCE CENTRE ACT COMMITTEE

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

During the year the Committee was not very active as the provincial law societies, as statutory supervisory bodies, have been dealing directly with the Financial Intelligence Centre (FIC).

Under the auspices of the LSSA Legal Education and Development division (LEAD), committee member Prof Angela

Itzikowitz, together with an employee of the FIC, developed a training DVD. The DVD is available to be purchased from LEAD and, together with the LSSA FICA manual, is very useful.

The Financial Action Task Force (FATF) typology research report into money laundering and terrorist financing (ML/TF) was released in June 2013 and exposed the vulnerabilities of the legal profession to such funding. The Committee, via the LSSA, also participated in a survey by the FATF on effective supervision and enforcement.

The FATF is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF recommendations are recognised as the global anti-money laundering and counter-terrorist financing standard.

All the provincial law societies signed a Memorandum of Understanding with FIC in which the co-operation between FIC and the law societies as supervisory bodies is dealt with. The MoUs are a significant step for the attorneys' profession in South Africa as the provincial law societies have now taken on the additional mantle of supervisory bodies in terms of FICA, which increases their regulatory functions over attorneys. This is indicative of a commitment to professionalism and ethical behaviour among practising attorneys.

As the trust accounts of attorneys are vulnerable to the possibility of being used by criminal elements, particularly for the laundering of money, attorneys have been designated as reporting institutions in terms of the Financial Intelligence Centre Act 38 of 2001 (FICA) and are thus required to register with the FIC in terms of s 43B of FICA. Attorneys are obligated to report any business activity that appears to be suspicious. The LSSA has urged any attorney that has not registered with the FIC, to do so expeditiously.

David Bekker,

Chairperson, FICA Committee

GENDER COMMITTEE

Members: Martha Mbhele (Chairperson), Amanda Catto, Krisha Candasamy, Llewelyn Curlewis, Giusi Harper, Deirdré Milton, Khanyisa Mogale, Annabelle Mhpahlele, Janine Myburgh and Manette Strauss

The Committee had two face to face meetings and one teleconference for the year under review. The Committee, jointly with the Family Law Committee, initiated a partnership with the South African Police Service (SAPS) intended at providing support to the SAPS in the form of training. A workshop was held in June 2013 with senior SAPS officials to outline the programme of action. Workshops are aimed at sensitising police officers working at the front desks of practical challenges faced by victims of domestic violence.

We remain focused on supporting women legal practitioners and ensuring that women's practices are sustainable. The Committee, with the support of LEAD, is in a process of developing a leadership programme for senior women attorneys. The aim of the programme is to provide women lawyers with leadership and management skills to run their businesses professionally.

We welcome the initiative by Government of introducing the Women Empowerment and Gender Equality Bill, aimed at affirming the status of women and ensuring the economic emancipation of women.

Martha Mbhele,

Chairperson, Gender Committee

HIGH COURT COMMITTEE

Members: Adam Pitman (Chairperson), Graham Belairs, Anwar Bhayat, André Bloem, Asif Essa, Peter Horn, Umesh Jivan, Neil Joubert, Dan Matlapeng and Thabo Mhlokonya

It was a relatively uneventful year, although some far-reaching enactments were passed by the legislature, such as the Constitution 17th Amendment Act, 2012 and the Superior Courts Act, 2013.

The National Efficiency Enhancement Committee (NEEC) under the Chief Justice continued to take shape with a number of meetings during the year. Moreover, in November 2013, the Chief Justice launched Provincial Efficiency Enhancement Committees (PEECs) that will combine with any case-flow management committees already in operation at High

Court divisions to improve efficiency. These committees will feed back to the NEEC meetings, which are already taking place during the year.

It seems that provincial case-flow management meetings are working well in those provinces where they are implemented. It was suggested that members of the High Court Committee be allowed automatic seats on provincial case-flow management committees.

There seemed to be more legislation and issues that the Rules Board for Courts of Law required urgent comment on than in previous years.

Ensuring regular increases in the court tariff has always been a priority for our Committee. There were meetings with other committees during the year and the consensus is to simplify the tariff as much as possible and to ensure there are regular increases, if only to keep up with inflation. The Committee is of the view that Rule 43 Applications should have the normal tariff of an application applicable to them, and not the current nominal R300 maximum charge. A submission to this effect has been made to the Rules Board.

Sales in execution and the possible intervention by the Rules Board in the procedure carried out by the sheriffs seemed not to eventuate, despite much discussion and a number of meetings. However, it appears that the setting of a reserve price is still being investigated by the Rules Board.

A costs indaba facilitated by the Rules Board is scheduled for February 2014 to discuss legal costs and related matters. We have discussed security for costs in our Committee extensively and have kept the item on our agenda for 2014.

After discussion regarding sub-committees to assist the Judges President in acting appointments, it appears that the LSSA constituents have different criteria for identifying candidates for recommendation to the Judges President. It was agreed that the KwaZulu-Natal Law Society's approach be adopted in this regard.

Adam Pitman,

Chairperson, High Court Committee

IMMIGRATION AND REFUGEE LAW COMMITTEE

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

The year under review has been a particularly trying one for attorneys in the fields of immigration and refugee law. During this period, the Committee dealt with a host of difficult issues, which are covered elsewhere in this report.

The Committee met either in person or by way of teleconference on three occasions during 2013. In January 2013 the profession was faced by a far-reaching amendment to the South African Citizenship Act, which came into operation on the 3 January 2013. The question surrounding naturalisation of foreigners as South African citizens has become somewhat more complex and more difficult as a result of these amendments.

In February 2013, the Committee was asked as one of the stakeholders to make oral representations to the Parliamentary Portfolio Committee on Home Affairs on matters surrounding the formulation of a new immigration policy. Substantial input was given by the Committee, with William Kerfoot presenting issues surrounding refugee law and Chris Watters giving input on immigration policy issues. The process is ongoing and it is anticipated that 2014 will bring further consultation on the policy issue.

In April 2013 Chris Watters was invited to address the 18th Commonwealth Law Conference, held in Cape Town, on South African immigration law, and by all reports we, as a profession, can be proud of our colleague in this regard.

Another ongoing issue which was canvassed by the Committee related to the situation of the handling by our commercial banks of the bank accounts of foreign nationals who had, due to no fault of their own, become visa over-stayers. A meeting was, therefore, arranged between our Committee and the Banking Association of South Africa, as well as the South African Banking Risk Information Centre (SABRIC) to discuss these aspects. Our Committee took the stance that some kind of compassion and/or leniency should be exercised in respect of a foreign national who is on a current temporary residence permit, asylum seeker permit and/or refugee permit and who has applied timeously for an extension or variation thereof and, due to the Department of Home Affairs not being able to deal expeditiously with the application, the individuals concerned technically became overstayers. This then precipitated rather arbitrary action by the banks in freezing their bank accounts.

Representing the Banking Association at this meeting was Cas Coovadia, accompanied by Stuart Grobler, one of the legal compliance officers, as well as Kalyani Pillay of SABRIC. The importance of the matter dictated that a further meeting should take place at SABRIC, which would then involve a high-level representation from the Department of Home Affairs and the Financial Intelligence Centre (FIC). This meeting took place on the 18 September 2013. The LSSA delegation was led by LSSA Co-Chairperson Kathleen Matolo-Dlepu, and included myself as Committee chairperson. One of the factors that immediately became apparent at this meeting

was that the issues which had precipitated the freezing of bank accounts were essentially compliance issues; that FIC had an obligation to ensure compliance by the banks and had to be rigid in this regard. A solid distinction was drawn between matters falling under the jurisdiction of the Refugees Act and those falling under the Immigration Act.

In short, the commercial banks, through the Banking Association, have undertaken not to summarily and arbitrarily freeze any accounts, but rather to do a 'soft closure' on reasonable notice.

The Deputy Director General of the National Immigration Branch, Jackson McKay, who represented the Department of Home Affairs, indicated that strong endeavours will be made by his department to ensure that permitting was dealt with on a quicker and more efficient basis.

The practicalities at the coal face are, however, somewhat different and we as a profession continue to suffer under the mantle of poor and limited service delivery in many different aspects of immigration and refugee law. Despite indications by the Department of 'turnarounds' and continued attempts to provide better service delivery, the reality remains that this has simply not happened, despite massive expenditure on these aspects. In fact, the client services call centre of the Department of Home Affairs has collapsed and IT breakdowns within the department are precipitating further delays on an ongoing and regular basis. A further problem being experienced is the inconsistency in application of the Immigration Act and its Regulations at regional offices and, more specifically, at the South African Government's outside embassies, high commissions and consular missions.

On a positive note, members of our Committee and the profession have acquitted themselves well in the broadcast and print media and are carrying the flame of the organised legal profession high. I thank those who continue to contribute articles and contributions to the media for their continued efforts on behalf of all of us.

The Immigration Amendment Act 13 of 2011 – which has still not been implemented having been signed into law on 27 June 2011 – appears to be on the horizon in terms of implementation as the draft Immigration Regulations, which will empower the Amendment Act, have (at the time of writing of this report) reportedly been referred to the Immigration Advisory Board for advice, as is required in terms of the Act.

Lastly I wish to thank my fellow Committee members for their continued support and valued input. I also wish to thank Lizette Burger and Kris Devan of the LSSA for their sterling inputs and logistical assistance.

Julian Pokroy,

Chairperson, Immigration and Refugee Law Committee

INTELLECTUAL PROPERTY COMMITTEE

Members: Esmé du Plessis (Chairperson), Johnny Fian-deiro, Madoda Nxumalo, Jan-Hendrik Senekal, Lesane Sesele, Bennock Shabangu, Tshepo Shabangu, Waheeda Shreef and André van der Merwe

Constitution of the Committee

The Intellectual Property Committee (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 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 thereof 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 CIPC (Companies and Intellectual Property Commission), responsible for the registration and recordal of IP rights, is located in Pretoria, four Committee members as nominated are members of the Law Society of the Northern Provinces.

The Committee has been classified by the LSSA Council as a standing committee. This notwithstanding, the Committee decided that, in order to avoid unnecessary expenditure, meetings would be arranged only as and when required by circumstances or developments in the area of 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. Ms Shabangu, who has served on the Committee with distinction, has indicated that, due to work pressure, she was no longer available. The Committee noted this with regret, but expressed its sincere appreciation to Ms Shabangu for her contribution.

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 intellectual property law, or relevant to intellectual property, 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 property law, to draft comments on legal developments as and when deemed necessary and to submit these to Council for further action, or to recommend other appropriate action.

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

In 2012 the Committee made a submission to the Acting CEO of the LSSA, in which 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 intellectual property, 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.

Since no express response was received from the Council, the Committee again proposes that its mandate be extended to

- participate in, or undertake on behalf of the LSSA, aware-

ness initiatives in South Africa, eg at universities, of IP as an area of law and as a career option;

- attend, and report back to the Committee and the LSSA, 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, for example, 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 2013

The Committee compiled the following broad work plan for 2013:

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 National Policy on Intellectual Property for South Africa, which was being formulated by the Department of Trade and Industry (DTI);
- the review process of the IP legislation of South Africa that is being planned by the DTI;
- the proposed amendment of the Trade Marks Act, 1993 in order to implement the Madrid Protocol to which South Africa may accede;
- the proposed amendment of the Designs Act, 1993 in order to implement The Hague Agreement to which South Africa may 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; and
- 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 World Intellectual Property Organisation (WIPO) Development Agenda, particularly in countries on the African Continent; and
- the further developments in the World Trade Organisation (WTO) Doha Round of talks, particularly in regard to the access to medicines and the role of patents in that context.

Developments on national level

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

After a prolonged Parliamentary process, 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. However, the assent of the Bill was also challenged by opposition parties and the President referred the Bill back to Parliament for reconsideration.

As indicated above, the IP Laws Amendment Bill was controversial from the start. There was no agreement among IP lawyers on the approach of the Bill, that is, to protect TK by way of IP laws, and also the members of the Committee did not agree. Since I was also involved, in my capacity as Deputy Chairperson of the Statutory Advisory Committee on IP of the Minister of Trade and Industry, in participating in, and advising on, the drafting of the Bill, I decided to withdraw from any debates within the Committee and not to participate in any submissions made by the LSSA.

The Bill was re-submitted to the Parliamentary process; was eventually passed again by Parliament and assented to by the President, and was published in *Government Gazette* 37148 of 10 December 2013 as the IP Laws Amendment Act 28 of 2013.

In the course of the second Parliamentary process, a Private Member's Bill was introduced by Dr Wilmot James of the Democratic Alliance. This Bill on the Protection of Traditional Knowledge had an approach different from the IP Laws Amendment Bill, and sought to protect TK by way of a *sui generis* statute. Again I took the decision not to participate in the drafting of a submission for the LSSA. A submission was drafted by other Committee members and submitted to the Portfolio Committee.

It can be reported that the Private Member's Bill was rejected by the Portfolio Committee on 7 November 2013.

National Policy on IP: The DTI has been engaged for some years in the process of compiling a comprehensive instrument entitled National Policy on Intellectual Property of

South Africa. A first draft of the National Policy on IP was made available to the public at the IP Indaba organised by the Department in 2011 and Committee members were encouraged to submit comments.

A revised Draft National Policy on IP was published in *Government Gazette* 36816 of 4 September 2013 for further public comment. Only 30 days were allowed for comments to be submitted. Once the Draft Policy has been approved by Cabinet, it is expected to be opened up for further public consultation.

Developments on international level

Discussions continue to take place within the two most relevant international bodies in the area of intellectual property, namely, 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 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 legislation recently passed by (see above).

Meetings of the Committee

Only one meeting of the Committee was held on 24 May 2013. The Committee considered the following matters:

- Progress with the IP Laws Amendment Bill to protect TK.
- 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; a draft letter was prepared and handed to the LSSA Secretariat.
- The report on the work done by the Copyright Commission now that the report has become 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.
- 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; the Committee will keep track of these. The anticipated Bills include the

- Trade Marks Amendment Bill (to introduce the Madrid Protocol system);
- 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

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

The first joint meeting between accountants and auditors was held on 9 May 2013, whereas a meeting of the attorney members only was held on 24 October 2013, due to a number of accountants not being available.

As per the usual format and as a cost-savings exercise, the attorney members met immediately prior to the joint meeting, where matters raised by the provincial law societies and the

agenda of the Joint Attorneys' and Accountants' Committee meeting were discussed.

A subcommittee meeting on auditing standards was held between the Auditors and Attorneys Trust Account Task Group on 18 November 2013, where the proposed guide for engagements on attorneys' trust accounts and the comments received were comprehensively discussed.

The purpose of the Joint Committee is to facilitate interaction and cooperation between the South African Institute of Chartered Accountants (SAICA), the Independent Regulatory Board for Auditors (IRBA), the Attorneys Fidelity Fund (AFF), the Law Society of South Africa (LSSA) and provincial law societies, as well as other stakeholders.

The potential risk attached to Customer Foreign Currency accounts is continuously being discussed as regards management of this by the AFF. The application form for a Fidelity Fund certificate was recently amended to add a field for trust balances designated in foreign currency. The form will become operative with effect from 2015 as a possible means to qualify the risk exposure. It has been proposed that the annual trust audit reports must also include trust balances designated in foreign currency.

After much discussion, the use of cellphone banking by practising attorneys has been strongly discouraged due to safety and risk issues.

A non-binding opinion was requested from the Companies and Intellectual Property Commission (CIPC) as to whether reg 28(2)(a) of the Companies Act, 2008 applies to incorporated practices of attorneys whose primary activity is not to hold assets in a fiduciary capacity. It is quite different if an incorporated attorneys' practice is running an investment practice.

Regulation 28(2)(a) requires companies to have their annual financial statements audited if, in the ordinary course of their primary activities, they hold assets in a fiduciary capacity for persons who are not related to the company, and the aggregate value of such assets held at any time during the financial year exceeds R5 000 000.

While the CIPC has agreed that assets held by a firm of attorneys in its trust account are held in a fiduciary capacity, it was not convinced that the operation of the trust account per se is in the ordinary course of the attorney's primary activities.

The CIPC is also of the view that the existence of the Attorneys Act and the rules passed in accordance therewith, would have been clearly accorded recognition, so as to avoid unnecessary duplication of regulatory measures.

The termination of the Reform Audit Support System (RASS) programme was communicated to the accountants. Jan de

Beer of the AFF's Inspectorate Programme has been invited to attend Committee meetings in 2014.

Iqbal Ganie,

Chairperson, Joint Attorneys' and Accountants' Committee

JOINT LSSA/AFF GATS COMMITTEE

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

Constitution of the Committee

The GATS Committee was initially created by the LSSA in 2002 to conduct a thorough study of the General Agreement on Trade in Services (GATS) of the World Trade Organisation (WTO), and to advise the LSSA Council and Government (through the Department of Trade and Industry) for purposes of WTO ministerial meetings.

Since then the Committee has become a joint LSSA/Attorneys Fidelity Fund Committee and has also incorporated members of the LSSA's Foreign Qualifications Committee. 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. The Committee's 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.

Furthermore, with the advancement of the Legal Practice Bill and its provisions for practice rights to be granted to foreign lawyers, the requests for advice and guidance have increased in number and in diversity of source. However, a mandate to deal with the Legal Practice Bill was not formally delegated to the GATS Committee.

Both the Department of Trade and Industry (DTI) and the Department of Justice and Constitutional Development, as well as the General Bar Council (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 profes-

sional services of the GCB. Representatives of these bodies would be invited to attend meetings, as and when required.

Broad mandate

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

- to make a study of the GATS agreement of the World Trade Organisation (WTO);
- to determine and monitor the progress by the DTI in preparing for, in formulating a position in regard to, and in presenting such position in the course of the negotiations regarding GATS (insofar as it applies to legal services) in the context of the WTO negotiations;
- to meet with representatives of DTI and other government departments (such as the Department of Justice and Constitutional Development) and other role players (such as the GCB), and to participate in the formulation of an official South African position in regard to legal services;
- to study the requests for commitments and concessions by South Africa regarding the rendering of legal services received from other countries, and the offers of commitments made to South Africa by other countries in the area of legal services;
- with the Ad Hoc Committee on Foreign Qualifications, to consider requests from foreign governments and/or persons or societies for the recognition of foreign qualifications for purposes of exemption under the Attorneys Act, 1979; and
- to report to the LSSA on these matters.

Extended mandate

The LSSA Council considered the issue of cross-border practice rights in the 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. A full report was submitted to the LSSA Council in 2012.

In addition, as the Legal Practice Bill advanced in its Parliamentary process, it became clear that the Bill included several provisions relevant to the granting of practising rights to, and the rendering of legal services by, foreign lawyers. These provisions attracted several enquiries, directed to me, from Government departments requesting advice and assis-

tance. Although I dealt with these in my personal capacity, I adhered throughout to the principles that have emerged from GATS Committee positions as set out in the past.

Activities of the Committee

In view of the fact that little has happened in recent years on the international WTO front which impacted on GATS and legal services, the Committee agreed during 2013 to monitor the progress of two matters and to act if and when required to do so:

- the progress of the Legal Practice Bill and the granting of practice rights to foreign lawyers; and
- the progress with the provision of cross-border practice rights with SADC.

Work outline for 2013

The LSSA requested all committees to submit a broad work plan for 2013. The GATS Committee submitted the following broad outlines:

- To continue to monitor developments in the WTO negotiations in so far as they impact on the provision of legal services and are relevant to South Africa.
- 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, namely to make use of the assessment model as applied in the Recognition of Foreign Legal Qualifications and Practice Act no 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, if this was required.
- To assist the LSSA/AFF in promoting acceptance and implementation of the model in South Africa and in the other SADC countries.

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.

Meetings during 2013

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 will take note of discussions in regard to GATS within the International Bar Association.

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 matter of the Legal Practice Bill. The Committee will have to analyse and assess the provisions regarding practising rights to be granted to foreign lawyers, to ensure that the recognition of foreign qualifications and the access to local practice for foreign practitioners, and other aspects impacting on domestic practice (such as Fidelity Fund cover), are dealt with adequately and appropriately.

Finally, as progress is made with the issue of cross-border practice rights for lawyers within the SADC region, the Committee will address issues of relevance to the mandate of the Committee.

Esmé du Plessis,

Chairperson, Joint Committee on the General Agreement on Trade in Services (GATS)

LABOUR LAW COMMITTEE

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

The Committee held three meetings during 2013.

Business of the committee

The Committee liaised with the Labour Court and met with the Judge President of the Labour Court, Judge Basheer Waglay.

The Judge President indicated that he would be prepared to make a senior Judge available to assist with training of attorneys in respect of Labour Court matters. The LSSA's Director

of Legal Education and Development (LEAD), Nic Swart, met with the Judge President and they agreed to work on a plan to offer training in labour law through LEAD.

On 21 January 2014 the Committee again had a brief meeting with the Judge President, who indicated that he was awaiting receipt of the LEAD training programme.

The Judge President again mentioned the backlog in dealing with cases. He requested practitioners to make themselves available to serve on the Labour Court in an acting capacity and on a *pro bono* basis during the long recess to assist in this regard.

Meeting with the director of the CCMA

The Committee had an exploratory meeting with the Director of the Commission for Conciliation Mediation and Arbitration (CCMA) and follow-up meetings will be held in 2014.

Meeting with SASLAW

On 21 January 2014 the committee met with representatives of the South African Society for Labour Law (SASLAW). SASLAW explained its *pro bono* project that it is running at the Labour Courts to assist indigent litigants.

A tripartite meeting of the Labour Law Committee, the LSSA's *Pro Bono* Committee and SASLAW was to be held towards the end of February 2014 to explore common issue and issues regarding *pro bono*. It was resolved that SASLAW should introduce itself to the LSSA, clearly explaining its role.

LSNP test case regarding legal representations at the CCMA

Law Society of the Northern Provinces (LSNP) President, Dr Llewelyn Curlewis, was invited to address the Committee on the Constitutional Court's decision to dismiss the LSNP's application for leave to appeal a Supreme Court of Appeal (SCA) judgment. The SCA had overturned a judgment by the North Gauteng High Court that found the CCMA's r 25(1)(c) that limits legal representation to be unconstitutional

Seminar topics

A recommendation would be made to LEAD to present seminars on the amendments to the Labour Relations Act throughout the country.

Jerome Mthembu,

Chairperson, Labour Law Committee

LIQUOR LAW COMMITTEE

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

It is clear to the Committee that there are a number of teething problems with the various provincial Liquor Acts that are already in place in the Western Cape, Northern Cape, Eastern Cape, Free State and Gauteng.

It seems that the Eastern Cape and Gauteng Liquor Boards improved their administration, which cannot be said of the other liquor boards, including the National Liquor Board. It is reported that the Eastern Cape Liquor Board amended its prescribed forms without following the correct procedures. Its interpretation of s 20 of its Act in respect of the transfer of licences and its advice and/or information to the public is also surprising.

The Free State Liquor Board is working hard to try and improve its administration, but its turnaround time is still more than five months to complete an application from date of lodgment. There is still a backlog of applications to be dealt with. After numerous meetings with various role players, amendments to the Act were drafted, but it is uncertain as to when these amendments will be published for comment.

The Western Cape Liquor Board has not made much progress in dealing with the backlog of applications lodged under the 1989 Liquor Act. The administrative systems that have been put in place to deal with applications lodged in terms of the new Western Cape Liquor Act are, however, a big improvement.

In Gauteng, the Gauteng Liquor Regulations on Shebeen Licences, 2012 came into effect on 1 March 2013. In terms of these regulations, existing shebeen license holders had until 28 February 2014 to re-apply to be able to continue to trade until such time as a decision has been made regarding their applications. The drafting of a new concept Liquor Act for Gauteng is in process.

The provinces where the 1989 Liquor Act is still applicable have difficulties in sorting out their administration and the turnaround time for applications is in some cases measured in years. The Committee will do its best to address this situation.

The Regulations of the National Liquor Act 59 of 2003 have been amended, and the amendments came into effect on 3 December 2013. These amendments are significant and deal with the lodgment of applications, the preparation thereof, the consideration of applications, trading hours and certain

transitional arrangements. On 4 December 2013, the Department of Trade and Industry also published, in terms of the National Liquor Act, National Liquor Norms and Standards for comment. The purpose of these is to ensure that liquor legislation and practises in the Republic are harmonised; to facilitate the effective enforcement of Liquor Laws by various enforcement authorities; to ensure consistency in the application of liquor laws; and to reduce the social economic and other cost of alcohol abuse by reducing access to and the availability of liquor. These norms and standards will also ensure certainty on how laws are implemented by various liquor authorities in the provinces and all provincial liquor legislation should be harmonised with the Liquor Act, 2003. The 1989 Liquor Act still in place in some provinces was to be repealed and replaced by new provincial legislation by the end of the 2013/2014 financial year. These norms and standards address, among other aspects, age verification, the sale and supply of liquor to minors, intoxicated persons and pregnant women; the payment of income tax; safety at liquor premises; noise and nuisance pollution; record keeping and uniform trading hours.

Kobus Burger,

Chairperson, Liquor Law Committee

MAGISTRATE'S COURT COMMITTEE

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

The Committee met on three occasions in 2013 and considered lengthy agendas. The year was a busy one for the Committee and the main issues dealt with are set out below.

Emoluments attachment orders

Criticism of the current emoluments attachment order processes was received from National Treasury and it was clear that it was lobbying for the Department of Justice and Constitutional Development to repeal the relevant provisions in the Magistrate's Court Act providing for emoluments attachment orders. Without emoluments attachment orders, the debt-collection process will become toothless. We, therefore, arranged for attorneys to participate in meetings of a task team of debt collectors and other industry stakeholders, who then formulated a code of conduct for debt collectors and the use of emoluments attachment orders. Meetings

were also held with National Treasury, which now appears to have recognised that emoluments attachment orders are necessary, but that it is their abuse which must be stopped. Written submissions on the subject were made by the LSSA to the Justice Department and the efforts of Jan van Rensburg and Jacques Tarica are gratefully acknowledged. In addition to the formulation of the representations to the Justice Department, Mr Tarica attended many meetings of the task team on behalf of the LSSA.

Interaction with the Rules Board for Courts of Law

A good line of communication has been established with the Rules Board. Not only do I, as Committee chairperson, sit as a member of the Rules Board, but correspondence dealing with proposed amendments to the rules and comments made in respect of proposals received from the Board are submitted to them on a regular basis. One of the submissions made to the Rules Board was that Rule 58, dealing with interim access and contributions to costs, should be treated as a full-scale application with founding, answering and replying papers and that an ordinary application tariff should apply to such applications.

In addition, representatives of the Magistrate's Court Committee attended a sales in execution indaba convened by the Rules Board, which was held in March 2013 and during which important topics, such as the terms and conditions of sale, the setting of reserve prices and the issue of private auctioneers, were debated. The content of this debate is still a subject of deliberation by the Rules Board.

A further indaba has been arranged by the Rules Board which committee members will attend. It is to deal with the issue of legal costs, and cover subjects such as tariffs, the simplification and uniformity of tariffs, costs and access to justice. The Committee has made a written submission to the Rules Board in relation to the various topics.

Other matters

Another issue on which representation was made to the Justice Department is the increase of the monetary jurisdiction of the Regional Court and the fact that the Regional Court appears to have jurisdiction only in respect of claims in excess of R100 000. Thus, if a party has an additional claim or counterclaim of less than R100 000, it cannot be heard in the Regional Court and will have to be dealt with in the district court.

Comments and submissions have been made to the Department of Trade and Industry in respect of the amendments to the National Credit Act, which have been introduced largely to overcome the many problems that recent case law has

brought to light. The Committee also made representations for the redrafting of the Act's poorly worded regulations.

Extracts of the Magistrate's Court survey conducted among attorneys have been submitted to the National Efficiency Enhancement Committee that has been set up by the Chief Justice to look into the efficiency of the Magistrates' Courts and High Courts countrywide. Hopefully the comments in the report will be accepted and used to improve the efficiency of the courts.

The Committee also deals with queries of a general nature. Colleagues are welcome to submit such queries through their respective provincial law societies for the Committee's consideration.

Graham Bellairs,

Chairperson, Magistrate's Court Committee

PERSONAL INJURY COMMITTEE

Members: Jacqui Sohn (Chairperson), Jan Maree, TV Matsepe, Azwifaneli Matodzi and Bennock Shabangu

Road Accident Fund Amendment Act 2005 and the Regulations

In 2013 the Road Accident Fund (the RAF) prosecuted an appeal in the Supreme Court of Appeal against the judgment of Satchwell J in the case of *MM Van Zyl v Road Accident Fund* [case number 34299/2009], which was decided in the South Gauteng High Court on 11 June 2012. In view of the significant issues of public interest raised on appeal, as well as the far-reaching impact that a successful appeal would have for the profession, the LSSA resolved to intervene as *amicus curiae*.

The court a quo had dismissed a special plea of prescription raised by the RAF based on the fact that the plaintiff had lodged an RAF 4 Serious Injury Assessment Report more than three years after the accident giving rise to the claim had taken place. In doing so the court had endorsed the opinion expressed by Prof H B Kloppe:

'who has suggested that the provisions of sub regulation 3(3)(b)(i) indicates that the report can be lodged at any time before a claim has prescribed – 'indicating the extended periods that follow on the lodging of a claim' ie three years extended by two years (on lodgement of a claim).Once a claim which complies with the provisions of section 24 has

been lodged within the time period stipulated in section 23(1) ie three years after this accident, then a further period of two years elapses before the claim prescribes. During the initial period and the extended two year periods there is no reason why substantiating documents such as the 'serious injury assessment report' may not be submitted.'

In its initial argument presented in the court a quo, the RAF submitted that the general damages component of a claim 'prescribed' if the RAF 4 had not been lodged within the same time periods as applied to a RAF 1 Form. However, on appeal, the RAF conceded that there was one, indivisible claim and that once a RAF 1 had been lodged, s 24 as read with s 23, had been complied with, but contended that the claim for non pecuniary loss (general damages) had become time barred and thus unenforceable in terms of reg 3(3)(b)(i) as read with (ii).

The LSSA argued, firstly, that there was an alternative interpretation to reg 3(3)(b)(i) which would render the time for lodgement of the RAF 4 Serious Injury Assessment Report open ended, so that its lodgement would be no different to any other expert report filed in a claim, and further submitted that, insofar as reg 3(3)(b)(ii) was inconsistent with this, it was contrary to the provisions and purposes of the Act and accordingly ultra vires the empowering provision in the Act, and should accordingly be declared invalid.

In this regard the remarks made by Satchwell J in the judgment of the court a quo 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.'

Following the filing of the applications to intervene, the hearing of the appeal which had been set down for argument on 16 September 2013, was postponed by the Supreme Court of Appeal for hearing in 2014. On 30 October 2013 the RAF served a notice of withdrawal of its appeal, thus leaving the judgment of the court a quo intact.

It is important, however, to note that in terms of the judgment of the court a quo, a RAF 4 Serious Injury Assessment Reports has to be lodged within five years of the date of accident giving rise to the claim, provided that a RAF 1 Form has been lodged timeously prior thereto.

Subsequent to the withdrawal of the appeal, the RAF has issued a directive to the effect that prescription should not be raised in relation to claims where RAF 4 Serious Injury Assessment Reports have been filed more than three years from the date of the accident (two years in the case of hit

and run claims). It must be assumed that, in line with the judgment, the RAF will contend that the claim for general damages is time barred if the RAF 4 is lodged more than five years after the accident.

Road Accident Fund Amendment Act Regulations 2008 amended

On 15 May 2013 the Road Accident Fund Amendment Regulations 2013 were published which, inter alia, introduced a list of injuries which, for the purposes of s 17 of the Act are not to be regarded as serious injuries. The list can be found in *Government Gazette* 36452 of 15 May 2013 and also on the RAF website.

The regulation put a limit of R2 650 on the liability of the RAF for the cost of a Serious Injury Assessment Report (RAF4). It provides that no amount in excess of that may be recovered from the RAF and shall be paid only if the injuries are found to be serious and the RAF is liable, generally, in terms of the Act.

The regulation also introduced a time limit within which the RAF is to react to a Serious Injury Assessment Report, namely 90 days from the date upon which it is sent by registered post or delivered by hand. However, the amendment to the regulations provides no specific sanction for the RAF's failure to comply. It is submitted that this is, in fact, provided in reg 3(5)(a) as read with reg 3(4).

The Amendment Regulations also amend reg 3(8) and reg 6. Sub-regulation 3(8) deals with time periods for referral by the Registrar of a dispute to an Appeal Tribunal and the amendment of reg 6 empowers the RAF to pay the costs associated with the completion of the medical report contemplated in s 24 (2)(a) of the Act direct to the practitioner or hospital.

Road Accident Fund Benefits Scheme (RABS)

In April 2013 submissions were lodged by the LSSA to the Department of Transport on the Road Accident Fund Benefit Scheme Bill, 2013 (RABS), which had been published for comment earlier in the year. Because of the very short period afforded in the first notice for comment, an extension of time was requested and the period was extended by 60 days to 3 April 2013. The Road Accident Fund Benefit Scheme Bill can be viewed on the RAF website and the comment submitted by the LSSA on the LSSA website.

The fundamental policy underlying RABS is to abolish the current Road Accident Fund Benefit Scheme and to replace it with a no-fault system of benefits, as part of the comprehensive social security system.

The current RAF scheme evolved from the need to protect the innocent road accident victim. In contrast, RABS protects the guilty motorist at the expense of the innocent victim. In terms of RABS, the common law right is abolished and a victim of a road accident can claim benefits only as prescribed by RABS.

RABS offers no compensation, whatsoever, for general damages, not even for the catastrophically injured, which the Satchwell Road Accident Fund Commission recommended should be paid. Medical benefits are to be subject to a prescribed tariff (yet to be prescribed) and loss of income is payable in installments and subject to caps and limits. The maximum period of any payment for loss of support or income is fifteen years from date of accident or until the beneficiary turns 60, whichever is the sooner. Persons unable to prove an income, such as children, students and those temporarily unemployed, will be compensated at the national average income, which, it is assumed, will be in line with the disability grant, which is currently R1 200 per month. In the case of children, payment will commence when they turn 18.

The LSSA submitted that the abolition of common law rights in this scenario, which prefers the rights of negligent motorists and their employers (both of whom may be guilty of criminal acts in relation to the accident) to the rights of innocent road accident victims, may be vulnerable to constitutional challenge, despite the judgment of the Constitutional Court in regard to the provisions of the Road Accident Fund Amendment Act, 2005. This is so as RABS effectively abolishes a state insurance scheme based in delict and substitutes it with a social welfare scheme. It is submitted that, now that there is no longer any compensation in delict in terms of the statutory cover, the common law right to claim compensation from the wrongdoer should be restored. Even workmen injured on duty retain the common law right to sue the wrongdoer, provided that this is not his/her direct employer.

Passenger claims and the Transitional Provisions Act 2012

The one-year period within which a claimant had to elect to have his/her claim remain under the provisions of the old Act expired on 12 February 2014, save for those claims where the claimant was under a legal disability.

Actuarial calculations and the cap

The controversy as to how to apply the cap in claims for future loss of income and support has been the subject of a further judgment in the Western Cape High Court: Cape Town in the matter of *EJ Sweatman v the RAF* (case number 17258/11) decided on 3 December 2013. The court held

that the actual loss must be calculated using the traditional method and discounted to present-day value. The loss in each year must then be compared with the cap and the lesser of the two amounts claimed. This method can make a significant difference to the quantum of the claim, especially where the future losses stretch over a considerable period of time.

RAF brochure

The LSSA has published and will be distributing a brochure advising victims of car accidents of their rights and the role that can be played by an attorney in prosecuting their claim for compensation against the RAF. The brochures are available in English, isiZulu, isiXhosa, Afrikaans and seSotho. Hopefully, the brochures will soon be made available to patients at provincial hospitals and other treatment centers where the RAF has established a presence as part of its active outreach programme.

Jacqui Sohn,

Chairperson, Personal Injury Committee

PRO BONO COMMITTEE

Members: Ricardo Wyngaard (Chairperson), Poobie Govindasamy, Riona Gunpath, TV Matsepe, Giusi Harper, Ilan Lax, Bongani Mpitso, Mfundiso Mavonya, Alida Obbes, Humphrey Shivamba and Alvina Wilson

The *Pro Bono* Committee continued to consider ways of making *pro bono* services more accessible for the poor and marginalised members of society. The statistics below indicate the *pro bono* activities recorded by the provincial law societies. However, these do not reflect the profession's full involvement in other *pro bono* projects and services. The profession's commitment to making *pro bono* services a reality has gained significant momentum since its inception. However, more can still be done to expand *pro bono* services, especially in rural areas.

Service as Small Claims Court commissioners

The need to encourage more attorneys to avail themselves as Small Claims Court commissioners has been identified during the reporting year. The Committee has agreed to prioritise this issue during 2014.

The Committee plans to, among other aspects, establish how many practitioners are serving as Small Claims Court commissioners in their respective provinces, identify the challenges presented in serving as Small Claims Court commissioners and collaborate with stakeholders, including the Small Claims Court Committee and the Department of Justice and Constitutional Development, to promote the service of Small Claims Court commissioners on a *pro bono* basis.

Uniform National Pro Bono System

The pending finalisation of the Draft Uniform Rules for the profession would mark an important step towards a uniform *pro bono* system. Currently the provincial law societies are providing *pro bono* services according to their respective provincial rules. For example, different means tests are applied at different law societies.

The LSSA's *Pro Bono* Committee can play a significant role in promoting a uniform national *pro bono* system in South Africa. The Committee has, with the consent of the Cape Law Society (CLS), circulated to all other provincial law societies the *pro bono* guidelines for non-profit organisations – as prepared by the CLS. The committee will also motivate for a submission to be made by the LSSA to the Attorneys Fidelity Fund for the establishment of a national clearing house.

Pro bono at provincial law societies

Cape Law Society: The CLS has during this period approved a joint venture agreement with Legal Aid South Africa. The CLS has also embarked on a process to amend its *pro bono* rule which was presented for approval by its members at its most recent annual general meeting and which received a favourable response from its members.

The CLS dealt with the following number of *pro bono* matters for the period January to September 2013:

Total number of <i>pro bono</i> applications	1 969
Total approved	1 017
Total refused	493
Total pending at 30 September	459

Law Society of the Free State: The LSFS has embarked on a joint venture agreement with Legal Aid South Africa. The University of the Free State Law Clinic assists the LSFS with the preparation of merit reports, for which the LSFS is very grateful. The LSFS dealt with the following *pro bono* matters for the period January to August 2013:

Total number of <i>pro bono</i> applications	186
Total finalised matters	156

KwaZulu-Natal Law Society: The KZNLS has embarked on joint venture agreements with both probono.org and Legal Aid South Africa. The KZNLS utilises the probono.org establishment as a clearing house. All matter are referred to them for perusal and referral to members.

The KZNLS dealt with the following number of *pro bono* matters for the period January to September 2013:

Total number of <i>pro bono</i> applications	453
Total approved	178
Total refused	275

Law Society of the Northern Provinces: The LSNP's *Pro Bono* Department and Committee identified the need for impact *pro bono* in rural and semi-urban areas where its clearing house is not easily accessible to indigent people and members of the public. The members of the Committee want to initiate a project with members of the LSNP where impact *pro bono* is done in four towns in the provinces served by the LSNP. With this outreach project, more indigent people will receive access to justice, which is the main objective of the *pro bono* scheme of the LSNP.

The LSNP has during this period been involved in the registration of the non-profit company that would be dealing with *pro bono* services at Chancellor House (Nelson Mandela and Oliver Tambo's former law offices). Furthermore, it has signed an agreement with Legal Aid South Africa and probono.org relating to the delivery of *pro bono* services. There is a possible project with the City of Tshwane focusing on the transfer of properties from deceased estates to indigent beneficiaries where rates and taxes have been outstanding for years. The LSNP is still engaged in talks on the project.

The LSNP dealt with the following number of *pro bono* matters for the period January to August 2013:

Total number of <i>pro bono</i> applications	1 383
Total referred to First Interview Scheme	251
Total referred to Contingency Fee Scheme	178
Total to attorneys in terms Pro Bono Scheme	540
Total pending	414

Meetings

The *Pro Bono* Committee convened two meetings during the year, one being a face-to-face meeting held on 1 October 2013 and other being a telephone conference held on 2 December 2013.

Conclusion

The Committee wishes to express its gratitude to the members of the law societies for their commitment towards rendering free legal services to deserving community members. *Pro bono* has become inherent in practising law in South Africa.

Having said that, it is also apparent that a key recommendation of the *Pro Bono* Committee had not been attended to with the necessary dynamism as required. The concept of a national clearing house has been on the agenda since 2006 and no significant progress has been made in this regard.

In the 2006-2007 LSSA Annual Report, the then chairperson of the Committee, Taswell Papier, made the following comment with regards to the concept of a national clearing house/institute for *pro bono* services:

‘The establishment of a national institute is not only a professional but a proactive initiative, dealing with *pro bono* in a way that does the profession proud, and not waiting for Government to prescribe core values to us. Failing to act in this way would be an unfortunate indictment on the profession, reflecting an inability to organise ourselves efficiently.’

The Committee reported in the 2007-2008 LSSA Annual Report that ‘it would be prudent to establish our national structure as a matter of urgency’.

This matter was raised again by the Committee in the 2009-2010 LSSA Annual Report:

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

The Committee again raises the establishment of a national clearing house.

Ricardo Wyngaard,

Chairperson, Pro Bono Committee

PROPERTY LAW COMMITTEE

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

The Committee was busy during the course of the reporting year, although only two formal meetings were held by the Committee during the year.

The Committee has continued to liaise with other role players, notably the South African Revenue Service (SARS), the Department of Rural Development and Land Reform, the Department of Human Settlements and the Office of the Chief Registrar of Deeds.

The Committee has had several meetings with the Project Vulindlela National Working Committee, being the development of electronic deeds registration. The profession continually gives input into the proposals and participates in various working committees.

The Committee continues to engage with SARS on developments affecting the industry. Such is the relationship that no changes are made to the processes by SARS without the input of the Committee.

The members of the Committee have also made contributions to the industry by actively participating in the Deeds Registries Regulation Board, the Sectional Titles Regulation Board and, most of all, by attending the Registrar’s Conference. A representative from each of the provincial law societies attended the conference. Suggestions for changes and amendments to conveyancing practice were much welcomed.

Selemeng Mokose,

Chairperson, Property Law Committee

TAX AND EXCHANGE CONTROL COMMITTEE

Members: Prof Daniel Erasmus (Chairperson), Robert Gad, Iqbal Ganie, Johan Fouché, Nelisa Mali, Nano Matlala and Vika Ndqaza

During the course of 2013 the Tax and Exchange Control Committee initiated meetings with the South African Reserve Bank and the South African Revenue Service (SARS). In both instances the Committee was able to bring to the attention of the authorities areas of concern to both the profession and the public. These matters were received in a positive manner from the authorities.

It is intended that the meetings with these authorities will continue to take place on an annual basis.

Through me as chairperson, the Committee arranged for a series of seminars to be conducted to the profession, training them on the provisions of the new Tax Administration Act, 2011.

Lizette Burger has a very good relationship with the SARS Head of Modernisation and Technology. In this regard, she has regular access to him in order to bring to his attention any tax operational issues, such as the challenges being faced by attorneys in submitting IT3(b) data in terms of s 26 of the Tax Administration Act. This matter is still receiving attention.

The Committee also attended to operational and substantial meetings with SARS, making contributions to propose amendments to the various tax Acts. In this regard, the Committee was due to meet early in 2014 to propose suggested amendments to tax Acts in preparation for the next tax Acts amendment session before Parliament in 2014.

As chairperson, I would like to thank my Committee members for all their input and efforts during the course of 2013. I would also like to thank Lizette Burger for her efforts as well as those of her professional assistant, Kris Devan.

Daniel Erasmus,

Chairperson, Tax and Exchange Control Committee



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