



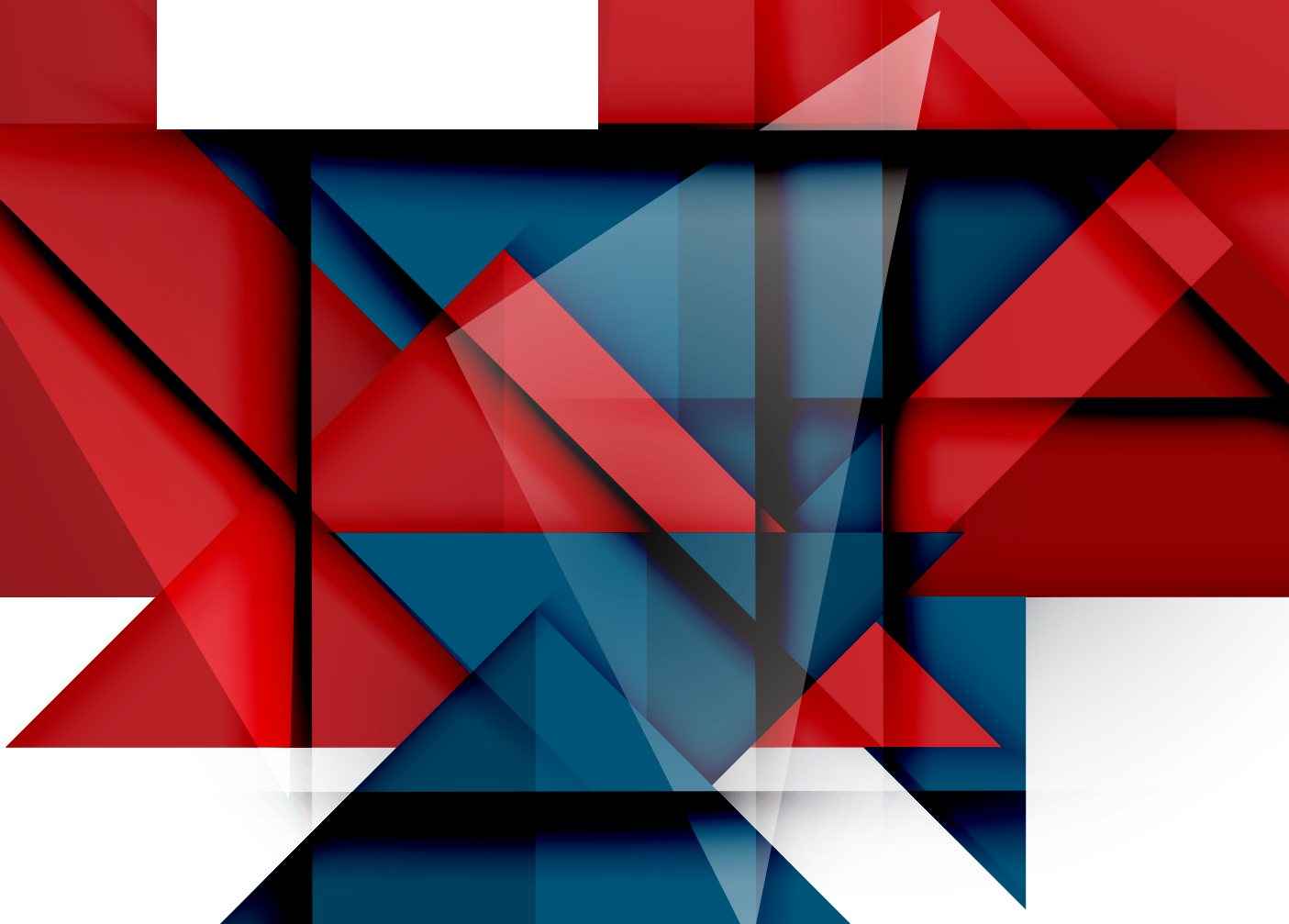
LAW SOCIETY
OF SOUTH AFRICA

2014/2015

ANNUAL REPORT

Committed to **Building** a Better
Legal Profession for All

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Legal Profession
for All





LAW SOCIETY OF SOUTH AFRICA

ANNUAL REPORT April 2014 to March 2015



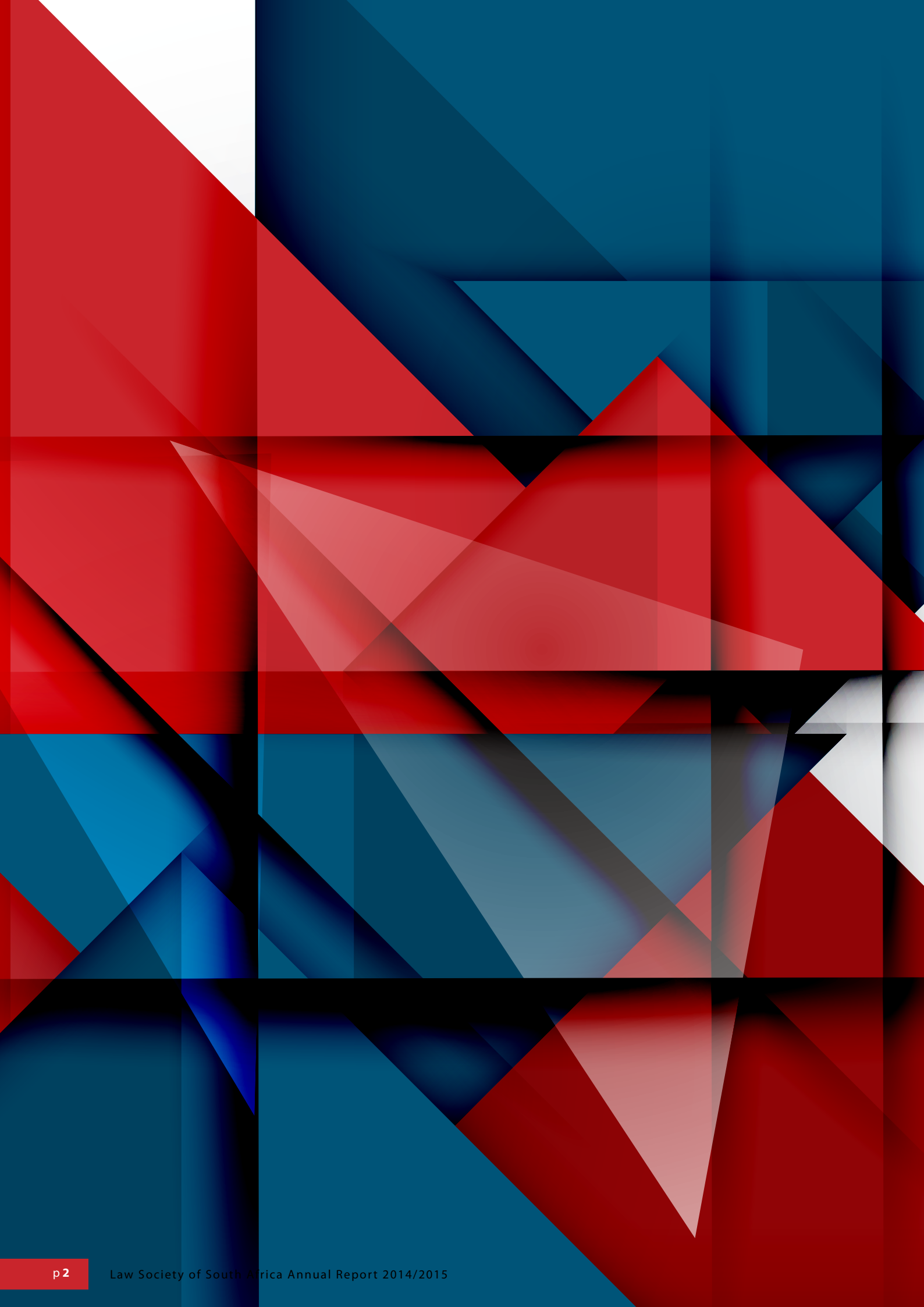
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We, the constituent members of the Law Society of South Africa – the Black Lawyers Association, the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces and the National Association 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)

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**Ettienne Barnard
and Max Boqwana**

Thank you

We are thankful for the opportunity to report and communicate on some important developments and on progress regarding the legal profession.

We must thank the Law Society of South Africa (LSSA) management and staff – a contingent of 86 staff members – for their support and dedication during these interesting and busy times. We are blessed by their commitment. Our thanks also goes to the constituent members, their management and staff for the continued cooperation and input to further our common vision in creating a strong, unified voice to speak out on issues that are important for society and for lawyers.

Legal Practice Act

It has been a privilege to serve as Co-Chairpersons of the LSSA at a time when the historic Legal Practice Act 28 of 2014 became a statute on our books and at a time when the National Forum on the Legal Profession (NF) was created to pave the way for the restructuring of our profession. In noting this, we are very aware that we have merely been an extension of a dedicated group of practitioners – councillors, committee members, task team members and other practitioners – who have contributed to the process since initial drafts of the Bill were published in 2002.

The Legal Practice Act (LPA) was assented to by the President on 20 September 2014 and gazetted on 22 September 2014. In a press release the following day, we noted that this signaled the formal start to a new dispensation which we believe will usher in a transparent, transformed, public-centred and responsive profession – changes which the attorneys' profession has long supported.

Parts 1 and 2 of Chapter 10 of the Legal Practice Act (LPA) came into effect on 1 February 2015. The implementation was signed by the President on 16 January 2015 and gazetted in *Government Gazette* 38412 of 23 January 2015.

We are grateful to the Minister of Justice and Correctional Services and his staff who have kept us in the loop of developments through meetings and communication on developments and implementation.

This is the start of the transitional phase which sees the NF bringing together various stakeholders in a negotiation process to flesh out the framework for the future governance of the legal profession under the Legal Practice Council (LPC). The provisions of the Attorneys Act 53 of 1979 will remain in force and the four statutory provincial law societies remain the regulatory bodies for the attorneys' profession until the LPC comes into being within the next three years. The tasks of the NF, the LSSA and its constituent members are enormous and we wish all concerned the best for the road ahead.

The LSSA has cooperated in the long process that has led to the promulgation of the LPA. We support it and are committed to cooperating actively with all the relevant stakeholders in the NF. In doing so we strive to ensure that an independent, uniform, efficient and transparent dispensation for the regulation of the legal profession is implemented within the prescribed three-year period, culminating in the implementation of the LPC. The LPA puts the public interest and transparency at the centre of the new dispensation. From the side of the profession, the independence and status of the pro-

profession, as well as the sustainability of practitioners is also paramount to ensure an independent judiciary. All of this is important for a justice system which functions well.

Strategy

The need for a relevant strategy for the future has been underlined during the past years. On 9 and 10 October 2014, the LSSA Council held a strategic planning session to provide clear direction to our eight NF representatives. The outcomes covered a number of key issues that will be on the NF's agenda, including fees, community service, practices and procedures for the LPC.

One of the most important aspects that has arisen is that of a representative body for legal practitioners. In principle, we agreed that, with the LSSA falling away, the provincial law societies being transferred to the LPC, and the LPC itself being merely a regulator, the attorneys' profession will be left without a voice or body representing its views and interests. We acknowledged that we cannot be left with a vacuum and that there is a crucial need for such a body. All legal practitioners should support the establishment of a unified body to represent them and to speak for them, to communicate to and on their behalf, to continue to publish a journal for them and to lobby in their interest and in the public interest in the future dispensation.

A general broad vision for the profession going forward into the new dispensation was framed as follows:

A unified, independent legal profession that protects and promotes the rights enshrined in the Constitution.

We undertake to keep practitioners informed along the way and to canvass views as it becomes necessary to do so.

As regards the LSSA, its objectives have been updated to state that in addition to its usual tasks, 'the LSSA has a key role in ensuring an effective transition' into the new dispensation. In particular the LSSA will

- provide sustainable support in concluding the transitional process;
- ensure a meaningful transfer of its institutional knowledge;
- manage the transfer of its relationships and affiliations;
- communicate developments widely to stakeholders; and
- assist with strategic planning as well as the development of policies, protocols and guidelines.

As one of the action steps, we convened an LSSA National Forum committee which by the time of tabling this report will have met three times to prepare for NF participation. At the second meeting, certain other stakeholders were invited to attend in an attempt to facilitate cooperation in the future.

The Co-Chairpersons have met with the LSSA CEO and future leaders of the LSSA to discuss relevant strategic issues and assist in a goal-oriented hand over of leadership to future Co-Chairpersons. This should enhance consistency in the role that management and the Co-Chairpersons play in this transitional phase.

Chief Justice

As Co-Chairpersons we met with Chief Justice Mogoeng Mogoeng at the end of 2014 and, among other aspects, expressed the profession's support for greater independence for the Office of the Chief Justice from the Justice Department. Although the process for this was launched by the Minister in 2014 with the transfer of staff and functions from the Department to the Office of the Chief Justice, we are of the view that the Office of the Chief Justice must be completely independent, especially financially, from the Justice Department. This will allow the Chief Justice to ensure the proper functioning of and allocation of budget to the higher and lower courts. It is imperative that the Judiciary, as one of the three arms of State, must be fully independent from the Executive and the Legislature.

As regards the proper functioning of the justice system, the LSSA is involved in the National Efficiency Enhancement Committee (NEEC) chaired by the Chief Justice at national level and practitioners participate in the Provincial Efficiency Enhancement Committees (PEECs). At the most recent meeting of the NEEC it was resolved that district efficiency enhancement committees (DEECs) be implemented to deal with practical matters at local level. Practitioners are urged to communicate problems within their local court system to their local circles for escalation. We have already noted a positive reaction and outcome where, via our members serving on the NEEC, the problems in certain rural areas have been addressed. Attorneys and constituents are urged to notify the LSSA Professional Affairs department of any frustrations regarding the access to effective justice in the courts.

During 2014, Co-Chairperson Etienne Barnard also addressed the Constitutional Court and other distinguished guests in a tribute to Justice Skweyiya who retired from a noteworthy term of service in this highest court of the land.

Justice Minister

We met with the Minister of Justice and Correctional Services, Michael Masutha, and Deputy Justice Minister John Jeffrey. The meeting was cordial and constructive and we agreed that there should be a forum where the Department and legal practitioners can meet regularly to discuss matters of mutual interest.

The uniform rules

The process to unify the rules of the attorneys' profession has taken more than six years. The LSSA appreciates the ongoing support of all constituents, the level of debate and the fact that the interests of the profession and the public were prioritised in the process.

The last draft of 2013 received the support of all members of the LSSA Uniform Rules Task Team and was then submitted to the annual general meetings of the four statutory law societies. The members of the KwaZulu-Natal Law Society (KZNLS) and the Law Society of the Free State (LSFS) approved the draft Uniform Rules, and they were approved by the Law Society of the Northern Provinces (LSNP), subject to some minor changes. The rules were not approved by the members of the Cape Law Society (CLS) and it was resolved at the annual general meeting of the CLS that a Rules Committee be appointed to deal with members' concerns.

The LSSA Uniform Rules Task Team considered the issues raised by the LSNP and the CLS, and finalised a new version in March 2014. The KZNLS had, in the meanwhile, sent the draft rules to its Judge President for approval; he made some minor corrections. Legal Aid South Africa also requested an amendment to the rules (regarding wills). The CLS Rules Committee then raised further concerns.

The LSSA's Management Committee (Manco) engaged with the CLS committee to resolve the issues and find a common way forward. This meeting took place on 26 August 2014 and a new version of the rules was produced. After this meeting, the CLS committee raised only a few outstanding issues. Manco was of the view that it was important for the profession to reach a national position and held a special meeting on 15 September 2014 to consider the CLS's issues.

The bulk of the uniform rules were then approved by all four law societies at their annual general meetings and, at the time of writing, were with the various Judges President for approval before being sent on to the Chief Justice. We have been informed that certain of the Judge Presidents have already expressed approval.

Court-annexed mediation

Court-annexed mediation came into effect on 1 December 2014 initially at certain magisterial districts and sub-districts in Gauteng and North West. It will be rolled out gradually to other provinces. The accreditation standards for mediators were published in *Government Gazette* 38164 of 31 October 2014. The LSSA has supported this development and has played a major role in the process and in discussions with the Justice Department and Rules Board. The LSSA made exten-

sive comments on the qualifications, standards and level of mediators, as well as the accreditation norms for mediators.

Mediation within the court procedure adds new opportunities for attorneys to expand their practices. To this end the LSSA's Legal Education and Development division (LEAD) has presented a five-day court-annexed mediation course. The course serves to prepare attorneys to mediate more effectively while complying with the relevant standards.

Election monitoring

As part of the profession's commitment to supporting the instruments of our democracy, the LSSA Council resolved at the beginning of 2014 to call on attorneys to volunteer as election monitors during the National and Provincial elections held in May 2014. We are grateful to the more than 260 attorneys and candidate attorneys who served as the 'eyes and ears' of the community and submitted full reports to the LSSA on their observations. LSSA observers attended a full-day training workshop where they familiarised themselves with the relevant aspects of the Constitution, the Electoral Act 73 of 1998, the Electoral Commission Act 51 of 1996, the African Charter on Democracy, Elections and Governance adopted by the African Union in 2007, the SADC Principles and Guidelines Governing Democratic Elections as well as the role of and code of conduct for independent observers. The trainings materials for the LSSA observers were sponsored by LexisNexis.

Through the LSSA observer mission we aimed to provide support for the Electoral Commission by supporting and strengthening the integrity of the elections process. Credible elections are an expression of active citizenship and the free expression of the free will of the people, which provides the basis for the authority and legitimacy of a sitting government.

We were pleased that the integrated observer report submitted by the LSSA to the IEC indicated that the elections were free and fair, the IEC voting staff was generally friendly and helpful and most of our observations regarding the organisation of the stations and the handling of issues by IEC officials were positive. Most voting stations seemed to be running efficiently and effectively and voters were in good spirits, with calm and peaceful atmospheres reported at the majority of the stations. The LSSA did, however, point out concerns and anomalies that were identified by observers and made a number of recommendations.

The LSSA has already engaged with the IEC to set up an observer mission for the 2016 municipal elections. Trainers are being trained in this regard. In addition, our core of election observers will be approached to join election monitoring missions in the SADC region as part of the observer missions deployed by the SADC Lawyers Association.

At a recent gala dinner function, the IEC expressed its gratitude to the attorneys' profession for its involvement. The IEC also pointed out that it regards this as a pioneering step which it hoped that other professional bodies and professions would follow.

Ethics summit

Concern has been expressed from various quarters about the decline in professionalism and the ongoing negative media attention on the profession. Generally, both of these aspects have a negative impact on the image of the profession and the service that legal practitioners render to the public. An Ethics Summit was convened in February 2014 to discuss this.

One of the outcomes of the summit – and a welcome one – has been a synergy between the profession and the law deans regarding the vital importance of inculcating ethics into future legal practitioners. Some law academics are of the view that ethics should be infused into every course in the LLB curriculum, and should not be confined to a specific, brief module. As regards practising attorneys, it was resolved that the concept of ethics should be modernised and presented to practitioners in a fresh, new way; although the rules and guidelines that underline professional conduct by attorneys must be maintained and strengthened.

With the rejuvenation of ethics in mind, the Council of the LSSA has resolved to honour the memory and spirit of the late Durban attorney Archie Gumede. He was actively engaged in the struggle against oppression; selflessly and courageously striving for freedom, justice and equality in a democratic, non-racial, non-sexist and prosperous South Africa. In honour of his centenary celebrations and contribution to democracy, the LSSA is holding a special Archie Gumede Lecture and dinner at its AGM in Durban in March 2015.

Regional and international affiliations

We joined our colleagues in the SADC region in March 2014 in raising serious concern at the irregular and arbitrary arrest of Swazi human rights lawyer Thulani Maseko and Editor of *The Nation*, Bheki Makhubu. They were arrested on charges of contempt of court for authoring and publishing articles which were critical of the judicial system and governance in Swaziland. Both were found guilty and sentenced to two years' imprisonment. The fact is inescapable that the trial of Mr Maseko and Mr Makhubu is not only their trial as individuals, but it is a trial of all that stand for freedom of expression, fairness and justice. Their continued imprisonment has little to do with them but rather with what they stand for.

It is a clear symptom of the failure of justice and rule of law in Swaziland, which instead of protecting the innocent and those that advance freedom, condemns them.

We were pleased to have joined a substantial contingent of South African practitioners at the 15th SADC Lawyers Association conference and annual general meeting at Victoria Falls in Zimbabwe in August 2014. It was gratifying to have the conference in Zimbabwe which has a new Constitution that now goes beyond civil and political rights and provides for an expanded Bill of Rights incorporating socio-economic, cultural and environmental rights as well as the protection of vulnerable groups. However, we support our Zimbabwean colleagues in striving to ensure that there is adherence to the Constitution, a speedy alignment of the laws to the new supreme law as well as continuing to lobby for the abolition of the death penalty in Zimbabwe.

The main conference theme of 'Strengthening the Rule of Law and Good Governance in the SADC Region: A Call for Transparent and Accountable Leadership' was canvassed by former President of Mozambique and recipient of the 2007 Ibrahim Prize for Achievement in African Leadership, Joaquim Chissano. He noted that there cannot be peace without economic development and, in turn, peace without economic development is unsustainable. Stable governments led by a transparent and accountable leadership are required, based on democratic political succession with fixed presidential term limits, within the framework of competitive party and electoral politics and the periodic holding of free fair and credible elections, managed by independent electoral bodies recognised under the Constitution. He challenged SADC lawyers to contribute to the campaign to ensure the drafting of model laws and normative aspects for transparent and accountable leadership. He concluded that constructive criticisms works better with constructive dialogue and guidelines.

We were delighted that former attorney and former LSSA Co-Chairperson Judge Thoba Poyo-Dlwati – who is also a former President of the SADCLA – was able to be present to deliver a keynote address at the session dealing with challenges faced by female lawyers in the profession. Judge Poyo-Dlwati represented the LSSA on the SADCLA Council for a number of years. Her contribution in this regard is acknowledged and appreciated. Max Boqwana has been her co-councillor at the SADCLA, and the LSSA introduced its new SADCLA Council representative at the AGM, Bloemfontein attorney Noxolo Maduba.

The LSSA has adopted the resolutions taken at the conference and will consider their domestic implementation.

These include

- facilitating public participation in democratic processes and local governance with a focus on effective service delivery at local and municipal level;

- assisting in putting in place monitoring and evaluation mechanisms to ensure transparency by the State as well as accountability laws, programmes and commitments;
- lobbying for the full implementation of SADC and international anti-corruption protocols and instruments;
- providing strategies, standards and training in anti-corruption for law firms;
- strengthening and supporting the independence of the judiciary, judicial service commissions and the legal profession; and
- positioning and empowering African law firms to meet the demands of clients as African economies grow and diversify, and leveraging the relationships between African law firms and the big international law firms in order to grow the work of African lawyers and law firms.

We also noted, via a workshops session, the importance of introducing more mechanisms to empower women in law and counter abusive practices in the SADC region. To this end the LSSA presented a pilot leadership training workshop for women attorneys which was held successfully over two sessions, the first in November 2014 and the second in February 2015.

The LSSA remains committed to participating and growing our participation in the SADCLA. South African lawyers are invited and encouraged to join the SADCLA as individual members. Please visit the pages at <http://www.sadcla.org/new1/> for more information. The SADCLA can be contacted at info@sadcla.org.

The African Court on Human and Peoples Rights

From 15 to 17 October 2014, the LSSA was invited to attend a sensitisation seminar on the African Court on Human and Peoples Rights (ACHPR) in Lusaka, Zambia. The seminar aimed to publicise the ACHPR, its mandate and its role in the protection of human rights on the African continent with special emphasis on the SADC region, within the broad framework of the African Union agenda on integration, development and shared values captured in the Agenda 2063 initiative and the African Governance Architecture (AGA).

The LSSA Council subsequently resolved to hold a colloquium on the African Court in May 2015 to inform local practitioners on access to and the procedures before the ACHPR; encourage the public to utilise the ACHPR in settling human rights disputes as well as encouraging the utilisation of the ACHPR to render advisory opinions.

The SADC Tribunal

At its session in August 2014, the SADC Summit adopted the new Protocol on the SADC Tribunal which eliminates a previously existing right of natural and legal persons (individuals) to approach the Tribunal, and now limits access to member States only. The protocol was adopted without proper consultation with the people of the region.

Prior to its earlier suspension in 2010 by the SADC Summit, the SADC Tribunal received 30 matters and finalised 24, all instituted by individuals. No single case had been received from SADC member States. Of the 24 cases instituted by individuals, 6 are still pending. It is highly unlikely that States will make use of the Tribunal to settle matters as they prefer to use diplomatic channels to do so.

Lawyers in the SADC region are considering legal avenues that could be explored to restore individual access.

The LSSA is applying to the North Gauteng High Court for an order declaring that the President acted unconstitutionally when he signed the 2014 Protocol on the SADC Tribunal.

We are of the view that an authentic sub-regional court capable of responding to the particularities of the region and able to dispense justice to the people of the region if their own court systems fail to do so, is a critical forum. The situation in Swaziland referred to above could be a case in point.

Other international liaison

As Co-Chairperson, Etienne Barnard attended the International Bar Association (IBA) Bar Leaders Conference in Brussels in May 2014. The conference underlined the value of international participation and left no doubt that international participation is relevant and necessary to develop our own approach to ethics, the regulation of the profession and opportunities for the development and growth of South African practitioners. We should not lose out on such participation as a time may come when we need the support of our international friends. Some of them – as can be seen from experiences of our colleagues in Swaziland, Sri Lanka and Malaysia – need ours. In addition we have a strategic duty to take our profession into the global future with vision.

The conference covered a number of topics, including the following:

- The independence of lawyers in the context of issues law firms and bar authorities are confronted with as a result of the trend to allow non-attorneys to own law firms. Reference was made to the impact of alternate business structures in certain jurisdictions.

- The general view on cloud computing was that it is ethically permissible to use the cloud, but lawyers must take reasonable precautions to protect the information.
- 'Co-regulation – a partnership or an adversarial struggle' is a topic that has been faced by us in the years leading up to our Legal Practice Act: the goals – sometimes competing – of protecting the public on the one hand while serving the interests of the profession on the other. The statement was made that good governance of the legal profession combines both. Regulation and discipline was in the public interest, but also benefited the profession by maintaining high-quality lawyers among its ranks.

In 2014, we attended a function and networking session hosted in Johannesburg by Shailesh Vara, Parliamentary Under-Secretary of State for Justice of England and Wales on opportunities for the UK and South African legal professions, the challenges we face and how we work together to address these.

We hosted a contingent of lawyers from Sri Lanka, which included the President of the Bar Association of Sri Lanka, Upul Jaysuriya and also a delegation of lawyers from China. In October the LSSA hosted a delegation of Egyptian lawyers, electoral officials and civil society representatives on a study trip to investigate gender mainstreaming in electoral administration.

Co-Chairperson Max Boqwana represent the LSSA at the International Bar Association annual conference in Tokyo from 19 to 24 October 2014. He was joined by the LSSA's newly appointed representative to the IBA Council, Pretoria attorney Ms Tshepo Shabangu.

On 19 November 2014, Ettienne Barnard welcomed all the delegates of the International Institute of Law Association Chief Executives (IILACE) to Cape Town, South Africa and Africa on behalf of the Co-Chairpersons. He pointed out some tourist attractions and expressed recognition for the importance of an institution such as IILACE. He specifically noted how he (for the LSSA) had experienced the power of networking through IILACE. Among other things he thanked the organisation and its membership for its willingness to share information.

Mr Boqwana represents the profession at the First BRICS Legal Forum held in Brasilia, Brazil in December 2014. This event brought together lawyers from the countries that form the BRICS group – Brazil, Russia, India, China and South Africa – to discuss topics of common interest and to strengthen existing ties between the legal professions in these countries. The Brasilia Declaration was signed by the representatives with the aim of seeking recognition of the Declaration by the respective Bars and law societies as well as by member states. It includes a commitment to build capacity for our lawyers and seek to include the role of universities

in these programmes. It also envisages structured exchange programmes focusing on skills and cultural exchanges.

Co-Chairperson Max Boqwana was invited to attend the Global Law Summit in London from 22 to 25 February 2015.

Other stakeholder interaction

In 2014 the Co-Chairpersons hosted a stakeholder function for all the stakeholders with which the LSSA interacts on a regular basis. This was well attended and well received, and provided an opportunity for us to interact directly and on an informal basis with representatives of some 30 professional organisations, government departments and regulatory bodies. We urge the new Co-Chairpersons to consider repeating this regularly in future. We need to encourage co-operation in the interests of enhancing service delivery to the public.

In April 2014, Co-Chairpersons Ettienne Barnard and LSSA CEO Nic Swart attended the launch of the South African Office of the Tax Ombud. Retired Judge President Bernard Ngoepe was appointed as the first Tax Ombud whose office has the objective of reviewing and addressing complaints by taxpayers on service, procedural or administrative issues relating to their dealings with the South African Revenue Service (SARS). We welcome the launch of the office as it will assist in broadening access to justice. Practitioners are urged to refer matters to the Tax Ombud where they are of the view that their clients have been treated unfairly by SARS.

In June 2014, Council member Mimie Memka and Ettienne Barnard attended the International Conference on Access to Legal Aid in Criminal Justice Systems held in Johannesburg and hosted by our Government and Legal Aid South Africa, together with the International Legal Foundation, the UN Development Programme, and the UN Office of Drugs and Crime. The three-day conference focused attention on developing effective strategies to meet the legal aid service needs of the poor, building on the first international instrument dedicated to the right to legal aid – the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. These principles cover key standards and contain detailed guidance on providing effective criminal legal aid services by encouraging dialogue, discussion of good practices and action-oriented outcomes.

Representatives of the LSSA attended the conference of the South African chapter of the International Association of Women Judges (SAC-IAWJ) from 8 to 10 August 2014 at the University of Pretoria. The SAC-IAWJ was also celebrating its ten-year anniversary under the conference theme of 'reshaping women's participation for gender equality in the South African judiciary'.

In December 2014, Co-Chairperson Ettienne Barnard, attended the launch of Amarightza at Constitutional Hill. This is a programme of the Department of Justice and the Foundation for Human Rights in partnership with the European Union aimed at raising awareness for human rights at grass-roots level. It was shown that there is without a doubt a need for informing and educating our citizens at all levels of society about their rights and their duties in respecting the rights of others. Please read more about this worthy project at www.amarightza.org.za.

In February 2015 the Co-Chairpersons together with LSSA management, certain staff and Directors of the School for Legal Practice attended a gala dinner hosted by the IEC to pay tribute to the LSSA's involvement in the election monitoring and training process. Max Boqwana addressed the meeting and underlined the importance of ventures such as the election monitoring in supporting democracy and the rule of law.

Professional affairs

Through its Professional Affairs department and specialist committees, the LSSA interacts with various stakeholders relevant to the profession as well as making submissions on draft legislation. The LSSA ensures that the attorneys' profession is represented on the boards and councils of all the relevant stakeholders.

The LSSA made submissions on the following policy documents and Bills this year (among others):

- Proposal from the Financial Intelligence Centre (FIC) to amend FICA in terms of FATF requirements
- Section 35(2) and 36(4) of the Tax Administration Act
- Adjustment to the rate of interest under the Prescribed Rate of Interest Act, 1975
- Consultation paper on the review of the Financial Intelligence Centre Act, 2001
- Proposed amendments of various fees and tariffs prescribed by legislation administered by the Justice Minister
- Superior Courts Amendment Bill
- Draft regulations relating to Sheriffs, 1990
- Draft Immigration Regulations
- State Attorney Amendment Bill
- National Credit Amendment Bill
- Regulations: Spatial Planning and Land Use Management Act
- Accreditation norms and standards for mediators
- Companies Act, 2008
- Legal Aid Bill, 2014
- Attorneys Amendment Bill
- National Environmental Management Waste Amendment Act, 2014
- Road Accident Fund Benefit Scheme Bill, 2014

- Amendments to the Magistrates' Courts Act
- Road Accident Fund Amendment Bill, 2014
- First Draft Amendment of the Refugees Regulations (Forms and Procedure), issued in terms of the Refugees Act 130 of 1998
- Various Magistrates' Courts and Uniform Rules published for comment by the Rules Board for Courts of Law.

As regards the Road Accident Benefit Scheme (RABS) the LSSA has made extensive comments and has attended various stakeholder meetings arranged by the Department of Transport and the Road Accident Fund. Among the many flaws in the Bill, the LSSA has stressed the serious concern that the scheme will abolish the common law right to look to the wrongdoer for compensation entirely, leaving the injured person with no right to compensation other than in terms of RABS. No provision is made for any payment for pain and suffering, loss of amenities of life, disability, disfigurement or psychological shock, regardless of how seriously the claimant is injured and impact this may have had on his or her life.

On Road Accident Fund (RAF) matters, we have received reports from various centres throughout the country that the RAF finances are in a deplorable state and that accounts (eg medical) are not being paid when they should be. The Government is urged to intervene in this matter to ensure that accounts are paid in order that the public does not suffer harm through discontinuation of very necessary services.

All the LSSA submissions can be accessed on the LSSA website at www.LSSA.org.za.

Communication and De Rebus

De Rebus continues to be our profession's primary communication and educational vehicle. We must ensure that this valuable resource – which will soon be celebrating its 60th anniversary as the attorneys' journal – is retained as a resource in which we can express our views independently, provide news relevant to our profession and leverage it for continuing professional development (CPD) purposes in the future dispensation. *De Rebus*'s print version currently circulates to some 25 500 attorneys, candidate attorneys, judges and other lawyers. The *De Rebus* Digital has grown in popularity and is received electronically by 15 143 recipients. The LSSA is considering the feasibility of a *De Rebus* app to allow practitioners to access the journal content on mobile devices across different platforms.

The LSSA comments publically on critical issues through press releases in the print and broadcast media. Of the press releases issued during our term in office we wish to highlight the ones in which we raised the profession's serious concern

about the unwarranted, scurrilous and personal attacks on the Public Protector, Adv Thuli Madonsela, particularly as regards her Nkandla report 'Secure in Comfort', and against North Gauteng High Court Judge Thokozile Masipa following the latter's judgment in the *Oscar Pistorius* matter.

As regards the latter, we stressed that judicial officers and legal practitioners must be allowed to perform their duties without fear of attacks on their persons, safety or work environment. Referring to the threats and personal attacks made against Judge Masipa and to the personal and inappropriate comments made regarding the judge's race and gender, we pointed out that the Pistorius matter was a high-profile case that played itself out in the glare of the local and international media, and people are free to disagree with the judgment. Although judgments by our courts are not above scrutiny, they must be respected and scrutiny must be informed, constructive and based on sound legal principles. For that reason we have an appeal procedure in our courts which allows parties – who are of the view that a different judge or court may come to a different conclusion – to apply for leave to appeal. Personal attacks on judicial officers and legal practitioners are not acceptable or appropriate in a country where the rule of law and the independence of the judiciary and of the legal profession are paramount.

The LSSA has adopted a conservative approach to social media and this year launched a LinkedIn profile for the LSSA, with showcase pages for LEAD and *De Rebus*. Practitioners are urged to follow us on LinkedIn as press releases, the latest issue of *De Rebus Digital* and other newsworthy items are published there.

In the 'Resources for attorneys' section on the LSSA website (www.LSSA.org.za) practitioners will find a number of useful guidelines, including an *Introduction to Social Media – Legal Implications for South African Law Firms: LSSA Guidelines* and a draft sample social media policy.

The Public Protector

As regards the Public Protector, we stressed that it is unacceptable that the Public Protector should be the target of undeserved attacks – even of a personal nature – and that her integrity and that of her Office and staff is questioned at every turn. The Office of the Public Protector is carrying out its mandate in terms of the Constitution. Her Office is a Chapter Nine institution which is independent and subject only to the Constitution and the law. We noted that persons or organisations that have problems or disagree with her reports should follow the proper legal route to challenge the reports and call for them to be reviewed. Only a court of law can review her reports. However, we added that such organisations and persons must guard against involving the Office of the Public Protector in unnecessary litigation as this



LSSA Co-Chairpersons Max Boqwana (left) and Ettienne Barnard (right), and CEO Nic Swart met with Public Protector Adv Thuli Madonsela in May 2014 to reiterate the support of the LSSA and the attorneys' profession for the work of the Office of the Public Protector.

would add to the financial and human resource burdens of her Office, which is already inundated with investigations on behalf of the public.

In this regard, the LSSA arranged a successful public colloquium on 4 February 2015 to debate the extent and limits of the powers of the Public Protector and whether her findings are binding. Although the matter was pronounced on by the Cape High Court, it is the subject of an appeal.

The event, which was presented in cooperation with the Centre for Human Rights at the University of Pretoria, was well-attended by LSSA council members, academics, numerous practitioners and some law students. The eminent speaker panel included John Jeffrey, Deputy Minister of Justice and Constitutional Development, the Public Protector, retired Constitutional Court Justice Zak Yacoob, Prof Mtende Mhango, Deputy Head of the School of Law at the University of the Witwatersrand and Lawson Naidoo, Executive Secretary for the Council for the Advancement of the Constitution. The LSSA is in the process of drafting a report with its recommendations.

LEAD

2015 marks the 25th anniversary of the School for Legal Practice which has seen over 21 000 candidate attorneys attending vocational training through its ten centres of the School. The pilot School opened its doors in Pretoria on 15 January 1990 with 51 candidates who had been recruited to participate in the project. Today the School has day and night programmes in Bloemfontein, Cape Town, Durban, East London, Johannesburg, Polokwane, Port Elizabeth, Potchefstroom and Pretoria, with a distance training centre in cooperation with Unisa which trains over 1 400 candidates a year.

The profession owes a debt of gratitude to LEAD Direc-

tor Nic Swart for his vision in building the School for Legal Practice into an institution that we, as a profession, can be justly proud of. We also thank all the practitioners who have served, and who continue to serve on the boards of all the School centres.

We would like to highlight two pilot workshops held in Johannesburg recently which, if successful, will be rolled out to other provinces: the first is writing for the media and law journals and the second is a course for women lawyers in leadership

The writing workshop recognises the growing need for attorneys to make input to and address current issues in practice by contributing practical articles, case notes and opinions for publication in *De Rebus* on the one hand, and on the other to contribute information for the public through the print media, thus promoting access to the law and legal information.

As the LSSA strongly supports the view that more women should be encouraged to take up leadership positions in the profession and elsewhere LEAD, in association with the Nelson Mandela Metropolitan University, launched a pilot leadership project for women attorneys which focused on key concepts relating to leadership.

The Council for Higher Education (CHE) published draft standards for the LLB degree earlier this year. The LSSA made submissions on the standards and will continue to participate actively in further developments led by the CHE.

Pro bono

The profession's *pro bono* work is often understated and unrecognized. Many attorneys perform more than the mandatory 24 hours of *pro bono* work a year and many firms have dedicated departments that assist many indigent persons and undertake public interest litigation. The statistics summarising the *pro bono* activities under the provincial law societies appear in the report of the *Pro Bono* Committee later in this annual report.

Practitioners also provide free advice under the First Free Interview Scheme and accept matters on a contingency basis.

During National Wills Week free wills are drafted for persons who have no wills.

We are particularly grateful to practitioners who make themselves available to serve the public on a *pro bono* basis as Small Claims Courts commissioners. These courts, which play an important access to justice role, would not be feasible without the dedicated service of practitioners.

We urge all attorneys to make themselves available to serve as commissioners in the Small Claims Courts.

Demographics of the attorneys' profession

The LSSA – through its six constituent members – represents some 22 900 attorneys and 5 500 candidate attorneys. Statistics show a profession that is changing slowly year on year. Of the practising attorneys 36% are black and 37% are women (13% are black women). Statistics from 2008 to 2014 show that, while white male attorney numbers have grown only marginally (and the total of white male attorneys has dropped 7% from 2008 to 2014), black male attorneys have increased from some 3 900 to 5 100.

As regards candidate attorneys, 56% are females and 57% are black. Eighteen percent of candidate attorneys are white males, whereas 31% are black females. Black male and white female candidate attorneys are 26% and 25% respectively.

An average of 1 590 attorneys have been admitted to the profession per year over the past 10 years. Last year, 57% of these were women and half of those admitted were black. Generally, for the past 5 years, more women have been admitted to the profession than men, and the number of black attorneys that are admitted varies between 47% and 50%.

Conclusion

As Co-Chairpersons we have had the utmost cooperation and support from the LSSA's constituent members, the LSSA Council and Manco members. In closing, we repeat our heartfelt gratitude to the management and staff at the offices of the LSSA. They provide thorough support and have enhanced the value of our journey throughout our term. As we have reported to the constituent members, the LSSA staff is an inspiration and we hope they know how much we appreciate their hard, thorough and excellent work! Keep up the good work ethic.

It is important to acknowledge former Co-Chairperson (and co-drafter of the LSSA constitution), Esmé du Plessis, who received a special award from the Law Society of the Northern Provinces for her contribution to the profession. The Co-Chairpersons lead the LSSA's Management Committee in echoing this achievement and a special letter was addressed to her. Her reply to the CEO was encouraging and underlined her gratitude for the acceptance (already during the early years of the LSSA) of her into the profession.

We wish our successors as Co-Chairpersons all the best for what promises to be an epic time for leaders in the profession.

Ettienne Barnard and Max Boqwana
Co-Chairpersons

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

(LSSA Constitution)

Councillor	Constituency	Meeting attended
Ettienne Barnard*	Co-Chairperson	05, 07, 09, 11, 02
Max Boqwana*	Co-Chairperson	05, 07, 09, 11, 02
David Bekker*	LSFS	05, 07, 09, 11, 02
Dave Bennett	LSNP	05, 07, 09, 11, 02
Llewelyn Curlewis	LSNP	05, 07, 09, 11, 02
Nolukhanyiso Gcilitshana	BLA	07, 09, 11, 02
David Geard	CLS	05, 07, 09, 11, 02
Krish Govender*	Nadel	05, 07, 09, 11, 02
Peter Horn*	CLS	05, 07, 09, 11, 02
Jan Janse van Rensburg	LSNP	05, 07, 09, 11, 02
Maake Kganyago ¹	Nadel	05, 11
Busani Mabunda	BLA	05, 09, 11, 02
Strike Madiba	Nadel	07, 09, 11, 02
Davies Mculu	BLA	07, 09, 11, 02
Mimie Memka	BLA	05, 09, 11, 02
Sam Mkhonto	Nadel	05, 07, 09, 02
Janine Myburgh	CLS	05, 07, 09, 11, 02
Lister Nuku	BLA	05, 07, 09, 11, 02
Richard Scott ^{*2}	KZNLS	11, 02
Praveen Sham*	KZNLS	05, 07, 09
Jan Stemmett*	LSNP	05, 07, 09, 11, 02

Key:

- 05 – May 2014
- 07 – July 2014
- 09 – September 2014
- 11 – November 2014
- 02 – February 2015
- 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 Kganyago was an acting judge during the reporting period.
2. Mr Scott replaced Mr Sham from the November 2014 Council meeting and on Manco.

* Member of the Management Committee (Manco).



Nic Swart
Chief Executive Officer

The changes in our environment and within the profession have inspired our actions in 2014 and 2015.

We represent a profession in transition.

2014 marked several highlights:

- A summit was held in February to discuss the state of ethics in the profession generally, and in legal education in particular. Both the profession and academia agreed to strengthen their focus.
- The LSSA was an observer unit for the 2014 national and provincial elections. Attorneys participated *pro bono* and a report was submitted to the Electoral Commission (IEC). The relationship between the profession and the IEC will be promoted through a memorandum of understanding, which will introduce voter education in 2015.
- The first course in significant leadership was offered to senior women practitioners.
- The LSSA participated actively in the consultation process of the Council for Higher Education to finalise new standards for the LLB. Future developments will be monitored.
- The legal practice of the future will differ substantially from the current model. This was a major discussion topic at the LSSA's annual general meeting. Future developments will be monitored and attorneys will be informed.
- The annual conference of the International Institute for Law Association Chief Executives took place in Cape Town. The discussions were of a high standard but, most important of all, South Africa has gained new friends from all continents. The delegates represented more than 2 million legal practitioners worldwide.

- The LSSA has become more involved in the programmes of the SADC Lawyers Association. Access to justice, rule of law, the fight against corruption and the promotion of women lawyers were among the issues that were addressed.
- The LSSA exceeded its delivery targets in terms of professional affairs, education, communication and *De Rebus*. This was the result of sound management, including financial controls and human resource advancement.
- A consistent approach to identifying and managing risks enjoyed special emphasis while applying new processes and doing 'more for less' have ensured most satisfactory results.
- After several years of intense debate, a set of uniform rules was approved at the annual general meetings of the four provincial law societies.
- The LSSA is dependent on its constructive engagement with strategic stakeholders and partners. A meeting was held with critical partners in recognition of the importance of our cooperation. This process will continue.

It is a privilege to submit this report knowing that achievement was possible only through the dedicated input of our Council and staff at all levels. In its leadership role, the LSSA's management focused on innovation, relationships, advancement and transformation.

Nic Swart
Chief Executive Officer

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

COMMUNICATION

LSSA communication ventured into the social media space during 2014 by launching a LinkedIn profile for the LSSA, with showcase pages for *De Rebus* and LEAD. Press releases, announcements and new issues of *De Rebus Digital* are communicated via the LinkedIn platform. In 2015 the LSSA plans to start providing Twitter updates, with *De Rebus* tweeting from key events and the LSSA tweeting relevant, newsworthy developments.

The conservative move into social media was made after careful research and consideration of the reputational risk that can ensue to the LSSA through uncontrolled social media interaction. A training session was arranged for LSSA staff with social media lawyer Emma Sadleir to sensitise staff on the serious and often unintended consequences of postings by staff on both the LSSA as an employer and staff as employees. A social media policy for the LSSA was drafted, adopted and communicated to staff.

The LSSA has implemented a social media monitoring tool to allow the communication department to 'listen' to relevant conversations across various social media platforms.

The LSSA's Co-Chairpersons, as its spokespersons, comment on developments locally, regionally and internationally through press releases and the broadcast media. Their availability is appreciated. Where relevant, the input of the chairpersons of the committees is invited on media enquiries that relate to specialist aspects.

The National Wills Week continues to be one of the communication highlights for the attorneys' profession. It attracts increasing participation by attorneys as well as from related stakeholders outside the profession. In 2014 the LSSA – with the assistance of the Cape Law Society (CLS) – was invited to participate in the Hospice Palliative Care Association of South Africa's national conference which ran parallel to the Wills Week. Ceris Fields and Meyer de Waal from the CLS's Estates Committee spoke at the conference with the aim of

informing hospice and social workers as well as attendees from the Departments of Health and Social Development of the importance of integrating legal services as part of holistic palliative care.

The National Wills Week provides much-needed positive media coverage for the profession and for attorneys who are seen to provide their services *pro bono* to the public during the week, and many beyond that.

In 2015, the communication focus will be on the Legal Practice Act 28 of 2014, both keeping practitioners informed on developments around the National Forum on the Legal Profession, and also promoting the views of the LSSA on critical issues being discussed between the stakeholders on the Forum.

Barbara Whittle,
Communication Manager

DE REBUS

The SA Attorneys' Journal

Editorial Committee: Danie Olivier (Chairperson), Peter Horn, Mohamed Randera and Lutendo Sigogo

As the profession's official journal, *De Rebus* strives to be the primary and preferred source of news on professional updates, practice development, as well as general legal news for all practitioners. The journal also aims to provide practitioners with a platform for discussion and sharing of opinions on matters relating to their profession.

De Rebus plays an important educational role and its content is authoritative and enables practitioners to practise more efficiently and effectively. It also reinforces a sense of belonging in the profession, which in turn promotes and maintains high professional standards.

Circulation

By December 2014, *De Rebus'* circulation was 25 471, which is made up of 19 094 attorneys, 3 998 candidate attorneys, 1 232 paying subscribers and 1 147 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 from these countries speaks to the value and importance of the journal.

As a complement to the hard-copy, printed version, the jour-

nal 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. By December 2014, the *De Rebus Digital* mailing list consisted of 15 143 active subscribers.

Apart from the sources mentioned above, *De Rebus Digital* is also available on the websites of My Virtual Paper and the Council for Medical Schemes. The journal can also be accessed online on the website of the Southern African Legal Information Institute (Saflii) and in Sabinet's African Journal Archive.

Financial information

As *De Rebus* is provided free of charge to all practising attorneys and candidate attorneys in South Africa, the *De Rebus* staff is mindful of the need to manage the costs of producing the journal each month. In 2014 *De Rebus'* advertising sales had a net income of R4 628 000 (unaudited figures) generated for both the journal and the classifieds supplement, which is higher than the budgeted amount of R4 422 000.

De Rebus and the classifieds supplement saved approximately R381 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.

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 Act 28 of 2014. In addition, *De Rebus* carried topical reports on a number of landmark judgments that were handed down by the courts in 2014.

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. 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 personal data and the internet, the Consumer Protection Act, virtual courts, the Intellectual

Property Laws Amendment Act, business rescue, the Supreme Court of Appeal and labour disputes, advertising vs touting and admission of guilt fines.

During the period under review, Barbara Whittle took over as acting editor as the editor, Mapula Thebe, was on maternity leave. Barbara's contribution during this time is greatly acknowledged.

The Law Society of South Africa, the *De Rebus* team and the attorneys' profession would like to thank Sithembele Mgxaji for serving as a member of the *De Rebus* Editorial Committee. Mr Mgxaji served on the committee from February 2006 until May 2014; he also served as the committee's chairperson during the 2011/2012 period. His insights and guidance, spanning over eight years, has helped produce a journal that is topical and of interest to the attorneys' profession. Mr Mgxaji, who was the Black Lawyers Association (BLA) representative on the committee, was replaced by Lutendo Sigogo.

2014 prize-winners

Two practitioners were recognised in 2014 for their contributions to *De Rebus* during 2013. Durban attorney Brett Bentley won the 2013 LexisNexis Prize for Legal Practitioners for the best article by a practising attorney published in *De Rebus* for his article titled 'Separating the baby and the bath water. Garnishee and emoluments attachment orders' published in 2013 (Mar) *DR* 22. The article dealt with the emotive topic of emolument attachment orders (commonly called garnishee orders), which in some instances have been abused and which in turn has resulted in a knee-jerk reaction of calling for their abolition without proper consideration of the alternatives open to judgment creditors. The article proposed a middle ground where emolument attachment orders are maintained but the laws amended to afford debtors greater protection. Mr Bentley won an iPad and one year's free access to his choice of five online titles in his own personalised library of online law publications.

In addition, Sandton candidate attorney Ben Winks won the 2013 Juta Prize for Candidate Attorneys for his article titled 'Expropriation – a minefield?' published in 2013 (July) *DR* 44. In his article, Mr Winks provided a critical analysis of the Constitutional Court's landmark judgment in *Agri SA v Minister of Minerals and Energy* 2013 (4) SA 1 (CC), where the constitutionality of the Mineral and Petroleum Resources Development Act 28 of 2002 was upheld. The article argued that both the majority and minority judgments erred in finding that the wholesale transfer of mineral rights from private ownership to common heritage under state custodianship was not a limitation of the right to property in s 25 of the Constitution. The prize was a 12-month single-user subscription to the online Juta's Essential Legal Practitioners Bundle valued at R 10 380 or book vouchers valued at R 7 500, which Mr Winks opted for.

The *De Rebus* team members are acknowledged for their excellent work during 2014 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.

Mapula Thebe,
Editor

FINANCE

The financial report covers the period from January to December 2014. The audited financial statements are finalised after the publication of the annual report and for completeness, they are available as a separate annexure.

The Audit and Remuneration Committee (ARC) is responsible for the implementation and review of finance matters, remuneration and risk management.

The following extract from the LSSA Corporate Governance Policy lists some of the key mandates and responsibilities of the ARC:

- The ARC shall make recommendations and or advise the LSSA Council on general finance matters referred to it.
- The ARC should oversee integrated reporting, subject to the limitation on integrated reporting as defined by the Council.
- The ARC should review the financial statements included in the integrated report and should have regard to all factors and risks that may impact on the integrity of the integrated report.
- The ARC is responsible to evaluate the efficiency and effectiveness of the LSSA's finance function annually and disclose this in the integrated report.
- The ARC shall report annually on the effectiveness of the LSSA's system of internal controls.
- The ARC is responsible for overseeing the internal audit activities, subject to the terms of reference of the Internal Audit Subcommittee (IAS).
- The ARC (including delegated functions to subcommittees) has overall oversight of financial reporting, financial risks and internal financial controls as well as fraud and information technology (IT) risks as they relate to financial reporting.

Schedule of ARC meeting attendance

The Internal Audit Subcommittee (IAS) held four meetings during 2014.

The Remuneration Committee (Remco) held two meetings during 2014.

The Budget Subcommittee held two meetings during 2014.

Member	Number of meetings
Ashwin Trikamjee (Chairperson)	5
Jan van Rensburg (Vice Chairperson and Budget Subcommittee Chairperson)	5
Igna Klynsmith (IAS Chairperson)	4
Mohamed Husain (Remco Chairperson)	1
Vincent Faris (consultant member - SAICA)	5
Peppy Kekana	4
Jan Maree	5
Roland Meyer	2
Ettienne Barnard (LSSA Co-Chairperson)	3
Total number of meetings in 2014	5

Internal Audit

Due to the *sui generis* nature of the LSSA (which differs substantially as compared to commercial entities or non-profit professional bodies the LSSA Council has elected not to establish an internal audit function.

Oversight of internal audit is considered by the IAS, with direct reporting to the ARC.

The IAS considers the control environment of the LSSA and the interim audit held for the nine months ended 30 September 2014 is primarily focused on the internal controls of the LSSA. The LSSA outsources internal audit functions on an *ad hoc* basis, where necessary.

In 2014 the LSSA appointed EOH to review the IT function and associated risks based on industry best practice (utilising the COBIT IT governance framework).

Also, in 2014 the LSSA appointed a senior IT governance expert, Willie Scholtz, as an independent expert who reports directly to the ARC and is charged to finalise the IT governance charter.

Risk management

Risk management is considered by the IAS with recommendations to ARC for analysis and review.

The ARC tables recommendations to the LSSA Council and operational committees, with the LSSA Council retaining overall responsibility for risk management.

The following extract from the LSSA Corporate Governance Policy details some of the key responsibilities for risk management:

- The Council assumes responsibility for the governance of risk management by ensuring the framework is in place and effectively monitored.
- The Council delegates the process and implementation to the following committees of the LSSA to manage, and to recommend and report to the Council via Manco:
 - The ARC, including Remco and the IAS, assumes the pri-

mary role on financial risks, including the remuneration policy.

- The communication risks are delegated to the Management Committee (Manco).
- The human capital risks are delegated to the Human Resources Committee.
- Operational risks for *De Rebus* are delegated to the Editorial Committee.
- Operational risks for the Legal Education and Development division (LEAD) are delegated to the Standing Committee on Legal Education (SCLE).
- Ancillary and other operational risks are delegated to Manco.
- The management team, under the direction of the CEO, is responsible for designing, implementing and monitoring the risk management plan via the strategic risks register.

Key strategic risks for the LSSA as at 31 December 2014

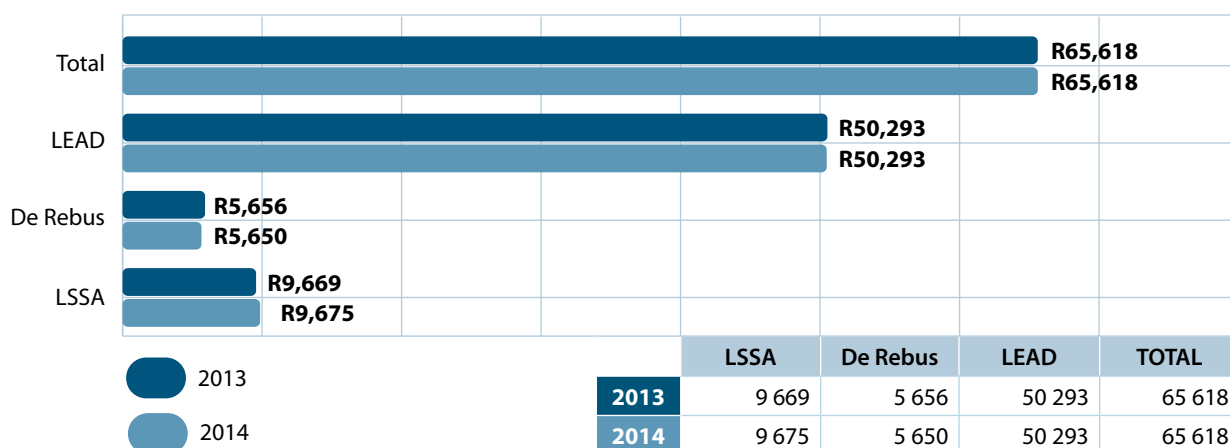
		Risk description	Consequence
1	Financial resources Sustainability and continuation of function	To fund training and professional initiatives for the legal profession. Attorneys Fidelity Fund (AFF) unable to fund existing levels due to organic growth by additional requests on resources. Do not attract alternative revenue streams.	Legal Practice Act (LPA) defines AFF funding and is specific for regulation and discipline. The LSSA is considering input to the National Forum. Alternate is funding by Legal Practice Council via AFF. Engagement with AFF for amendments to the Act.
2	Staff tenure and sustainability	Attraction and retention. Appropriate skills levels to perform job. Internal mentorships. Adequacy of salary range.	LPA creates insecurity of tenure of staff due to three-year timeline on life of the LSSA.
3	Credit control	Provision for doubtful debt. Collection process. Financial assistance loans impacted upon by LEAD bursary and financial assistance system, including the policy of registration with deposit and not full payment.	PDI/other attendance at School for Legal Practice - linked to access to profession.
4	IT systems and IT staff	Critical risk: Distance training (e-learning). Critical risk: Infrastructural resources outdated and not in keeping with growth. Present IT capacity is insufficient to fulfil needs of LSSA.	IT staff and support risk due to inadequate skills. Requires adequately skilled staff and/or outsourced service provider.
5	Sustainability of university-based School centres	There is an increased risk of university-based centres of the School being moved off university premises with staff unsure of tenure. The universities where School centres are located at universities are increasing administrative and facilities costs. The Cape Town School has moved off the university premises and the Durban School is under increasing pressure.	Cost of School centres may not be able to be fully funded. Staff insecurity may lead to loss of skilled staff with ability to attract adequately skilled staff limited by budgetary constraints.
6	Communication	To ensure effective and efficient communication within the LSSA as well as externally. Communication to external and internal stakeholders may be inadequate to provide information regarding proposals received, approved projects, progress reports and outcome results of projects. To make the public aware of specialised skills of attorneys: Public awareness may not be adequately and effectively achieved. Efforts may be duplicated in an awareness campaign or insufficient to ensure public buy-in.	Reputational risk, adverse member interaction. Loss of influence, integrity and professionalism.

		Risk description	Consequence
7	ECT/POPI	To ensure credible data and protection including encryption as well as security and storage of data-collection, interpretation and dissemination in order to advise relevant parties. Data manipulation, analysis and interpretation of skills planning information may not provide adequate input into achieving a culture of high-quality, lifelong learning. Data may not be verifiable and accurate to achieve an understanding of the sector. Incomplete or inaccurate reports to inform stakeholders.	POPI and ECT require policy development and implementation. Risks vest at statutory, provincial law societies, with any failure/lack of compliance impacting negatively on the LSSA
8	Legal Practice Act	Dissolution of the LSSA. LSSA constitution, as current, stipulates that funds revert to provincial law societies. SARS requirement on standard dissolution clause outstanding.	Loss of institutional knowledge and loss of intellectual property (IP) - require protection. Potential diminished value of assets both fixed and current.

Summary of macro financial information

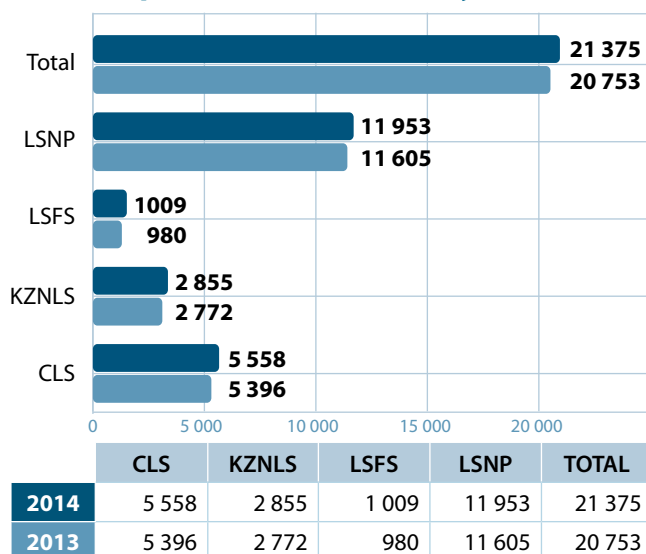
AFF subvention in R 000's

This has been fixed at 2012 level until 2017.

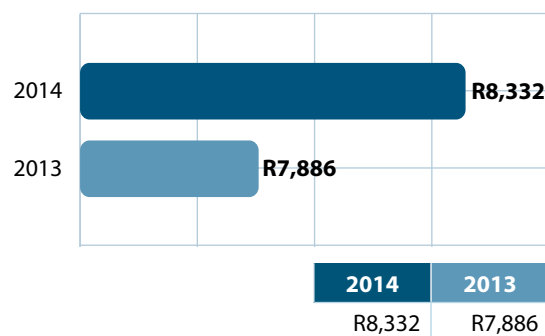


Levies for 2013 and 2014 are R380 per attorney member.

Capitation: Attorney numbers



Capitation: Levies in R000's



Ashwin Trikamjee,

Chairperson, Audit and Remuneration Committee

Anthony Pillay,

Finance Director

HUMAN RESOURCES

Members: Busani Mabunda (Chairperson), Ettienne Barnard and Max Boqwana

This report covers the period from 1 January to 31 December 2014.

The LSSA management has prioritised constant and meaningful engagement with staff so as to ensure that they are fully informed about the developments on, impact of and the changes brought about by the Legal Practice Act 28 of 2014 (LPA).

The LSSA has embarked on developing a value-added human resource retention strategy. A survey (opinion poll) was conducted to gather feedback from staff so as to provide meaningful input into the retention strategy. The objective of the employee retention plan is to retain top talent at the LSSA and to support key personnel throughout the change management process.

The financial and service growth and sustainability of the LSSA lies in the capacity of its employees and in its ability to retain key skills. The LSSA has seen an increase in staff turnover and believes that the imminent changes due to the LPA will impact on the retention of critical, valued and high-risk skills and talent.

The importance of training and development of employees is stressed in order to assist staff members to position themselves correctly for their future growth and development, including any future employment opportunities. The LSSA set a target of 30% for NQF-aligned training for 2014 and onwards. This ensures that staff members are not only skilled in their areas of specialisation, but are also qualified.

In 2014 the LSSA budgeted to ensure proper and professional implementation of an Employee Wellness Programme which will greatly benefit staff members.

Human resources plan for 2015

- To ensure that a strategy is in place so that staff members understand the retention strategy of the LSSA.
- To implement and roll out the professional Employee Wellness Programme that will speak to and provide potential solutions to staff needs including change management, financial/economic, psychological, social and legal requirements.
- To continue empowering staff members through training and development in their areas of specialisation and beyond.

Staff numbers: 2014

Permanent employee resignation are replaced with fixed-term contracts due to the impact of the LPA.

Consolidated staff numbers	Total as at 31/12/2013	Budget	Less Resignations	Add Appointments	Total as at 31/12/2014
LSSA	30	33	3	2	29
De Rebus	5	6	-	-	5
LEAD	51	57	6	7	52
Total: actual	86	96	9	9	86

Staff movement

Appointments

Title	Name	Section	Post	Date	Equity
Ms	Anriette Nel	LEAD: Quality Assurance	Learning Material Developer	27 January 2014	W / F
Ms	Inida Nofotyela	LEAD: UNISA Distance School	Training Coordinator	27 January 2014	A / F
Mr	Moses Sikombe	LEAD: Quality Assurance	Quality Assurance Assistant	1 February 2014	A / M
Ms	Pelcrine Mathibi	LEAD: Practice Management	Training Coordinator	1 April 2014	A / F
Mr	Paul du Plessis	LSSA: IT	IT Administrator	1 April 2014	W / M
Ms	Molatelo Mashabane	LEAD: Polokwane School	Director	15 April 2014	A / F
Ms	Poselesho Nedzamba	LSSA: IT	Desktop Support	1 July 2014	A / F
Ms	Phumeza Dlabathi	LEAD: East London School	Cleaner	1 September 2014	A / F
Ms	Tshegofatso Mogajane	LEAD: Practice Management	Training Coordinator	6 October 2014	A / F

Promotions

Title	Name	Section	Post	Date	Equity
Ms	Kathleen Kriel	De Rebus	Production Editor	1 May 2014	W / F

Terminations

Title	Name	Section	Post	Date	Reason for Termination
Ms	Mokgadi Mabilo	LEAD: Polokwane School	School Director	1 January 2014	Resigned (Personal reasons)
Ms	Juliette Mphasha	LEAD: Practice Management	Training Coordinator	7 January 2014	Resigned (Relocated)
Ms	Anriette Nel	LEAD: Quality Assurance	Learning Material Developer	1 April 2014	Resigned (Relocated)
Mr	Phumelelani Mayongo	LEAD: Practice Management	Senior Training Coordinator	12 May 2014	Resigned (Better offer)
Ms	Inida Nofotyela	LEAD: UNISA Distance School	Training Coordinator	22 June 2014	Resigned (Better offer)
Ms	Thandiwe Ncukana	LEAD: East London School	Cleaner	30 June 2014	Retired (Ill health)
Mr	Andrew Sebapu	LSSA: Professional Affairs	Legal Official	25 July 2014	Resigned (Relocated)
Ms	Zaida Hoosen	LSSA: Finance	Finance Officer	22 August 2014	Resigned (Relocated)
Ms	Alana Abrams	LSSA: Finance	Payroll Administrator	6 December 2014	Deceased

Vacant positions as at 31 December 2014

- Sub Editor (De Rebus)
- Learning Material Developer (LEAD: Quality Assurance)
- Director UNISA Distance School (LEAD: UNISA Distance School) – currently filled on contract basis
- School Administrator (LEAD: Pretoria School)
- Legal Official (LSSA: Professional Affairs)
- Finance Officer (LSSA: Finance)
- Bookkeeper/Payroll Officer (LSSA: Finance)

Training	Attendance by staff members
Achieving customer service excellence	3
Accounts payable	1
Accpac administrator course	1
Adobe Photoshop	1
Advanced events management	1
Advanced photography course	1
Anger and conflict management	1
Articulate studio	2
Assessor training	4
Asset-control training	1
Board of governance course	1
Bookkeeping to trail balance	3
Business ethics for the office	1
Business report writing	4
Branding and marketing course	1
Client care	1
Communication mode training	1
Confidence and assertiveness training	2
Customer care	1
Develop your leadership	2
Effective communication	1
Effective stakeholder management	1
Effective office administration	6
E-Leader inhouse training	3
Election monitoring training	1
ELMS inhouse training	3
Emotional intelligence	3
Employment equity	1
Excel	3
Finance for non-finance managers	4
First aid	1
Higher certificate in office administration	1
Typing skills	1

Training	Attendance by staff members
Individual voice programme	1
Leadership and time management	1
Magic-makers for tea ladies	1
MBA for office professionals	2
Mentorship module training	1
Mid-year update for tax submission	1
Minute-taking	1
Moderator training	2
Monitoring and evaluation	1
Meeting management and minute taking	1
Mentorship	1
Organising your time priorities	1
Payroll and annual updates	1
Payroll and monthly SARS updates	1
Presenting skills for office professionals	1
Procurement training	2
Project coordination	3
Project management	2
POPI ACT	1
Receptionist training	1
Script-writing and directing workshop	5
Supervisory management	1
Significant secretary powerful PA	1
Time and stress management	3
Train the trainer	1
Training and development management	1
VAT	2
MS Word	2
Total cost of training for 2014:	R321 000

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, Mbulelo Jolwana, Peter Horn, Jan Maree, Abe Mathebula, Janine Myburgh, Bulelwa Ndzondo 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 2014.
- 1 468 graduates attended the School for Legal Practice - more than ever before.
- Major progress was made with regard to e-learning through the provision of fully online courses in bookkeeping, legal office administration, legal writing, customary law and company law. 1 560 students benefited.
- Following the successful LLB Summit in 2013, the Council for Higher Education (CHE) published draft standards for consultation. The profession participated actively and has made written submissions to the LLB Task Team and the CHE.
- An effective summit was held in February in Durban to examine the state of ethics generally, and in education in particular. Both the profession and academia agreed to place significantly more emphasis on ethics training. A new curriculum will be developed at LLB level and ethics training under the auspices of the LSSA will be more intensive in the future.
- The Director attended an international conference for educators in ethics in London during July.
- Successful first courses were offered in leadership for women lawyers and in writing legal articles.
- Practitioners from the United States and Ireland offered training in commercial law.
- LEAD produced its first YouTube productions in IT, mediation etc.
- Students of the School were involved in social responsibility programmes throughout the country.
- LEAD offered training for institutions such as the Department of Justice and Correctional Services and the Competition Commission. Another successful programme was offered in business rescue.

Location

LEAD is situated in Sunnyside, Pretoria from where it coordinates 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 2014 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.

Staff

Staff are committed and equipped to render a high standard of service to the profession.

LEAD staff in Pretoria

Director: Nic Swart, **Senior Manager:** Ogilvie Ramoshaba. Anriette Nel (until 31 May 2014), Anthony Matimbe, Barbara Makhandia, Bettie Lubbe, Beverley Chueu, Boitumelo Maluleka, Dodo Dubazane, Dianne Angelopulo, Gail Mason, Grace Mukuru, Jackson Ndlovu, Kezzy Chauraya, Lolita Pieterse, Maria Mokwape, Martha Baloyi, Modi Vinger, Molatladi Modiba, Moses Sikombe (from 1 February 2014), Nomfundo Mbinambina, Norman Khudi, Nomsa Sethosa, Pelcrine Mathibi (from 1 April 2014), Phumi Mayongo (until 31 May 2014), Phyllis Mphasha, Ria Mahlangu, Selina Ramano, Sharon Lee, Stephne Pieterse, Tamara Sihlangu, Tasha Roestoff, Tshogofatso Mogajane (from 6 October 2014) and William Khunou.

LEAD staff at Schools for Legal Practice

Bloemfontein: Willem Spangenberg and Eugenia Sookane

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

Durban*: Fahreen Kader, Nadira Sewnarain and Ntokozo Buthelezi.

East London: Bongi Nkohla, Sue Donovan, Neliswa Dibela, Thandi Ncukuna (retired on 31 July 2014) and Phumza Dlabati (from 1 September 2014).

Johannesburg: Chandika Singh, Titus Mbatha, Connie Malinga, Melanie Reddy and Dorah Dumane.

Polokwane*: Mokgadi Mabilo (until 31 January 2014), Molatelo Mashabane (from 1 May 2014), Louisa Motana, William Mathe and Salome Maloka.

Pretoria: Ursula Hartzenberg, Zukiswa Kala (until 31 October 2014) 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, Inida Nofotyela (until 22 June 2014) and Zukiswa Kala (from 1 November 2014).

*Coordinators at these centres are appointed by universities.

Ongoing education and development activities 2014

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. 2 093 candidate attorneys attended in 2014.

Instructors and presenters involved in LEAD activities: More than 700 practitioners and other experts were involved in the activities of LEAD in 2014.

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. 1 468 persons attended the day, night and distance programmes in 2014.

Conveyancing and notarial training: 356 persons participated in 2014.

Seminars: 4 790 persons attended LEAD seminars in 2014. The following topics were offered:

- Administration of deceased estates
- Children and divorce
- Company law update
- Consumer Protection Act
- Contingency litigation
- Conveyancing: New developments
- Court-aligned mediation
- Debt collection
- Divorce and retirement
- Drafting heads of argument
- Drafting of contracts (advanced)
- Education law
- Electoral project
- Ethics summit
- Evictions and rental recovery: Lease agreements
- Immigration law

- Labour court rules
- Legal costs
- Legal interpretation
- National Credit Act
- New Tax Administration Act
- Train the trainer (mediation)
- Trust law update

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

E-learning: The following programmes were offered:

- Legal bookkeeping
- Office administration and client care
- Customary law (all School for Legal Practice students)
- Forms of business enterprise (all School for Legal Practice students)
- Practice administration.

The LEAD studio was completed. It produces brief video clips and will in future offer webinars.

New business development (ACT): A total of 949 persons received training in 2014. The following courses were offered:

- Legal support staff training
- Business rescue
- Other courses for example, to the Department of Justice and Correctional Services (women lawyers in seven provinces) and Competition Commission.

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 2014. These publications included practice manuals, e-PLT CDs, training DVDs and seminar material.

Social responsibility at School for Legal Practice

The School for Legal Practice exposes its students to community projects in order to sensitise students to the needs of the poor and vulnerable.

Cape Town School: Students participated in various areas of community outreach and support for national social responsibility projects and legal aid assistance. Students supported several charities with a winter warmth project, collecting blankets and clothes for the homeless in the Western Cape. Students showed support for the international 'Bring Back our Girls' campaign. The 2014(2) students supported the National Mandela Day Drive. In addition a 'Lawyers for Literacy' project was started to collect books for underprivileged communities. Students continued with legal aid assistance at the University of Cape Town Tribunal

Bloemfontein School: It was agreed that the focus would be on enriching the legal education of learners in high school. The Petunia Secondary School was selected. At the start of the course, the 2014(1) class was divided into four 'firms' or groups. Each group was responsible for discussing a different aspect of law with the learners at the school. The main purpose of the project was to impart as much knowledge about the law as possible, while making the experience exciting for the learners.

The range of aspects that the groups covered included constitutional law, family law, criminal law and children's rights. Some of the groups prepared pamphlets for the learners with relevant information on the topic discussed, whereas other groups drew up posters to enable learners to be more interactive during the presentations.

Durban School: In the first semester of 2014, students organised two events. A party was arranged for the children at the Ocean View Place of Safety located on the Bluff. Children were provided with a meal, school bags, stationery, toiletries, toys and sweets. Fund-raising was done for the St Teresa's Home in Shallcross, and students donated boxes of groceries and cleaning supplies, together with a cash donation of R1 700.

In the second semester, students organised an event for the Durban Children's Home which included a meal, games for the children and donations of necessary items such as school supplies and toiletries.

The Durban School also contributed to a number of national and local charities in 2014 including Reach for a Dream's Wear Your Slippers to Work; Sunflower Fund Bandana Day; Mandela Day 67 minutes to promote peace and reconciliation; and Casual Day in support of the National Council for Persons with Physical Disabilities.

In addition, the School participates in a feeding scheme at Wembley Primary School in Phoenix, where lunch is provided every Friday for 25 underprivileged young learners.

Polokwane School: On 22 May 2014, the Polokwane School provided legal advice to the Community of Moletji, 20 km from Polokwane. The event was graced by Kgosi Moloto of the Moletji Tribal Council which was hosted in partnership with the Commission for Gender Equality.

Topics that were discussed included different matrimonial systems in South Africa; customary marriages and the impact of non-registration; maintenance; Road Accident Fund claims; and criminal court procedures such as pre-trial, trials, sentencing etc.

The students participated extensively during the programme and according to Kgosi Moloto, it became clear that communities need more such events.

The School is also currently participating in the bread tags for wheelchairs project.

Potchefstroom School: Students chose Bert's Bricks Primary School in Potchefstroom and on 26 July 2014 they took part in a project which involved visiting the primary school and engaging with the children, parents and teachers on children's rights, maintenance and domestic violence. Care packages were distributed and food provided. The School donated a new netball ring and kit. The project was a success and the feedback from the primary school was very positive. The School also partnered with the SAPS in addressing the community.

Johannesburg School: Students at the School participated in a blanket drive in the first semester and visited an underprivileged area of Johannesburg and donated blankets to a local nursery school. Soups and other groceries were also donated. Students of the second semester donated blankets and food to street children and under-privileged people for Mandela Day.

Pretoria School: The Pretoria night school students 'adopted' the Kingdom Life Children Centre in Saulsville during 2013. This centre accommodates more than 100 orphaned children. The 2013 (1) night school donated blankets to the centre. The 2013 (2) night school bought toiletries and during 2014 this toiletry project was maintained to such an extent that the orphanage hardly had to buy any toiletries.

The day school students are partnering with St Michaels All Saints Anglican Church, Sunnyside, to give a meal to approximately 70 people living on the streets. The first meal was served on Friday, 13 June 2014. Since then students have prepared and served food on a regular basis, their programme permitting, on every Friday morning before School starts. It cost about R800 per meal session for a balanced, cooked

meal to be prepared. Because of budgetary constraints the students started a tuck shop where they sell snacks at the School to help pay for the food required. Students finance the tuck shop themselves.

Port Elizabeth School: In 2014 the School adopted the EP Children's Home as its social responsibility project. The home caters for abused and destitute children. The five-week PLT course was presented at the home and the PLT students were encouraged to support the coffee shop on the premises. In this way the home was assisted in generating much needed funds.

On 17 March 2014 the students visited the home to reach out to the children. The children were divided into different age groups, and each 'firm' was allocated a group of children to interact with. The children were given motivational talks,

taught about taking responsibility for choices and actions as well as crime prevention. With the youngest group, students opted to play educational games.

During April a number of the students, under supervision of their wills and estates instructor, assisted the staff members at the home with drafting of their wills. The staff was also given a talk on employment issues and consumer protection. This was again done under supervision of an instructor who is a qualified, practising attorney.

East London School: The East London 2014 1D group decided that they would support The Heaven Old Age Home which doubles up as a day-care centre for children. Soup was funded, prepared and served by the students. They also provided personal grooming assistance, collected clothes and made other donations..

Summary of attendance of all LEAD programmes for 2014

	2014	2013
School for Legal Practice	1 468	1 407
Conveyancing and notarial training	356	426
25-day courses for candidate attorneys	2 093	2 222
Diplomas and certificates (distance)	206	195
Practice management training	937	715
Seminars	4 790	4 043
Other training	1 353	1773
<i>Irish commercial law</i>	20	20
<i>Women in leadership</i>	16	0
<i>Media writing</i>	30	0
<i>E-learning (online to schools 1560)</i>	240	401
<i>Practice development seminars</i>	28	513
<i>International Senior Lawyers Project</i>	70	42
<i>Support staff</i>	547	493
<i>Business rescue</i>	187	304
Other external training	215	240
Total	11 203	11 021

Raj Badal,

Chairperson, Standing Committee on Legal Education

Nic Swart,

Director of Legal Education and Development

PROFESSIONAL AFFAIRS

The Professional Affairs department of the LSSA coordinates and supports the activities of its 29 specialist committees, as well as ad hoc committees and task teams.

The work of the department continues to increase significantly, given the profusion of new legislation, policy documents, review papers, initiatives by the Government and other organisations. All of these require the considered input of the profession.

In addition to their normal activities, it is essential for the committees to engage with various stakeholders. During the period under review, we had 68 meetings, which included meetings with stakeholders such as the South African Police Service, the South African Revenue Service, the Road Accident Fund, the Department of Home Affairs, the Master of the High Court, the South African Board for Sheriffs, the Office of the Registrar of Deeds, to name but a few. The committee reports in the 'Specialist Committee Reports' section in the annual report contain more information.

We would like to convey our sincere gratitude to our committee members for their continuing support and guidance.

I also wish to take this opportunity to thank the Professional Affairs team, Kris Devan, Edward Kafesu and Nonhlanhla Chanza for their ongoing loyalty and dedication. Andrew Sebatu, the legal official left the employ of the LSSA in mid-2014. The members of the department were laden with the extra workload.

Lizette Burger,

Manager: Professional Affairs

ATTORNEYS DEVELOPMENT FUND

The years 2013/14 and 2014/15 have seen many empowering challenges for the Attorneys Development Fund (ADF). The most beneficial of these were the support, critique and rethink of the ADF and its focus during the draw to the end of 2014 and towards the build-up to the first ADF annual general meeting, which was held on 27 November 2014.

The ADF Board is indebted to the LSSA for the support afforded it, particularly as a sounding board and by way of assistance through sharing of resources at their year-end Council meeting, which ensured us a venue for the AGM and other logistical advantages, which we are and always will be grateful for.

The actions of the LSSA demonstrated that we are not only independent as an entity but are so as per regulation and for governance purposes. This was evident in the way that the LSSA Council and the Board of Control of the Attorneys Fidelity Fund as a collective of stakeholders exuded a stern stance in reflecting on the objects and purpose of the ADF and what was expected of the ADF as regards the development of young, new and existing attorneys.

Attendance of most of the LSSA Councilors at our AGM and the valuable advice and input by both LSSA Co-Chairpersons was most humbling and led to a commitment at the Board meeting that ensued to adopt all questions and concerns as an action list which will guide the ADF's activities from 2015.

Governance

Following constituent's elections and changes to law societies' councils and the Attorneys Fidelity Fund, the makeup of the ADF Board changed as a result, as shown below. These directors are appointed and registered with the Companies and Intellectual Property Commission (CIPC) on terms not exceeding two years.

Changes to directors

The following changes were effected to the Board and comprise the present Board of Directors:

- Michelle Beatson remains as Director – Law Society of the Northern Provinces
- Luvuyo Godla remains as Director – Black Lawyers Association
- Nomahlubi Khwinana remains as Director – National Association of Democratic Lawyers
- Roland Meyer remains as Director – Cape Law Society
- Miemie Memka appointed as Director – Law Society of South Africa
- Etienne Horn remains as Director – Attorneys Fidelity Fund
- Gavin McLachlan appointed as Director – KwaZulu-Natal Law Society
- Tšiu Vincent Matsepe appointed as Director – Law Society of the Free State.

Governance committees

The Board of Directors appointed Etienne Horn as Chairperson and Nomahlubi Khwinana as Deputy Chairperson at the AGM Board meeting. The appointment of committee members and chairpersons will be done at the meeting of the ADF Board scheduled for 23 February 2015. The ADF has the following committees:

Executive Committee
Investment/Finance Committee
Legal Committee
Loans Committee
Procurement/Infrastructure Committee
Human Resources Committee.

Operational issues

Applications

As at the end of November 2014, the ADF has assisted beneficiaries in almost all the major centers of business in South Africa. The statistics of where beneficiaries are located are shown in the table below.

Location	Beneficiaries
Bloemfontein	1
Cape Town	1
Durban	4
East London	1
Grahamstown	1
Hermanus	2
Jeffrey's Bay	1
Johannesburg	8
King William's Town	1
Kokstad	1
Mthatha	3
Pietermaritzburg	3
Pretoria	5
Welkom	1
Wynberg (CT)	1

At the beginning of December 2014 to date, there have been further applications that were approved and are in various stages of finalisation

Reporting

The AFF is committed to ensuring an interactive and transparent operational model and will, as far as possible, strive to ensure that our critical communication and reports receive the LSSA Council's attention through submissions for noting at each of the LSSA's Council meetings as far as possible.

While avoiding duplication, the ADF will endeavour to keep the provincial law societies, the Attorneys Fidelity Fund and other stakeholders informed through these reports.

Financial model

The financial model of the ADF is undergoing a review as per recommendations at the AGM. The final options shall be communicated to all stakeholders and on the ADF's new website.

Operational model

The operational model will be greatly influenced by the financial model and shall be communicated as soon as finalised.

It is important to note that these models are tweaked with risk management models as opposed to functional models. Thus, as far as possible, engagement is sought with risk managers in order to ensure that the risks of invested and operational funds are managed.

Conclusion

The ADF will take heed of stakeholder concerns which include but are not limited to the following:

- Record to be kept of progress made by each beneficiary firm.
- Rural-based practitioners are approached and the offerings of the ADF are made to them as a key priority.
- The Board is to take a stance of being activists and be more visible to targeted practitioners.
- Set targets and measure those targets against performance.
- Ensure that the ADF tax exemption status is revisited.

The ADF Board of Directors would like to extend its appreciation to the LSSA for its continued support.

Etienne Horn,

Chairperson, Attorneys Development Fund

LEGAL PROVIDENT FUND

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

Independent trustees: Vincent Faris, Iqbal Ganie, 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.

Currently the majority of the board of trustees is appointed by the LSSA. During 2014 the trustees applied to the Financial Services Board (FSB) for a rule amendment to provide for members to elect the board of trustees, in line with governance principles. The LPF Board, together with Alexander Forbes Financial Services in its capacity as administrator, is working on a structure for such member elections.

The LPF has managed to sustain its membership numbers during 2014. There were a large number of withdrawals and retirements, matched by an approximately equal number of new members. In industry terms the LPF remains a medium-sized umbrella-type retirement fund, with approximately 450 participating employers and 4 500 members.

During 2014 most portfolio options delivered performance slightly in excess of inflation. The longer-term performance over three and five years has delivered returns well in excess of inflation, meeting the investment objective. It goes without saying that investment performance is under constant scrutiny going forward.

The Board considered the relative merits of active and passive investment strategies and conducted an asset liability modelling exercise to assess the ability of members to retire with reasonable retirement savings. The findings confirm that the default Life Stage investment strategy provides a reasonable balance between above-inflation returns to support capital accumulation during the earlier years of membership, and responsible de-risking as members near retirement age. The concern remains that too many of our members are not contributing adequately towards their retirement, despite the flexibility created by the rules with regard to the contribution categories available.

2014 was a busy year with the trustees meeting on three occasions for formal Board meetings. An additional governance workshop was held in December 2014. The Executive Committee of the Board 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 2015 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: Charles Cohen (Chairperson), Daryl Burman, Fazel Bulbulia, Maribe Mamabolo, Letuba Mampuru, Jerome Mthembu, John O'Leary, Ebrahim Patelia and Sue Pillay

After more than twenty years at the helm, Daryl Burman stood down as Chairperson of the committee and Charles Cohen was elected in his place. Daryl's important contribution to the development and propagation of alternative dispute resolution (ADR) in South Africa is acknowledged with much gratitude and appreciation. He will continue to serve as a member of the committee.

As regards ADR, 2014 was a seminal year for this committee and indeed for the profession as a whole. In December, court-annexed mediation was officially introduced and gazette, and the Minister is shortly to appoint mediators in terms of the Rules of Court.

Submission to mediation at this stage applies only to certain Magistrates' Courts and is voluntary. The intention is that, after a two-year trial period, mediation will be extended to all courts, including the High Court. We have been advised that, as a matter of policy, litigation involving the State will in future be required in the first instance to be referred to mediation.

Given international trends and developments within South Africa itself, the introduction of mediation as part and parcel of legal practice is unstoppable. It should, accordingly, be viewed as a challenge and opportunity for practice development. Its introduction will, in the long run, be of benefit to both attorneys and their clients.

In this regard LEAD has taken the initiative to train mediators to required standards. During the year under review, forty-hour training sessions (five days) have been held in Johannesburg (twice), Durban, Cape Town, Bloemfontein and East London.

This has resulted in the training of over 100 mediators who qualify for accreditation in terms of the Minister's criteria for accreditation. This is in addition to several hundred attorneys who have, over the years, been trained by LEAD.

The training is done by practitioners experienced in mediation who have, in addition, undergone specific training for the task. Apart from myself, the following persons were involved in the training programme: Ebrahim Patelia, Charles Mendelow, John O'Leary, Kamlesh Kerr, Mahomed Essack, Ahmed Cachalia and Johanna Mayne. The trainers, all busy practitioners, have executed the training with enthusiasm and professionalism of the highest order, for which we are deeply grateful.

A train-the-trainers programme was launched. The purpose was primarily to have local trainers available in various centers, thereby increasing the geographical areas in which training is available to practitioners.

One further development of great importance to the profession is the intended overhaul of our hopelessly outdated Arbitration Act 42 of 1965. The import of this cannot be underestimated. The proposed amendments will bring South Africa in line with international developments in the field of arbitration, which in turn will make this country an attractive venue for international arbitration, particularly from sub-Saharan Africa.

It is anticipated that there will be two separate Acts – one for international commercial arbitration and a separate one for domestic arbitration. As regards the latter, one of the proposals is to allow for arbitration in matrimonial disputes, which is prohibited under the 1965 Act.

My sincerest thanks to the committee and the LSSA for all the support that we have received in our endeavours. In this regard it should be mentioned that we have enjoyed the full support of the LSSA in promoting mediation, for which we are most grateful.

Charles Cohen,

Chairperson, Alternative Dispute Resolution Committee

COMPANY LAW COMMITTEE

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

The Company Law Committee meets only on an *ad hoc* basis as and when circumstances dictate. The committee met twice during the year, both times for lengthy periods. On the first occasion, the committee assessed submissions made by practising attorneys regarding possible amendments to the Companies Act, 2008 (the Act) and prepared its own submission (based inter alia on the submissions made by practising attorneys) (the SCCL submission) which was sent to the Specialist Committee on Company Law (SCCL).

The Chairperson (who is also a member of the SCCL) and Kevin Cron spoke at a meeting of the SCCL on the SCCL submission. The SCCL asked for further submissions on certain aspects of the LSSA's SCCL submission, as well as for submissions on other aspects of the Act. That was the reason for the second meeting of the committee. A further submission was prepared and sent to the SCCL for consideration. The committee has not yet heard the outcome of the SCCL's deliberations on the two submissions made to it. The submissions are available on the LSSA's website.

The committee was invited to attend a symposium arranged by the Department of Trade and Industry on company law in August 2014. The Chairperson attended, inter alia representing the LSSA. The symposium was attended by some 400 delegates. The keynote speaker, who spoke in many sessions over the two-day period, was retired Chief Justice Myron Steele from the Delaware court, one of the key corporate law jurisdictions in the world. He gave stimulating – and at times amusing – addresses on Delaware law as regards mergers and acquisitions, nominee directors and new developments in the company law of Delaware, and business rescue equivalents in the United States. South Africans were indeed privileged to have had the opportunity to listen to and interact with retired Chief Justice Steele, who over many years was at the cutting edge of company law development in the United States, bearing in mind that the Delaware court is undoubtedly the leading court on company law in the United States.

Also participating extensively were South African judges Dennis Davies, Ephraim Makgoba and Owen Rogers, whose pithy analyses of South African company law aspects were very well received. Prof Piet Delport gave an illuminating overview of the fundamental transaction sections of the Companies Act. The symposium, which was opened by the Minister of Trade and Industry, was very well attended, although sadly seemingly not by many practising attorneys.

Again the strong attendance at the symposium demonstrates the interest in company law in South Africa.

Miranda Feinstein,

Chairperson, Company Law Committee

CONTINGENCY FEES COMMITTEE

Members: George van Niekerk (Chairperson), Frank Dorey, Poobie Govindasamy, Peppy Kekana, Howard Maimela, Jan van Rensburg, Henri van Rooyen and Yusuf Wadee

The Contingency Fees Committee had one telephone conference and two meetings during the year.

The committee had resolved at the beginning of the year to address instances of abuse, and to review the application of the Contingency Fees Act 66 of 1997.

It concluded its deliberations for the year by preparing a memorandum with its views, which will be distributed to various committees of the LSSA, including the Costs, Ethics, High Court, Magistrate's Court and Personal Injury Committees for their input. Once the input from these committees has been collated, consideration will be given to approaching the Minister of Justice and Correctional Services to promulgate regulations in terms of the Contingency Fees Act, to give greater clarity regarding its use to practitioners and clients alike.

The committee also reviewed the submissions made by of the Law Society of the Northern Provinces to the Deputy Judge President of the North Gauteng High Court in regard to the use of contingency fee agreements in the North Gauteng High Court.

The committee differentiated between ordinary contingency fee agreements, for example in personal injury matters, and contingency fee agreements in respect of debt collecting matters.

The committee considered whether it is possible to clarify perennial issues with the Act, such as whether or not counsel fees are included or excluded, whether VAT is included or excluded, and whether the normal disbursements and expenses incurred by an attorney are included or excluded.

- Counsel's fees: The fees due to counsel may be included or excluded from the agreement, depending on the agreement. If counsel participates in the contingency fee arrangement, then the aggregate of attorneys' fees and counsel's fees may not exceed 25%.

- VAT: It appears to the committee that VAT is included in the statutory prescribed fee.
- Disbursements: The normal disbursements and expenses incurred by an attorney may be either included or excluded. It is a matter which should be specifically agreed, and then recorded in writing between the attorney and client.

In the meanwhile, guidance should be obtained from the Law Society of England and Wales, as well as the law societies in Australia, as they are grappling with the same issues. It appears from research commissioned by the Legal Services Board in the United Kingdom that the introduction of conditional fee agreements have had little discernible impact on access to justice over the past fifteen years.

Section 35 of the Legal Practice Act 28 of 2014 requires the profession to examine the manner in which practitioners bill their clients. The use of contingency fee agreements and its efficacy will no doubt be a hot topic in the next year.

George van Niekerk,

Chairperson, Contingency Fees Committee

COSTS COMMITTEE

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

The Costs Committee held a meeting on 20 February 2014, a teleconference on 9 May 2014 and a teleconference on 11 November 2014.

The profession was also represented at the Legal Costs Indaba convened on 22 February 2014, which was initiated by the Rules Board for Courts of Law. The topics addressed included the sustainability of costs in the context of access to justice, the structure of the tariffs for attorneys and sheriffs, as well as the need for a tariff for taxation of advocates' fees.

The provisions of the Legal Practice Act 28 of 2014 in the context of costs requires discussion and debate and it will be necessary to participate in this process, so as to ensure that the interests of the profession are considered and implemented.

The committee maintains its focus on the statutory tariff primarily with regard to the simplification of the current tariffs, as well as motivations in respect of regular increases to ensure that the disparity between attorney-and-client charges and the party-and-party tariff is reduced so as to ensure that this factor does not inhibit access to justice.

The challenges to the profession are in the context of the Legal Practice Act, 2014 further submissions for increases in the statutory tariffs and the simplification and harmonisation of the tariffs.

Research will be conducted to consider costs in the context of the Legal Practice Act 2014. This will necessitate consultation with other stakeholders and consideration of the different jurisdictions.

Asif Essa,

Chairperson, Costs Committee

CRIMINAL LAW COMMITTEE

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

The Criminal Law Committee met only once during 2014 despite many attempts by the Chairperson to arrange at least two meetings. A depleted committee met on 20 June 2014 in Johannesburg with only the Chairperson, the Deputy Chairperson and Elsje Clarke of the Law Society of the Northern Provinces present.

This issue was raised in this committee's report submitted for the 2013 year when there was also only one meeting, which was a joint meeting with the Legal Aid Committee. The poor attendance at meetings of this committee is an aspect that the LSSA should address urgently. If members do not attend these meetings, the functioning of the committees, which are so important, collapses.

The issues that were debated at the meeting dealt with media coverage of trials, particularly in light of the Oscar Pistorius trial which was finalised during the year in the North Gauteng High Court, Pretoria. It seems that media coverage – to a greater or lesser extent – is with us to stay.

Having said that, obviously each judge or magistrate who deals with a particular case has the discretion, depending on the circumstances of the case, to allow or disallow media coverage.

In the recent case of *S v Dewani* (CC15/2014) [2014] ZAWCHC 188 (8 December 2014) dealt with in the Western Cape High Court, the presiding judge decided not to allow the same extent of media coverage as was allowed in the Pistorius trial, but the proceedings were certainly debated by all, not only in legal circles, but by the public in general.

One concern that has been raised is that witnesses' evidence may be contaminated if they are able to watch or hear what other witnesses who have testified before them have to say about the same incident. A mechanism which deals with this concern needs to be developed.

A major concern has been raised about people being arrested too quickly for petty crimes and sometimes being detained overnight or even over a long weekend when such an arrest and detention is not justified.

It was felt that police officers need to exercise far greater discretion. They are, in any event, allowed to release suspects on so-called police bail or on warning notices, but in many instances, police officers are not, sadly, aware of the law or what is set out in the Criminal Procedure Act 51 of 1977 pertaining to the arrest and subsequent release of suspects.

In this regard workshops/seminars have already been held in partnerships with the South African Police Service (SAPS) during 2013 as well as in 2014. We hope to encourage all attorneys to attend meetings and to invite police officers to workshops dealing with the law and the better functioning of the police, also in their conduct towards members of the public.

The Cape Law Society's (CLS) Criminal Law Committee submitted a report on behalf of the CLS to the Khayelitsha Judicial Inquiry which was concluded during 2014.

It is hoped that we will continue to engage the SAPS at the highest level with regard to issues of mutual concern. Attorneys have a duty towards members of the public to improve the effectiveness of police officers in the way they deal with all cases, not only on behalf of suspects who are arrested, but also on behalf of victims of crime.

The committee also discussed the issue of admission of guilt fines which are often set at police stations for suspects. Two recent decisions from the Western Cape High Court, *S v Calvern Tong* and *S v Rammel Ramjee*, were noted. Both cases laid down the requirements that are needed to be adhered to by police officers before setting admission of guilt fines. It was also noted that an admission of guilt fine which is set after the arrest of a person, will amount to a conviction recorded on that person's record, which could have disastrous effects for somebody convicted of a petty crime and who later has to apply for work or for a visa for travel purposes.

Insofar as allegations of torture at South African prisons are concerned, a symposium arranged by the Wits Justice Project took place during August 2014. Attorneys are urged to report all instances of torture at prisons that come to their attention so that the necessary steps may be taken to rid our prison system of this scourge.

Various provincial law societies have also engaged with the

Department of Justice and Correctional Services along the lines of the engagement with the South African Police Service in order to hold lectures, seminars and workshops.

In this regard it was also noted that attorneys are excluded from representing prisoners at many parole board hearings. It seems that requests for legal representation for victims at such hearings are more easily granted by the chairpersons of Parole Boards. It is felt that a test case should be identified so that the courts can be approached to obtain a ruling as regards legal representation at these hearings.

Members of various provincial law societies attend the Provincial Efficiency Enhancement Committees' (formally Case Flow Management Committee) meetings. There have been complaints about administrative court personnel at various Magistrates' and High Courts in the way they deal with the public.

Certain magistrates and even judges sometimes lack public relations skills when dealing with the public and with lawyers. These complaints need to be aired at the Efficiency Enhancement Committee meetings so that they may be resolved.

The Department of Justice and Correctional Services' main focus is, at present, on the Civil Justice Reform System. It is felt that urgent attention should be given to a review of the Criminal Justice System as well.

William Booth,

Chairperson, Criminal Law Committee

DECEASED ESTATES, TRUSTS AND PLANNING COMMITTEE

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

The Deceased Estates, Trust and Planning Committee met once during the year under review. The meeting was held on 18 June 2014. Adv Lester Basson, the Chief Master of the High Court, also attended the meeting.

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

- the Paperless Estate Administration System;
- the Paperless Estate Administration System for Trusts;
- challenges facing the various Masters' Offices in relation to

files that cannot be found and quality of decisions being made at service points;

- budgetary constraints in the Office of the Chief Master affecting human resources;
- jurisdictions of the Masters' Offices;
- annual performance statistics and reports; and
- the establishment of Master's Liaison Committees by the provincial law societies.

The committee made written submissions during June 2013 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. A response to these submissions is still awaited.

The committee made written submissions to the Justice Department on the proposed amendments of fees and tariffs prescribed in terms of the Administration of Estates Act 66 of 1965 and the Trust Property Control 57 of 1988.

The Minister of Justice and Correctional Services, acting in terms of ss 18(3), 80(2) and 90(1) of the Administration of Estates Act, 1965 has determined an amount of R250 000 for the purposes of the said sections. The determination was published in the *Government Gazette* by Government Notice R920 dated 24 November 2014. The previous Government Notice R318 dated 19 September 2003 which determined an amount of R100 000 for the purposes of the said sections has been repealed.

Some 75% of all estates in the Republic are administered pursuant to directions issued in terms of s 18(3) of the Administration of Estates Act, 1965. The s 18(3) procedure is unsatisfactory. Once the directions in terms of s 18(3) are issued, there is no follow through by the Master for an accounting or to furnish proof of transfer of the immovable property, where applicable. In many instances, proper disclosure of the assets is not made when directions in terms of s 18(3) are applied for, with the result that the estate has subsequently to be re-opened and a letter of executorship has to be applied for. In the meanwhile, the bank accounts of the deceased have been emptied. It is submitted that an executor should be appointed in every estate. This would ensure a measure of supervision by the Master and also accountability to the Master.

The Minister of Justice and Correctional Services, acting in terms of ss 1(1)(c)(i) of the Intestate Succession Act, 1987, has fixed an amount of R250 000 for purposes of the said section. This determination was published in the *Government Gazette* by Government Notice R921 dated 24 November 2014. The previous Government Notice R483 of 18 March 1988, which fixed the amount at R125 000 for the purposes of the said section, has been repealed.

Chief Master's Directive 4 of 2014 requires the various Masters' Offices, inter alia, to furnish the following statistics:

- percentage of letters of appointment issued in deceased estates within 15 days from receipt of all required documents;
- percentage of liquidation and distribution accounts in large estates (> R125 000) examined within 15 days from receipt of all required documents;
- percentage of beneficiaries in receipt of payment within 40 days (Guardian's Fund); and
- percentage of letters of authority issued in trusts within 14 days of receipt of all required documents.

These statistics greatly assist to monitor and determine the turnaround times of the Master's Offices on certain key outputs.

The establishment of Master's Liaison Committees by all the provincial law societies has not yet been accomplished. Provincial law societies that have not yet established these committees are urged to do so as a matter of urgency. This would be an ideal forum to discuss operational issues and to establish sound relationships with the Master. It would also facilitate measurement of performance levels by both the Master and practitioners, as well as indicate performance trends.

The following Chief Master's Directives were issued during 2014:

	Subject Matter	Effective date
1 of 2014	Master's representation at insolvency proceedings	31 March 2014
2 of 2014	Appointments in terms of the policy on the appointment of insolvency practitioners	31 March 2014
3 of 2014	Monitoring the implementation of the policy on the appointment of insolvency practitioners	31 March 2014
4 of 2014	Keeping of annual performance plan statistics and reports	1 April 2014
5 of 2014	Contact details and telephone lists of Offices of the Master of the High Court	18 June 2014
6 of 2014	Guardian's Fund – Refund of capital loss amount plus interest	5 August 2014
7 of 2014	<i>Inter vivos</i> trusts – suffixes for identification of Offices of the Master of the High Court	15 September 2014

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 and Sizwe Snail

This committee has remained in contact with Department of Justice and Correctional Services, the Master of the High Court and the Department of Rural Development as they move towards much greater electronic interaction with the profession and others.

It remains involved, together with the LSSA's Property Law Committee, in the Department of Rural Affairs' recently unveiled 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 necessary. We were able to influence the Department to set aside its initial proposals, which we believe would have been unworkable in practice. We will be able to keep our profession updated about progress towards the electronic deeds registration system and will work with LEAD to arrange training to ensure no lawyer is left behind.

We have been asked to see how we can fit our digital signature project into the trial digital conveyancing process, and we will involve various conveyancers in that process. We have had advanced electronic signatures issued to around 100 practitioners and will be reporting on our trial project in 2015.

The Chief Master of the High Court has also asked us to work on digital submission of authenticated documents from practitioners with the two KwaZulu-Natal Masters' Offices as part of our KwaZulu-Natal trial.

The parallel process of amending, repealing or adjusting statutes to allow for e-conveyancing is also important and the Department in question is aware of this, so we will work with the LSSA's Property Law Committee in this regard.

We also worked together with the Property Law Committee to oppose the Chief Registrar's sudden decision to forbid lodgement of rates clearance certificates obtained by the online process we had been using for over ten years. There was a significant struggle, which we succeeded in winning; and a possible massive disruption of conveyancing transactions and the economy was avoided.

General e-competence is vital for practitioners as e-government gathers momentum. 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 during 2015.

The recently enacted Protection of Personal Information Act 4 of 2013 (POPI) will significantly affect practitioners and we arranged some workshops through LEAD, which were presented by Mark Heyink during the latter part of 2013. We intend to repeat these workshops in 2015 once the regulations are published and the Information Commissioner has been appointed, as a new world of information management will begin in earnest. Lawyers will be in the firing line and must be guided proactively about POPI.

The profession must also draft its own code of practice rather than having a generic one thrust upon it, so we have arranged that Mark Heyink and others will work on it for the profession's benefit

The Chairperson and Deputy Chairperson have been involved in advisory panels for the Department of Communications on e-commerce and cyber security, whereas the deputy chairperson, Sizwe Snail, has been appointed to the newly established National Cyber Security Committee, which will perform a vital role in future. It is encouraging to see that Mark Heyink was also appointed to this committee and the State is drawing on the reservoir of skilled and specialised e-practitioners within our profession. We managed to make a significant contribution to the drafting of the recently released National Integrated Information and Communication Technology Policy White Paper.

We will continue to provide input as needed for the Attorneys Development Fund (ADF) about improving practitioners' e-skills and the use of technology, and we can help bring vendors into that process. The Chairperson was appointed as a director of the ADF and will contribute as much as he can to its success.

As before, we will continue to work to try and increase the profession's visibility in the local e-law environment and 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 members of the LSSA regarding environmental law.

The committee met for its annual meeting on 11 June 2014 and discussed significant legislative developments and current environmental issues. At the meeting the committee reaffirmed its commitment to commenting on key legislative developments relevant to environmental issues on behalf of the LSSA and responsibilities for drafting comments were allocated to particular members. The committee also followed up on the establishment of an environmental law committee at each of the provincial law societies, and reaffirmed its intention to arrange for a speaker at an LSSA annual general meeting on an environmental legal topic. Members were also encouraged to join the Environmental Law Association (ELA).

A representative of the committee continued to serve on the Department of Water Affairs' (DWA) Reference Group to provide input on behalf of the LSSA to the finalisation of the Waste Discharge Charge Strategy (WDCS). However, no further progress was made on the WDCS by the DWA during the reporting period. Norman Brauteseth is monitoring developments concerning the Planning Professions Act 36 of 2002 and Regulations.

Catherine Warburton,

Chairperson, Environmental Law Committee

ETHICS COMMITTEE

Members: Krish Govender (Chairperson), Butch van Blerk, Dave Bennett, John Christie, Johan Fourie, Linda Magaxeni, Percival Maseti, Deirdré Milton and Ed Southey

Our committee has raised serious questions about the state of professional conduct and ethics over the years which has resulted in a growing disrespect for the legal profession, in particular, attorneys. The vast majority of our members and the unsuspecting members of the public bear the brunt of the consequences of the erosion of the ethical standards which has penetrated even some of the large corporate legal firms in our country. These challenges facing the legal profession and the public that we have raised have been taken up in a most serious way in the past year, with the support of the LSSA and the infrastructure and staff of LEAD, under the stewardship of the CEO, Nic Swart, and his management team. We cherish the hope that the programme of action to confront many of these challenges which has started is seen through to finality, such that professional ethics will not be a subject consigned to the proverbial footnotes of the profession's priorities.

It was during 2014 that the debate and discussions on professional ethics and ethics as a mandatory university module/course were advanced to conference level. Our Ethics Committee meeting on 14 February 2014 laid the basis for a national conference on ethics and the pursuance of the transformation of teaching and curricula in tertiary legal education. In this regard LEAD has taken the lead.

As a result, the first Ethics Summit in the LSSA's history was held on 28 February 2014 at the Hilton Hotel in Durban, under the banner of LEAD. This was a great success and was attended by practitioners, academics and senior managers from both the LSSA and LEAD. The keynote address was given by the tireless retired Justice Zak Yacoob of the Constitutional Court whose presentation was excellent, as always. This was followed by presentations by specialist academics and senior practitioners. Space does not allow for repetition of these presentations made at this summit. Readers are urged to refer to the fifteen-page report of this summit which is available on the LSSA and LEAD websites, and which has been widely distributed. The call for the promotion of ethics as a mandatory course for study in the proposed LLB curriculum that was under debate, was given a powerful boost at the summit. The theory and content of such an ethics course was conceptualised in effect at the summit. At the very least, mention must be made of the excellent Summit papers by Helen Kruuse, Madoda Nxumalo and Chris du Plessis. The Summit was chaired by the able Chairperson of the Standing Committee on Legal Education, Raj Badal.

This summit had a strong influence on the two meetings that were subsequently held by the LLB Task Team on 16 May and 11 November 2014, on which task team some of us also serve. In these task team meetings, organised by LEAD under the auspices of the LSSA, the role and importance of ethics as career guidance, character development, values rooted, rights conscious and examination course, was accepted by all the stakeholders, including the Council for Higher Education and the Departments of Higher Education and of Justice, apart from the lawyers, academics and law students.

The foundations have been laid for this project rooted in values and integrity. However, while all of these ideas and plans develop, we cannot remain aloof and hopeful. The constant difficulties faced by the lay public, law societies and also by many upstanding lawyers in practice in our country, and in the world at large, in attempting to seek redress and to hold errant lawyers accountable cannot be allowed to continue in the same old vein of 'business as usual'. There is a national demand that has gained foothold, forcing lawyers to look at themselves and to act swiftly against unscrupulous practitioners, in the public and national interest. Failure to do so will result in interventions from other agencies linked to the State which may compromise the cherished independence of the legal profession. It bears repeating that the stresses and strains of the legal profession in a tough local and global

economic environment are leading to the blurring of lines between ethical and unethical conduct. Many practice styles, methods, rules and ordinary day to day activities in legal firms have been compromised in the greedy chase for greater profits. The old drive to serve and make ends meet is nowadays superseded by the urge to get rich quick, by many powerful corporates, bankers and businesses in general. Criminals have industrialised and corporatised their activities in our global village and some lawyers have become the consiglieres of crime lords. The risks and returns are very high in the glitzy nightlife, fast cars, gambling and related activities in the reckless underworld. All of this is a cause for distraction for many a bright young lawyer, taking their lead from some older ones.

In our constitutional democracy, the role of the lawyer within our much lauded legal system is paramount for the sustainability of justice, human rights and prosperity for all in our very young and fast-growing nation which still remains a beacon of hope in a violent and conflict-ridden world. The role of ethical lawyers and ethics, therefore, is the lifeblood for stability and growth in our country. In this regard, our committee has the full backing of Manco and the Council of the LSSA in all its endeavours. We have to succeed and break down the so called 'Chinese Walls' and many other obstacles that are being placed along the path of entrenching honesty and integrity in the legal profession. We look forward to 2015 with strength and hope!

Krish Govender,

Chairperson, Ethics Committee

FAMILY LAW COMMITTEE

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

The Chairperson participated in a telephone conference of the Costs Committee of the LSSA on 20 February 2014 where the following issues were discussed:

- sustainability of costs and access to justice;
- structure of the tariff for attorneys;
- structure of the tariff for sheriffs ;
- tariff for taxation of advocates' fees in the Supreme Court of Appeal, the High Court and the Magistrate's Court.

The participants agreed that the fact that increases of the tariffs are not in keeping with attorney-and-client charges, is an inhibition to access to justice.

The Chairperson represented the committee at the Rules Board Indaba on Access to Justice on 22 February 2014. The committee had made written representations to the Rules Board for Courts of Law on the tariff and procedure in respect of r 43 of the Uniform Rules of Court and r 58 of the Magistrate's Court Rules. At the Indaba, the Chairperson also made an oral presentation on the issue. We are still awaiting the Rules Board's response to our submissions.

Subsequent to the Rules Board Indaba, a telephone conference between the chairpersons of the Costs, High Court, Magistrate's Court and Family Law Committees was held to discuss the feedback from the Indaba, as well as the simplification of the tariffs and costs in the context of the Legal Practice Bill (as it then was).

As reported previously, the Gender and Family Law Committees embarked on a joint initiative with the South African Police Service (SAPS) which aims to support the victims of domestic violence who report crimes against women and children to the SAPS. A workshop was held with provincial commissioners and relevant National and Public Visibility SAPS officials in Johannesburg on 25 June 2013. Following the Johannesburg workshop, workshops with the SAPS were held at Cape Town Customs House in Cape Town on 14 May 2014, in Huis Paarl Vallei on 15 May 2014 and in George on 28 May 2014. The Chairperson attended the Cape Town and Paarl meetings together with Zenobia du Toit and Brian Segal, and Mr Segal also conducted the meeting in George on behalf of the LSSA.

During the workshops a number of issues were raised and discussed between the representatives of the committees and the SAPS. It was generally agreed that there should be a cooperative thrust on a multidisciplinary level, involving all of the stakeholders, to improve the implementation of the Domestic Violence Act 116 of 1998 and the prevention of domestic violence in a practical, cooperative and improved manner.

The SAPS and the LSSA committees will be moving forward with implementation of and obtaining dates for the other provinces and persuading all stakeholders and NGOs to assist and become part of the initiative at provincial and national level.

The Chairperson represented the committee in a further meeting of the High Court, Magistrates' Courts and Costs Committees, held on 3 July 2014. At that meeting, it was resolved that the Chairperson or another representative of the Family Law Committee should continue to attend Cost Committee meetings, as issues of relevance, such as r 43 of the Uniform Rules of Courts and r 58 of the Magistrate's Court Rules were discussed, with which the Family Law Committee can assist.

During 2015, the LSSA Family Law Committee will

- consider and comment on the Sexual Offences Amendment Bill, the Maintenance Amendment Bill, the uku-thwala report and investigation by the South African Law Reform Commission, as well as other relevant draft legislation which may be published;
- contribute towards the discussion, together with the Gender Committee, on gender representation on the judiciary;
- deal with the Rules Board in relation to the amendment of the r 43 and r 58 tariff and application procedure;
- make proposals about the amendment of the Arbitration Act 42 of 1965 to remove the prohibition against domestic arbitration so as to allow arbitration in family law matters;
- consider making submissions for an amendment to the Children's Act 35 of 2005; and
- continue with the SAPS project.

Susan Abro,

Chairperson, Family Law Committee

FINANCIAL INTELLIGENCE CENTRE ACT (FICA) COMMITTEE

Members: David Bekker (Chairperson), Greg Duncan, Angela Itzikowitz, Puleng Keetse, Maboku Mangena, Leon Rousseau and Praveen Sham

The Financial Intelligence Centre (FIC) intends to start prosecuting practitioners who do not comply. New entrants to the profession are reminded especially of the duty to register with the FIC and to inform the law society of their successful registration. The statutory, provincial law societies, as supervisory bodies in terms of the Financial Intelligence Centre Act 38 of 2001 (FICA), are obliged to report to the FIC on non-compliance.

The FIC published a consultation paper which proposed to amend FICA to move to a risk-based approach and certain other matters. This committee considered the proposals and prepared a submission to the FIC. In this report I will only deal with the issues that I presume will be of importance to practitioners. The full submission of the committee to the FIC is available on the LSSA website.

This committee expressed the view that the objective of a risk-based approach, as stated in the document, should be supported by the attorneys' profession. It would afford an attorneys' firm more flexibility to adopt either a more stringent or less stringent approach to the KYC (know your client), depending on the firm's size and its client base. It was cautioned that a subjective test could be problematic, as one person could be overly zealous while the other person's standards could be more relaxed. However, the standards could be taken care of in the guidelines of the profession. The committee resolved to submit the following:

- A hybrid approach should be proposed in terms of which, in some instances, a relationship could be structured through a rule-based approach, but incorporating a risk-based model to provide for the categories or nature of an attorney/client relationship.
- The standards should be dealt with in terms of the guidelines of the profession.
- Only the principles will be dealt with in the comment and, when the legislation is published, detailed comment will be submitted.
- The FIC should be advised that there should be sufficient phase-in time allowed.

On the issue whether practitioners should, in terms of FICA, establish the identity of the 'beneficial ownership' of clients, the committee resolved to submit that it was not in favour of a blanket requirement to interrogate the identity of the beneficial owners of clients that were corporate vehicles. This issue would, to a large extent, be dictated based on the scope of the mandate between the attorney and his or her client, that is, the attorney would call for certain information to enable him or her to execute the mandate properly. Furthermore, the risk would be determined through the risk matrix of the practitioner.

The question was also posed in the discussion paper whether FICA should provide expressly for situations where an accountable institution (practitioner) is unable to complete the identification and verification requirements. This committee was not in favour of providing expressly for situations where an accountable institution is unable to complete the CDD (client due diligence). Practitioners should be allowed to commence to execute their mandates while verifying clients, if CDD was required in terms of their risk matrix. If the accountable institution suspects a suspicious transaction, a report in terms of s 29 must be submitted. Suspicious transactions will trigger an automatic report and it is unnecessary to deal with them under general provisions.

The committee welcomed the proposal that certain criminal sanctions in FICA should be amended to administrative sanctions.

The committee also had no problem with express provisions to be inserted in FICA to determine how accountable institutions should treat PEPs (politically exposed persons) as customers.

David Bekker,

Chairperson, Financial Intelligence Centre Act Committee

GENDER COMMITTEE

Members: Martha Mbhele (Chairperson), Susan Abro, Michelle Beatson, Amanda Catto, Krishna Candasamy, Llewelyn Curlewis, Deirdré Milton, Khanyisa Mogale, Annabelle Mphahlele and Janine Myburgh

During the year under review the committee held a telephone conference on 11 March 2014 and had a face-to-face meeting on 23 September 2014.

The committee conducted a snap survey on gender equality in the legal profession. The aim of the survey was to ascertain the reason for the discrepancy in numbers between female law students and those getting into practice.

I wish to highlight the following:

- All four provincial law societies distributed questionnaires to female attorneys and received 115 responses.
- Thirty-five percent of the respondents were sole practitioners and 30% were from small firms.
- The majority of respondents were based in urban areas and a small percentage in rural areas.
- Sixty-four percent of respondents had not encountered discrimination based on gender and 36% had been discriminated against by male clients and/or the court environment.
- Sixty-six percent of respondents felt that the legal fraternity was male dominated.
- All respondents felt that balancing motherhood and a career in the profession was a mammoth task. The majority of the respondents felt that a lot was required for them to compete on an equal basis with their male counterparts.

The committee is committed to supporting women legal practitioners and to ensuring that women's practices are sustainable. It intends meeting with the Minister in the Presidency responsible for Women, the Minister of Justice and Correctional Services and the Minister for Small Business Development to discuss the challenges women legal practitioners face. The government is the biggest consumer of le-

gal services and it is necessary to ascertain the rate at which women attorneys are getting instructions from government.

I reported previously on the development of a leadership programme for senior women attorneys, the aim of which is to provide women lawyers with leadership and management skills to run their businesses professionally. I am glad to report that a successful session took place in November 2014 under the auspices of LEAD and a further session was held in February 2015. The first group that participated in the programme commended the initiative and saw it as a necessary tool for all women attorneys who aim to grow their practices.

I also reported previously that the Gender and Family Law Committees initiated a joint initiative with the South African Police Service intended at providing support to the SAPS in the form of training aimed at sensitising police officers on domestic violence issues. The Chairperson of the Family Law Committee reports more fully on the workshops that were held in this regard.

Members of the committee participated in various meetings and workshops on behalf of the profession, including the South African Women Lawyers Association annual general meeting, the South African Chapter of the International Association of Women Judges Conference and the Women in Justice Conference.

I would like to thank all members of the committee for their hard work and dedication.

Martha Mbhele,

Chairperson, Gender Committee

HIGH COURT MATTERS COMMITTEE

Members: Adam Pitman (Chairperson), Graham Bellairs, Anwar Bhayat, André Bloem, Asif Essa, CP Fourie, Peter Horn, Umesh Jivan, Neil Joubert, Dan Matlapeng and Macdonald Moroka

It was a good year for the High Court Committee in that it seemed to be a consolidation of the last few years' work. Each province appears to now have a Provincial Efficiency Enhancement Committee (PEEC) which will now feed back to the National Efficiency Enhancement Committee (NEEC) meetings.

Furthermore, the various High Courts are now under the budget of the Office of the Chief Justice.

These two factors have the potential to contribute to making our courts truly independent and innovative. The challenge of our committee is to make the PEEC's relevant and a driving force for efficiency in our justice system. As in all organisations, they are only as good as the people involved, which means the LSSA really needs to ensure that we have dynamic people on these committees.

The Rules Board has continued to operate with apparent efficiency. Graham Bellairs has contributed to this success and needs a special mention for his contribution.

The Rules Board has published a proposed tariff for advocates which will go a long way to clarifying party-and-party charges. This tariff will be looked at more closely by the Costs Committee; however, it is supported by this committee at this stage.

Court-annexed mediation was started as a pilot project in Gauteng and North West and, if successful, it will be rolled out to the other provinces. The committee has been very involved in this process and will continue to monitor it.

The committees have met regularly and we have settled into a good working relationship.

Adam Pitman,

Chairperson, High Court Matters Committee

IMMIGRATION AND REFUGEE LAW COMMITTEE

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

The year under review for this committee has been a particularly arduous, frustrating and sometimes confusing one.

Numerous developments in the immigration and refugee law field have taken place during this year and several significant court judgments have been handed down. It has not only been these changes, but also practical 'coalface' interaction with the Department of Home Affairs (DHA) at all levels, from the Ministry down to regional offices, embassies, high commissions and consular offices of the DHA worldwide, that have become the basis of much of the inconsistency that has arisen.

During this year we have been confronted with the implementation of the Immigration Amendment Act 13 of 2011, which came into operation with new regulations on 26 May

2014. Although these had been in the pipeline for some time, their actual implementation was literally on a few days' notice. Applicants, their representatives and even officials at the DHA at regional office level were caught unawares.

Fundamental changes to the way things had to be conducted literally had a four-day notice period, of which two days constituted week end days, to deal with implementation of the new regulations and new and changed requirements and goalposts.

Some of these changes and how they impact will be dealt with elsewhere in this report, but the next most significant change that took place was that, with the advent of the new Amendment Act and its regulations, a company called Visa Facilitation Services (VFS) became the receiving and despatch agent for the DHA in respect of all visas lodged within South Africa. While VFS's offices were being used by the DHA at several embassies outside the country, this was a first for receiving of applications within the country. It appears that, not only the general public and their representatives were taken by surprise with the actual implementation date, but that VFS suffered a similar disability. The path from that point forward has not been an easy one, with VFS being inundated with applicants and not being able to cope with the volume. A system that had been set up to expedite matters appears to have had rather a dilatory effect on the process.

The 'utilisation' of the 'services' of VFS comes at a cost to the consumer, with R1 350 per document or application lodged, per applicant, whether it is an application for a visa, change of status, lodgement of an appeal or review or any other process under the Immigration Act. This has presented an undue burden to many applicants, as the administration fee payable to the DHA remains payable in addition to this fee.

The effect of the introduction of VFS has been that the DHA, at head office's central adjudication hub, has now effectively been buffered from having to deal with the applicants or the public. It has become particularly difficult to elicit responses from officials in the hub, to get to speak to them or even to fax them about queries on applications.

The backlogs – according to the Minister of Home Affairs at the time and Director General – appear to have widened rather than shortened. In a televised debate in the Parliamentary Portfolio Committee, the Deputy Minister of Home Affairs, in response to a question, indicated that more than 55 000 applications for temporary residence were in backlog and in response to a further question, indicated that more than half of those related to foreign nationals married to or in permanent cohabitative relationships with South African citizens or having South African citizen children. The situation is untenable and borders on a question as to whether these actions are within the realms of constitutionality. Perhaps a challenge to the Constitutional Court on aspects surrounding this would not be untimely?

One of the largest problems that have been experienced is the inconsistency in application of the word and letter of the Immigration Act and its amendments, as well as the immigration regulations. This has resulted in a spate of refusals of applications based on circumstances that do not fall within the Immigration Act or its regulations being bad at law, bad at administrative law and as stated above, in some instances unconstitutional.

A further complication has been that applications that were lodged prior to the amendment coming into operation on 26 May 2014 are, in some instances, being adjudicated under the new criteria and not those prevailing at the time. Transitional provisions in all our immigration legislation allow for an application lodged under a specific set of the Acts and regulations to be adjudicated to finality, provided lodgement took place before the implementation of the amendments.

A lack of coherent policy appears to be a further problem. By way of report, and with reference to the last item, the Minister of Home Affairs hosted a 'roundtable' on the formulation of new immigration policy and, although the LSSA was not invited to attend, it received an invitation by default upon enquiry. Our Vice Chairperson, Chris Watters, ably represented the LSSA at this roundtable and, whereas only preliminary discussions took place, the indications are that there will be further discussions and debate, as well as an opportunity for input.

The committee Chairperson and Vice-Chairperson met with the South African Qualifications Authority chief director on evaluation of qualifications to clarify certain issues surrounding critical skills visas and a very constructive meeting was held, although the question of registration with professional bodies which is a requirement of the critical skills visa section in the Act, has not yet been resolved.

The Vice Chairperson of the committee, Chris Watters, presented a series of seminars for LEAD, entitled 'Visas, Permits and Passports – The Change and Challenges'. These were successfully attended and feedback has been very constructive, thereby highlighting the need for continued seminars of this nature.

During the course of the year the committee had one telephone conference and one meeting on 3 December 2014. The bulk of the issues discussed were those that have been outlined above.

During February 2014 the Department of Home Affairs senior management called a meeting with the LSSA to discuss the anomaly that had arisen regarding the inability of foreign national students who had graduated with law degrees, completed articles, LEAD training, the Attorneys Admission Examination and indeed participated in the LEAD courses, from applying for admission as attorneys on the basis that they were not permanent residents or citizens, both requirements set out in the Attorneys Act 53 of 1979.

Historically, these applicants had been able to make out good cause for an application for exemption from the residence provisions as envisaged in s 31(2)(b) of the Immigration Act. The purpose of the meeting was to inform us that the Minister was no longer prepared to consider any further exemptions on the basis that none of these issues constituted either exceptional circumstances or good cause for an exemption. This has created a massive dilemma for students who studied in South Africa with the expectation ultimately of being able to be admitted.

Suggestions have been made in this regard for submission to the LSSA Council, but the reality remains that applications for s 31(2)(b)'s in this situation are being refused in their numbers.

Also during February 2014, the committee formulated the draft regulations but, *ex post facto*, it would appear that these inputs were simply ignored by the drafters. In fact, many of the problems highlighted indeed constitute some of the problem areas referred to above in this report.

During April 2014 the LSSA was represented at a meeting hosted by the Law Society of the Northern Provinces, which involved the Chief Director Immigration at the DHA's head office, together with a delegation from VFS, in order to enable the aforesaid to enlighten the legal profession as to what could be expected.

Useful interchanges took place, but the waters still remain muddy at this time. As stated above, a spate of unwarranted refusals of visa applications has become the norm. The reason for mentioning this once again relates to the fact that appeals and reviews, when embarked upon, now also have to be lodged with VFS, again with a payment of the fee due to VFS in terms of the new regulations, namely, R1 350 per applicant. The application is taken in, whether correct or not, and forwarded on to the adjudication hub where it appears that it then gets lost in a quagmire of bureaucracy. On a quick whip around of colleagues very few, if any, have had any results since 26 May in respect of decisions on appeals and reviews.

The committee will continue to engage wherever possible with the DHA, but there has been a perceived reluctance of the Department through its offices locally and at outside missions, to deal with our colleagues in any way. It is a moving and developing trend that reports have been received, again on a regular and ongoing basis, of applicants being asked why they are using attorneys when they could interface direct with the DHA.

It also appears that this is not something peculiar to the immigration law specialty field.

While it is understood that a personal presence of an applicant is now required for confirmation of biographical data and fingerprinting, the applicant's unassailable right to be represented by their attorney is being put under question.

On behalf of the committee and myself, I thank Lizette Burger and Kris Devan at the LSSA for their willingness to assist, provide logistical backup and generally be there for the committee whenever needed.

Julian Pokroy,

Chairperson, Immigration and Refugee Law Committee

INTELLECTUAL PROPERTY LAW COMMITTEE

Members: Esmé du Plessis (Chairperson), Johnny Fian-deiro, Paul Ramara, Jan-Hendrik Senekal, Lesane Sesele, Waheeda Shreef and André van der Merwe

The committee on Intellectual Property (the IP Committee) was constituted as an LSSA committee in 1998 in the light of the increasing relevance of intellectual property (IP) 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.

Broad mandate

A broad mandate was initially given to the committee. Since the committee was satisfied that this mandate covered all contingencies in the area of IP law, or relevant to IP, the committee agreed to conduct its work in accordance with this broad mandate, namely

- to monitor developments (legislative as well as other trends, locally as well as abroad) in the area of IP, with a view to assessing the effect thereof on the legal position and the legal regime in South Africa, on attorneys in South Africa, and on the structures within the organised profession;
- to participate, as far as this is necessary or appropriate, on behalf of the LSSA in initiatives and projects having a bearing on IP;
- to meet, as and when required, to consider and assess

issues within the area of or impacting on IP law, to draft comments on legal developments as and when deemed necessary and to submit these to the LSSA Council for further action, or to recommend other appropriate action.

- 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 LSSA, in which it informed the LSSA Council of its view that there is a lack of awareness, on the side of the public, of IP 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 if necessary delegated) to attend conferences and seminars on IP, both national and international, and to report back to the committee and to the LSSA. Attendance would in many cases not have a cost implication for the LSSA, since the members of the committee already attend such conferences and seminars on behalf of their firms. However, in some cases, particularly in the case of international conferences in other countries, the LSSA may be requested to provide support funding to facilitate attendance.

Since no express response was received from the Council, the committee considered that its mandate should be seen as including the following:

- to participate in, or undertake on behalf of the LSSA, awareness initiatives in South Africa, e.g. at universities, of IP as an area of law and as a career option;
- to 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, trademarks, copyright, industrial designs, ambush marketing, anti-counterfeiting measures, etc. Statutory changes could also impact on the structures and procedures for the registration and enforcement of different IP rights. Moreover, IP law is a highly globalised and internationalised area of law, so that international developments and agreements would likewise have a far-reaching impact on national legal regimes on IP.

Work outline for 2014

The committee compiled the following broad work plan for 2014:

- To monitor developments (legislative changes as well as other developments) on national level in the area of IP law. More specifically, the committee would monitor and, to the extent possible, participate in
 - the development and finalisation of the comprehensive policy instrument, that is the National Policy on Intellectual Property for South Africa, which was being formulated by the 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 194 of 1993 in order to implement the Madrid Protocol to which South Africa may accede;
 - the proposed amendment of the Designs Act 195 of 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, on items of interest dealt with at 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 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 an earlier report of the committee, 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).

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 Chair 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 on that particular topic within the committee and not to participate in any submissions made by the LSSA.

After a prolonged Parliamentary process, the Bill was eventually passed by Parliament and assented to by the President, and was published in GG 37148 of 10 December 2013 as the IP Laws Amendment Act 28 of 2013. This Act has not yet been implemented. Before it can be implemented, an extensive set of regulations has to be drafted (to fit in with the existing regulations issued under the four IP statutes concerned), and a national framework system will have to be established. The committee will continue to monitor developments in this regard.

National Policy on IP

The DTI has been engaged for some years in the process of compiling a comprehensive instrument to constitute a 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 the GG 36816 of 4 September 2013 for further public comment. Only 30 days were allowed for comments to be submitted, yet more than 150 written submissions were made, comprising more than 2 000 pages. All of these had to be considered by the DTI, and it is understood that the initial draft policy has been revised, amplified and reformatted. The finalised version is expected to be submitted to Cabinet early in 2015 for approval. Once the IP policy has been approved by Cabinet, it will constitute the policy positions of Government on IP matters, and it is expected to be opened up for public information. The next phase would be the drafting of legislative provisions (for example, by amending the existing IP statutes) to implement the policy positions.

Developments on international level

Discussions continue to take place within the two most relevant international bodies in the area of IP, 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 (ACTA) to be concluded; this proposed instrument has not been implemented yet.

- The need for an international instrument to harmonise the protection of Traditional/Indigenous Knowledge in national laws. These discussions were of particular relevance in the context of the South African legislation recently passed (see above).

Meetings of the committee

The committee met on 24 July 2014 and considered the following matters:

- progress with the IP Laws Amendment Act, 2013 to protect TK;
- the continued 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; so far a meeting could not be arranged;
- the report on the work done by the Copyright Commission on broadcasting and 'needle time', now that the report has been approved by Cabinet and has become available to the public;
- the effect of the amendment to the Exchange Control Regulations on IP-related transactions;
- the effect of the Promotion and Protection of Investment Bill on IP;
- the possible effect of the Legal Practice Act 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 when the instrument is implemented; and
- the importance of continued monitoring of and, where appropriate, participating in or providing input to international and national IP-related initiatives.

Future work

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

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

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

- Designs Amendment Bill (to introduce The Hague Agreement system);
- Copyright Amendment Bill (to implement recommendations of the Copyright Commission).

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 Law Committee

JOINT ATTORNEYS' AND ACCOUNTANTS' COMMITTEE (JAAC)

Members: Iqbal Ganie (Chairperson), Asif Essa, Frank Dorey, Etienne Horn, Clayton Manxiwa, Francois Mvundlela, Andrew Stansfield, Jan van Rensburg and Thandanani Zondi

The first joint meeting of the Joint Attorneys and Accountants Committee (JAAC) with the accountants and auditors was held on 16 April 2014 and the second meeting was held on 22 October 2014.

As is the usual format and as a cost-saving exercise, the attorney members meet immediately prior to the joint meeting where, inter alia, matters raised by the provincial law societies and the agenda of the JAAC meetings are discussed.

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

The salient points that were discussed included:

The tax position of the Legal Provident Fund contributions for sole practitioners. The matter had been escalated by the National Tax Committee of SAICA to the National Treasury. The National Treasury indicated that the matter would be revisited while considering the retirement reforms.

In view of the advanced technology, the use of cellphone banking by practising attorneys is discussed on an ongoing basis and, at this stage, IRBA undertook to communicate to the auditors that attorneys should exercise caution when dealing with cellphone banking transactions. This was to be relayed to the auditors through a circular.

A report back by the AFF noted that there has been a significant reduction in the number of claims, but that the average quantum of individual claims has increased significantly. The lower amount of claims admitted was largely as a result of the application of excussion.

There is still uncertainty as to whether non-monetary assets in a trust/estate are under the protection of the AFF. The valuation of these assets held in trust by attorneys is a potential problem and still needs to be deliberated further, as there is no clarity.

A report is regularly provided by the AFF inspectorate team, led by Jan de Beer. Accountants were informed that the KwaZulu-Natal Law Society's Reform Audit Support System (RASS) programme has been terminated officially.

The fees of auditors, pursuant to the *New Guide for Registered Auditors: Engagements on Attorneys Trust Accounts*, was discussed and it was noted that it ought not to increase costs significantly, as procedures should have been performed in any case. It was suggested that the auditor and the attorney should engage aggressively on the audit plan and determine the amount of work required and how the audit fee was arrived at.

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, Clayton Manxiwa, Silas Nkanunu, Lister Nuku and Wilfred Phalatsi

The GATS Committee was initially created by the LSSA in 2002 to conduct a study of the GATS Agreement (the General Agreement on Trade in Services) of the World Trade Organisation, and to advise the LSSA Council and Government (through the Department of Trade and Industry) on the potential impact of GATS for purposes of World Trade Organisation (WTO) ministerial meetings. The GATS Agreement regulates the provision of professional services, including legal services, across country borders.

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

Furthermore, with the advent of the Legal Practice Act 28 of 2014 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 Act has not formally been delegated to the GATS Committee.

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 WTO;
- to determine and monitor the progress by the Department of Trade and Industry (DTI) in preparing for, in formulating a position in regard to, and in presenting such position in the course of the negotiations regarding GATS (insofar as it applies to legal services) in the context of the WTO negotiations;
- to meet with representatives of the DTI and other government departments (such as the Department of Justice and Correctional Services) and other role players (such as the General Council of the Bar), 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;
- 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;
- to report to the LSSA on these matters.

Extended mandate

The LSSA Council considered the issue of cross-border practice rights in the Southern African Development Community (SADC) region, and specifically in the context of South Africa's rights and obligations in terms of the GATS Agreement.

As a consequence of a decision taken by the LSSA Council, the committee's mandate was extended to require it to investigate the feasibility of introducing cross-border practising rights in the SADC region, and to propose an outline of the steps to be taken, the legislative amendments to be effected, and the legal structures to be created in order to achieve this, taking into account the new dispensation under the Legal Practice Bill. 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, including from government departments requesting advice and assistance.

The Department of Home Affairs (DHA) requested a meeting with the LSSA on 18 February 2014 to discuss the access to local practice by foreign lawyers. Comments were drafted to be used at this meeting; a copy of the submission can be obtained from professionalaffairs@lssa.org.za.

Activities of the committee

As reported in the 2013 report, very little has happened in recent years on the international WTO front which impacted on the GATS Agreement and legal services. The committee thus agreed to monitor the progress of two matters and to act, for example, by convening a meeting, only if and when required to do so:

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

Work outline for 2014

The LSSA requested all committees to submit a broad work plan for 2014. The GATS Committee submitted the following 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, and
 - 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 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 Act, 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 2014

In view of the demands on the time and personnel of the LSSA by the finalisation of the Legal Practice Act, and taking into account that the Legal Practice Act was 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 Act became available.

On 1 July 2014 the Law Society of the Northern Provinces held a workshop on the Legal Practice Bill, which was attended by the Chairperson.

The Legal Practice Act 28 of 2014 has been signed into law: the assent to the Act was published in GG 38022 of 22 September 2014. In terms of s 120 of the Act, the Act will be implemented in three phases: Phase 1 will be the implementation of Chapter 10, setting out the transitional provisions. Parts 1 and 2 of Chapter 10 came into effect on 1 February 2015. It would be appropriate for the committee to meet early in 2015 in order to consider the possible implications.

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 Act. The committee will have to analyse and assess the provisions regarding practising rights to be granted to foreign lawyers, to determine what the effect would be of 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). It will be necessary to analyse the manner in which these issues have been dealt within the Act.

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 LSSA/AFF GATS Committee

LIQUOR LAW COMMITTEE

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

The Liquor Law Committee held its annual meeting on 11 April 2014. It was evident from the meeting that most provincial Liquor Boards, including the National Liquor Authority, are still struggling with their administration and have problems improving their turnaround times for new liquor applications. The only provinces without their own Liquor Acts are Limpopo and North West, in respect of which Act 27 of 1989 is still applicable.

The Free State Liquor Authority is still behind with quite a number of applications and its turnaround time for new applications continues to exceed six months. The intended amendment to the Free State Gambling and Liquor Act has not yet been finalised, but hopefully it will be published in 2015 for comment.

Mpumalanga's Provincial Liquor Legislation was enacted on 31 August 2014. According to colleagues in that jurisdiction, there is a problem with the interpretation of the trading hours as set out. The application procedures for new applications are also long and drawn out. It is expected that this will create problems in having applications finalised expediently.

The Gauteng Provincial Liquor Board's members were disposed of during this year. A new board and a number of new personnel were appointed, which caused a delay of some four months. It was brought to my attention that attorneys battled to receive payment of their bills of costs in respect of court applications brought against the Gauteng Liquor Board. Its turnaround time is also unsatisfactory.

As far as it concerns new liquor applications in the Western Cape, it seems that the system there appears to be working efficiently. The Liquor Board responds promptly to applications and advises the applicants of outstanding requirements. This is very helpful both to applicants and attorneys.

In the normal course of events, applications are heard between four to six months from the date of lodgement. There is, however, a bottleneck once applications have been granted and it can take as long as two months before the license document is issued. This problem is clearly of an administrative nature and can and should be addressed by the board. The so-called 'minor' applications are, however, receiving scant attention and there are transfer and structural alteration applications which have been pending for more than a year. This is disconcerting and creates a lot of uncertainty in the industry. The Appeal Tribunal has been dysfunctional for many months, due to the resignation of the presiding officer early in the year and the delay in appointing a replacement. We understand that a presiding officer has been appointed. There are thousands of applications lodged under the 1989 Act and in the early days of the new Act which still remain unheard. Our experience has been that very little progress is being made in dealing with the backlog. The quality of the Liquor Board staff has improved markedly and we look forward to a new year which will fulfill the high hopes we had with the introduction of the 2008 Western Cape Liquor Act.

The administration in the Northern Cape is still a little slow but it seems that they have things under control.

The North West and Limpopo, which still function under Act 27 of 1989, still have administrative problems and their turnaround time is totally unacceptable.

It seems that the Eastern Cape Liquor Board's administration is functioning better than many of the provincial Liquor Boards, apart from a few concerns here and there. Their turnaround time for new applications can still be improved.

The National Liquor Authority is trying hard to improve service delivery after it was reported to the Public Protector.

Kobus Burger,

Chairman, 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 during the year at the Intercontinental Hotel, OR Tambo International Airport, the dates of the meeting being 20 May, 12 August and 13 November 2014.

The work of the committee for the most part comprised considering proposed rule changes submitted by the Rules Board for Courts of Law to the profession for comment, as well as the comments of the provincial law societies and members of the profession. The Rules Board's submissions of proposed changes to the rules have been prolific and are mainly focused on aligning the Magistrate's Courts Rules with the Uniform Rules of Court. It is not the purpose of this report to go into the proposals in detail, but the more important considerations were the following:

- Barring of pleadings: There are presently three references to the barring of pleadings in the Rules, namely r 12(1)(b), r 15(4) and r 21B. The committee considered this to be both unnecessary and confusing. It did, however, welcome the introduction of the no bar period. In considering the proposals made by the Rules Board, the committee has agreed that references to barring be deleted from r 12(1)(b) and r 15(4) and retained solely in r 21B, which should mirror the barring provision in the Uniform Rules and incorporate the *dies non* period.
- Problems experienced with r 14, which deals with summary judgment applications: Concern was raised about applications for summary judgment being launched by plaintiffs where notices of intention to defend had been served upon the plaintiff's attorney, but not filed at court. The court, being a creature of statute, held that the failure on the part of the defendant to file the notice at court prevented the court from granting summary judgment. In another case, where the plaintiff had failed to annex a copy of a written agreement to a summons, the Magistrate's Court, being a creature of statute, had no power to condone the omission and summary judgment was refused.

The committee considered various proposals and made recommendations for the amendment of r 14 to the effect that it is best to retain the rule in its present form and support the Rules Board's proposal for the introduction of a general condonation rule to allow magistrates to condone non-compliance with the rules.

The non-compulsory Court-Annexed Mediation Rules were promulgated and mediation is being implemented at various pilot courts. The committee gave consideration to and commented on the fees to be paid to mediators and the training of mediators.

The committee also commented on many issues relating to tariffs and costs which were referred to it by the LSSA Costs Committee. These issues are reported on more fully by the Chairperson of the Costs Committee. Suffice it to say in the interim that the Magistrate's Court Committee supports the establishment of a tariff for advocates, so that clients who are involved in litigation can be advised of the estimated costs of litigation more accurately. However, there is much work to be done in determining the structure and amounts of these tariffs.

The committee considered a proposal for the lifting of the cap on commission payable to sheriffs for sales in execution of immovable property, based on the premise that sheriffs would be inclined to advertise sales of immovable properties more widely and take other proactive steps to ensure that higher market-related prices for sales in execution would be realised. The committee does not share this optimism, but does see the need for a raising of the cap and the increase of the commissions payable to sheriffs for such sales.

The committee also considered the problems arising out of service of notices by registered post. This does not only apply to letters of demand and those in terms of s 65A(2) of the Magistrates' Courts Act 32 of 1944, but also notices given in terms of s 129 of the National Credit Act 34 of 2005, to mention but a few. The courts have noted the statistics in respect of unclaimed registered letters sent to debtors in terms of s 129 of the National Credit Act and have stipulated more onerous requirements for giving of notice by registered post. The problem has been exacerbated by the recent postal strike and this has prompted the committee to write to the Justice Department and the Department of Trade and Industry and suggest that the relevant legislation be amended to include alternative forms of giving written notice to debtors, including fax, e-mail, as well as delivery by couriers and the sheriff.

A request was received from the LSSA to identify ethical issues particular to Magistrates' Courts practice. The committee identified the following:

- Deponents to affidavits had to be identified and the proper administration of the oath/affirmation had to be effected and recorded on affidavits.
- Attorneys have to ensure that papers submitted to court are in order, not only for trials but for default judgment and other applications, whether defended or not.
- If attorneys appearing before court in any matter are aware of any problems, they are obliged to raise them in court.
- While there is nothing wrong with double briefing, attorneys have to ensure that they are available and prepared when matters are called in court.

The committee has considered amendments to the Magistrates' Courts Act relating to the granting of garnishee and emoluments attachment orders. It supports the view that judicial oversight is necessary, particularly in the light of the abuses which have taken place over recent times. In particular, the committee has expressed concern about consents to emoluments attachment orders being implemented after being given by debtors telephonically. Representations have been addressed to the Justice Department and banking authorities in this regard.

Complaints have been received in relation to the poor and dilatory services rendered by iAfrica Transcriptions. Consequently, a letter was written to the Justice Department to request that more transcription services providers be appointed to deal with accumulated backlogs and poor service. Competition is necessary to improve the service provided by the current appointee.

The committee has considered the application of *dies non* to applications and not just notices to defend and demands for plea in actions. The exception would obviously be applications of an urgent nature. A submission in this regard has been made to the Rules Board.

Attorneys are invited to make submissions to the committee for consideration and submission to the Rules Board or other authorities, preferably through their provincial law societies for escalation to the LSSA committee. The committee thanks those who have made submissions to us.

Graham Bellairs,

Chairperson, Magistrate's Court Committee

PERSONAL INJURY COMMITTEE

Members: Jacqui Sohn (Chairperson), Michael de Broglio, Jan Maree, TV Matsepe, Azwifaneli Matodzi, Ben-nock Shabangu and Mikateko Ignatius Shirilele

Road Accident Fund Benefits Scheme (RABS)

The Road Accident Fund Benefit Scheme (RABS), this time in the form of the 2014 Bill, again dominated the first half of the year. A comprehensive submission was made, which can be viewed on the LSSA website. A copy of the Bill is available on the Road Accident Fund (RAF) website. To summarise, the Bill abolishes the common law, abolishes general damages and provides limited loss of support and income benefits payable for a maximum of 15 years or until age 60.

Although, on the face of it, a system of no-fault compensation may appear equitable, there is no equity in the current proposed RABS scheme and the R20 billion currently paid by motorists every year for the sole purposes of compensating road accident victims is unlikely to find its way into the hands of those requiring support.

This income will continue to flow into RABS in terms of the draft Bill but, unlike under the current scheme where in-

jured persons received compensation in the form of lump sum payments for loss of income, loss of support and general damages, under RABS this income will be used to cross-subsidise public health and state unemployment benefits.

It is vital that every practitioner be aware of the very significant changes that are being proposed and the calamitous effect that these will have on every person who is exposed to being injured or has a family member who could be injured in a car accident and who does not have extensive private medical, health and accident cover and extensive disability cover for loss of income. If the Bill is passed as is, you and your family will be on your own as there will be little, if any, comfort to be found in the 'benefits' offered in the Bill.

RABS offers no compensation whatsoever for general damages, not even for the catastrophically injured, which was recommended by the Satchwell Commission, 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 15 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, currently prescribed in terms of the regulations at R43 965 per annum or R3 663.75 per month. In the case of children, payment will commence when they turn 18.

The LSSA again 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 or her direct employer.

Road Accident Fund Amendment Bill, 2014

The above Bill was published for comment on 3 November 2014 and a period of 30 days allowed for submission of comments from publication. The stated purpose is to address the Constitutional Court judgment in 2010 which struck down the public health care tariff.

However, the tariff itself still needs to be published for comment. No doubt, the objective of the introduction of a 'tariff' is still to limit the exposure of the Road Accident Fund (RAF) with regard to expenses incurred which are covered by that tariff. The Act requires that any such tariff be prescribed after consultation with the Minister of Health. It is not known whether those consultations have taken place and whether there has been any engagement with the private health care sector and/or medical aids on what would be an acceptable tariff for the private sector to be able to continue to provide much needed treatment and health care to road accident victims to supplement the often inadequate, overstretched, poorly administered and, in some cases, unavailable services at public hospitals.

Other proposed changes are the introduction of a 30 day 'free' medical and health care period (no fault cover), a capped 'free' (no fault cover) payment for funeral expenses to a maximum of R10 000 and the abolition of the shorter prescriptive period for lodgment of claims in hit-and-run cases. The RAF is now specifically empowered with the discretion to offer a cost contribution with an offer of compensation.

A cumbersome procedure is proposed to precede the attachment and sale in execution of RAF assets where it fails to pay amounts due for capital and costs.

The LSSA's comment on the Bill is available on its website.

General

The RAF has continued expanding its 'footprint' with an aggressive marketing campaign aimed at cutting out lawyers. It has also embarked on widely publicised road shows where claims are settled on the spot directly with injured parties as well as a settlement drive with claims handlers inviting block settlement meetings and being incentivised to finalise claims. According to recent press reports, the RAF paid out claims totaling R22 billion in the 2013/2014 financial year. As expenditure exceeded income because of the intensive settlement campaign, reserves were used to supplement income. At present, it appears as if the R9 billion cash reserve referred to last year has been spent as the RAF is now claiming cash flow problems have necessitated a dramatic slowdown in payments, although the settlement drive continues unabated.

In settling claims direct, the RAF attracts a duty of care to act in the best interests of the claimant and it is to be anticipated that in the future claims will arise in delict against the RAF where direct claims have been under-settled or have prescribed.

Proposed amendment to court rules

Practitioners should be aware of the proposal by the Rules Board for Courts of Law to amend both rr 69 and 36(9).

It is proposed that a tariff be prescribed for counsel's fees recoverable in a party-and-party bill by a successful litigant. Although the hourly rates mooted are, for the more senior practitioners, realistic, the proposed fees for the more junior counsel are too low and will inevitably result in an increase in attorney-and-client costs for the successful party. The proposal also recommends that, where an attorney appears as counsel, that the recoverable cost be the same as if counsel were briefed. The proposal is silent as to whether in those circumstances an attorney, acting as attorney and an attorney acting as counsel from the same firm will both be entitled to recover when representing a party in the High Court.

Other changes are recommended with regard to charges for short telephone calls and other formal attendances, which in effect are already being applied by taxing masters when taxing bills.

The proposed changes to r 36(9) are more startling and, if adopted, will change the face of litigation.

Jacqui Sohn,

Chairperson, Personal Injury Committee

PRACTICE DEVELOPMENT COMMITTEE

Members: Praveen Sham (Chairperson), Koos Alberts, Michelle Beatson, David Bekker, Ann Bertelsmann, Llewellyn Curlewis, Thulani Kgomo, Sipho Mbelle, EC Maswazi, Abe Mathebula, Motlatsi Molefe, Harshna Munglee and Claudia Shalala

As the Practice Development Committee (PDC) supported the presentation of practice development seminars in 2012, arrangements are made to present at least one practice development seminar every year. These seminars are targeted at single practitioners and practitioners in small to medium-sized firms.

Because of interest from practitioners, the 'Grow your practice: Why and how' seminar was again scheduled to take place in 2014 but, due to the ill-health of the presenter, all the seminars were cancelled. These had been arranged to be

presented in Polokwane, Mbombela, Mthatha, East London, Pretoria, Johannesburg, Kimberley, Bloemfontein, George, Paarl, Klerksdorp, Durban and Pietermaritzburg.

We will endeavour to present these seminars in early 2015.

For the Practice Management Training (PMT) course, the main challenge has always been the recruitment of instructors, as the objective was to have at least three instructors per subject at every centre.

The PDC has recognised the importance of mentorship as an effective tool of practice development. Recruitment of mentors is currently taking place and we hope that the mentorship programme will be rolled out fully in 2015. We again appeal to experienced members of the profession to share their expertise with their junior colleagues by agreeing to become mentors.

A PDC 'think tank' meeting was held on 9 October 2014. Among other issues that were discussed was the proposed model for PMT. This new model for PMT will be introduced in 2015. It will effectively reduce the number of classes, while ensuring that the quality of the training is not compromised. The proposed model appears below.

Proposed model for Practice Management Training

Objective: This training must be efficient and sustainable, meeting the objectives of the profession and learners. Learners must clearly state that the course has added substantial value.

Current situation: The largest percentage of students indicated dissatisfaction with the elements of the course. LEAD has always experienced difficulty in attracting suitable presenters and drafters.

Outcomes: The PDC has approved the outcomes, and they will continue to be fundamental to a new model.

Structure of the course

Intensive face-to-face tuition of 40 days in the following aspects:

- Financial management, focus on controls, analysis of statements, profitability.
- Risk: financial and reputational.
- Entrepreneurial: identifying ideas and strategy.

Online presentations and/or DVD on other modules:

- Human resources management.
- Marketing of legal services.

- Administration.
- Systems and technology.

Submission of a business plan for assessment purposes.

Praveen Sham

Chairperson, Practice Development Committee

PRO BONO COMMITTEE

Members: Ricardo Wyngaard (Chairperson), Poobie Govindasamy, TV Matsepe, Ilan Lax, Mfundiso Mavonya, Bongi Mpitso and Mohamed Randera

Pro bono services are a people-centred commitment in an increasingly profit-orientated world. The legal profession has made significant strides with the provision of *pro bono* services since the initial introduction of a mandatory *pro bono* scheme. With the South African legal profession in transition, the need to implement an effective *pro bono* scheme to deserving members in society must remain a priority for the profession during this phase.

The LSSA's *Pro Bono* Committee convened four meetings during 2014: three face-to-face meetings held on 14 February, 2 July and 29 October 2014, and one telephone conference held on 3 September 2014.

Terms of reference

The committee revised its terms of reference and agreed on the following functions:

- To assist, advise and make recommendations to the LSSA Council in respect of *pro bono* and related matters;
- To promote the acceptance and implementation of an efficient and effective scheme for *pro bono* service by attorneys throughout South Africa;
- To promote and facilitate the development of the scheme, and from time to time review the appropriate policy and guidelines for the implementation of the scheme;
- To encourage research into the provision of *pro bono* services and improving access to justice and the scheme;
- To coordinate, monitor and evaluate the *pro bono* scheme and the collection of statistics with regard to services under the scheme; and
- To cooperate with other recognised organisations to enhance the scheme.

Service as small claims courts commissioners

The committee recognised, as one of its key priorities for 2014, the need to encourage more attorneys to avail themselves as small claims courts commissioners. In pursuing this, the committee has requested provincial law societies to encourage more attorneys, through their communication platforms, including newsletters and annual general meetings, to avail themselves to serve as commissioners. It was also encouraging to note that in 2013, after the LSSA's Small Claims Court Committee met with the Justice Department, an article was published in *De Rebus* calling on practitioners to take up appointments as commissioners. Law societies have reported an increase in interest from attorneys to serve as commissioners. Some administrative challenges still remain and the committee will continue to prioritise this during 2015.

Pro bono at provincial law societies

The statistics below do not reflect the profession's total involvement in other *pro bono* projects and services.

Cape Law Society: The CLS dealt with the following number of *pro bono* matters for the period January to November 2014:

Total number of <i>pro bono</i> applications	2 785
Total approved	1 272
Total refused	810
Total pending at 30 November 2014	730
Total referred at 30 November 2014	481
Total of 2014 applicants that still need to be referred	791

Law Society of the Free State: The LSFS dealt with the following number of *pro bono* matters for the period January to November 2014:

Total number of <i>pro bono</i> applications	391
Total approved	308
Total refused	83
Total pending at 30 September 2014	308
Total referred at 30 September 2014	257

The *pro bono* coordinator also acted as CEO of the LSFS during the period from 1 July 2013 to 10 June 2014.

KwaZulu-Natal Law Society: The KZNLS dealt with the following number of *pro bono* matters for the period October 2013 to September 2014.

Total number of <i>pro bono</i> applications	2 292
Total approved	1 093
Total refused	1 199
Total pending at 30 September 2014	849
Total referred at 30 September 2014	244

Law Society of the Northern Provinces: The statistics of cases are as follows:

Total number of <i>pro bono</i> applications	2 395
<i>Pro bono</i> applications received	2 395
Applications referred to attorneys	1 028
First interview referrals	263
Contingency fee referrals	377

The *pro bono* office at the LSNP is in the process of opening a branch office (clearing house) in Pretoria in partnership with one of its recognised structures, Probono.org. The LSNP Council approved this project in July 2014 and the office was scheduled to open in January 2015.

Pro bono coordinators' meeting

It was agreed that *pro bono* coordinators from the four provincial law societies would, where necessary, meet after *Pro Bono* Committee meetings to discuss issues of mutual interest. At the first meeting the coordinators discussed the data-capturing and workflow processes employed at their respective offices. The coordinators agreed to analyse the operational methods utilised and to work towards a consistent approach for the way forward. Such meetings are crucial for streamlining *pro bono* matters at national level.

Pro bono clearing house

One of the key objectives of the *Pro Bono* Committee for 2014 was to establish whether the LSSA has given consideration to the committee's recommendation for the establishment of a national *pro bono* clearing house. This question remains at the doorstep of the legal profession and should be given due consideration as the profession's journey ahead is contemplated.

As reported in the LSSA's 2013 annual report, the concept of a national *pro bono* clearing house has been on the agenda since 2006 and no significant progress has been made in this regard. This matter was thereafter raised consistently by the committee. In particular, it reported in the 2009-2010 Annual Report: 'The next phase must be the establishment of an

efficient, well-resourced clearing house to facilitate and co-ordinate 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 need to revisit the concept of a national *pro bono* clearing house has become more pertinent with developments pertaining to the draft Uniform Rules and the adoption of the Legal Practice Act 28 of 2014. The profession will have to commit, in no uncertain terms, on how it will execute and promote *pro bono* services to the most vulnerable members of society.

Conclusion

The *Pro Bono* Committee remains grateful for the commitment demonstrated by the members of the four law societies toward rendering *pro bono* services. *Pro bono* continues to be inherent in practising law in South Africa

Ricardo Wyngaard,

Chairperson, Pro Bono Committee

PROPERTY LAW COMMITTEE

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

The committee continued its activities as usual in the past year. It continues to be a very active committee dealing with issues for the profession, although only two meetings were held during the year.

The committee participated in issues of the profession and property industry by attending the Registrar's Conference and making contributions to discussions and policies of the Deeds Offices around the country. However, this year, only one person representing the LSSA was invited to the Registrar's Conference due to financial constraints on the part of the Office of the Chief Registrar. The committee will, however, continue to engage with the Office of the Chief Registrar in an endeavor to send representatives from all the provincial law societies in the future.

The relationship with the South African Revenue Service (SARS), as one of the key role players, continues. The LSSA is invited to meetings with SARS on a regular basis to discuss

proposed changes to procedure, as well as other matters of mutual interest.

The committee has continued to liaise with other role players, notably the Department of Rural Development and Land Reform, the Department of Human Settlements, the National Home Builders Registration Council, the Estate Agency Affairs Board, the various banks, various local authorities and the South African Local Government Association. These meetings have been fruitful and positive.

The profession continually gives input into proposals and participates actively in various working committees, including those of the Deeds Registries Regulations Board and the Sectional Titles Regulations Board.

Selemeng Mokose,

Chairperson, Property Law Committee

SMALL CLAIMS COURT COMMITTEE

Members: Johan Gresse (Chairperson), Etienne Barnard, Crystal Cambanis, Llewelyn Curlewis, Mojau Ramathe, Joseph Mhlambi, Nomachule Oliphant and Butch van Blerk

The Small Claims Court Committee of the LSSA did not meet during the year 2014, but members of the committee also serve on the Steering Committee of the Small Claims Courts under the chairmanship of the Deputy Director of the Department of Justice and Correctional Services, and all the items which would normally have been discussed at a meeting of the Small Claims Court Committee of the LSSA are also dealt with at the Steering Committee meetings.

The Steering Committee discussed the national plan to re-engineer the small claims courts countrywide. Inter alia, the following items were dealt with:

- The establishment of new small claims courts;
- Appointment of commissioners and advisory boards;
- Legislative and policy issues;
- Review and legislative framework including an appeal process;
- Sheriffs' tariffs;
- Training of commissioners and clerks;
- Recognition of service for small claims court commissioners;
- Increase in the monetary jurisdiction of the small claims court;

- Legal assistance and possible use of paralegals;
- Financial support by the Swiss government.

The Justice Department is highly appreciative of the work done by commissioners of the small claims court and the Deputy Minister of Justice has repeatedly expressed his gratitude for the work done by commissioners.

Practitioners are urged to make themselves available to serve as commissioners. Further information and the application form can be obtained from the website of the Department of Justice and Correctional Services at www.justice.gov.za.

Johan Gresse

Chairperson, Small Claims Court Committee



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