



LAW SOCIETY
OF SOUTH AFRICA

ANNUAL REPORT

2015/2016

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



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Building a Better
Legal Profession
for All



LAW SOCIETY OF SOUTH AFRICA

ANNUAL REPORT April 2015 to March 2016



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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)

CONSTITUENT MEMBERS OF THE LAW SOCIETY OF SOUTH AFRICA

Black Lawyers Association

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Braamfontein, Johannesburg
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Cape Law Society

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KwaZulu-Natal Law Society

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Law Society of the Free State

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Tel: +27 (12) 338 5800; Fax: +27 (12) 323 2606;
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National Association of Democratic Lawyers

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www.nadel.co.za

Our term as Co-Chairpersons started at the end of March 2015 and in this report we outline some of the highlights. We took office a few days before the National Forum (NF) on the Legal Profession held its inaugural meeting. That meeting marked the first steps of our profession towards the new dispensation envisaged in the Legal Practice Act 28 of 2014. The NF is the transitional body which brings together the stakeholders in the legal profession tasked in the Act with putting in place the foundation for the Legal Practice Council. Advocate Kgomotso Moroka SC was elected as NF Chairperson and LSSA councillor Max Boqwana was elected as Deputy Chairperson. Since then the NF has had three further meetings and set up subcommittees to deal with its complex tasks.

Our profession is ably represented on the NF by

Kathleen Matolo-Dlepu	Black Lawyers Association
Lutendo Sigogo	Black Lawyers Association
Janine Myburgh	Cape Law Society
Manette Strauss	KwaZulu-Natal Law Society
Jan Maree	Law Society of the Free State
Jan Stemmett	Law Society of the Northern Provinces
Max Boqwana	National Association of Democratic Lawyers
Krish Govender	National Association of Democratic Lawyers

The LSSA has a team supporting our NF representatives who play a prominent and engaged role in discussions. The LSSA has kept you informed of developments through advisories, in *De Rebus* and on the LSSA website. We also undertake to consult you on critical issues. At the appropriate time the LSSA will undertake roadshows throughout the country to communicate direct with practitioners.

The LSSA is not working only towards a new regulatory dispensation, it is also considering the issue of the professional interest of members in the light of the purely regulatory functions of the Legal Practice Council, and the dissolution of the provincial law societies and the LSSA once the Council comes into being. In principle, the constituent members of the LSSA have all supported the establishment of an association to represent the interests of legal practitioners.



Busani Mabunda and Richard Scott

As we focus on the future of our profession, we have also had cause to support our judiciary against the unwarranted attacks against it. As Co-Chairpersons we attended the press conference held in July 2015 by Chief Justice Mogoeng Mogoeng and other senior judges, to show the support of our profession for the Chief Justice's call for a meeting with the Executive. That meeting was held in August 2015 and we trust that the resolutions that were taken will be adhered to for the sake of our constitutional democracy. Of particular relevance was the resolution that court judgments must be complied with.

The Rule of Law

The above is of particular importance after the African Union Heads of State Summit held in Johannesburg in 2015 and the ensuing international fiasco relating to the departure of Sudanese President Omar Al Bashir, despite a Gauteng High Court order forbidding him to leave the country pending the court's judgment relating to South Africa's obligations to hand him to the International Criminal Court (ICC) in terms of our country's being a signatory to the Rome Statute. The appeal was to be heard on 12 February 2016 and, at the time of writing, we await the judgment of the Supreme Court of Appeal with interest.

In a press release at the time of the Bashir incident, we raised our serious concern about the actions by our government. We also expressed our concern at the trend by African leaders – including our government – to emasculate regional and international instruments and tribunals set up to protect human rights and the victims of human rights abuses. This has been evident in the attitude adopted towards the ICC and the SADC Tribunal. The threats to withdraw from the Rome Statute are akin to the developments that have taken place at SADC Tribunal level, where Heads of States in SADC have agreed to change the protocol to deprive members of the public from the right to approach the court for redress if their own courts do not provide such. The protocol now provides for an administrative forum for interstate access only.

As regards the latter, the LSSA launched an application in the Gauteng High Court in 2015 to declare the actions of the President as well as the Ministers of Justice and International Relations and Cooperation in voting for, signing and planning to ratify the SADC Summit Protocol in 2014 as it relates to the SADC Tribunal, to be unconstitutional. At the 2014 SADC Summit at Victoria Falls in August 2014, President Jacob Zuma signed the 2014 Protocol which has yet to be ratified. Other law societies and Bar councils in the SADC region have or are in the process of launching similar actions in their courts to challenge the ratification of the SADC Protocol in their countries. This position was reaffirmed at the SADCLA meeting in Dar es Salaam in August this year. In Tanzania, the matter has been heard and judgment is awaited. The LSSA is also a member of a coalition of a number of NGOs promoting the cause of the SADC Tribunal.

In the LSSA matter, the State has filed its responding affidavit, the Southern Africa Litigation Centre has requested leave to be admitted as *amicus* and a group of Zimbabwean farmers have requested leave to be admitted as applicants in the matter. At the time of writing this report, the LSSA was awaiting a set down date for the interveners' application and had agreed with the State Attorney to place its application on hold, pending the outcome of the interveners' application.

We would like to thank our attorneys in this matter – Mothle Jooma Sabdia – and Thipe Mothle and his team in particular, who are acting *pro bono* for the LSSA in this significant intervention.

In August 2015 the LSSA facilitated a colloquium on the African Court on Human and Peoples' Rights, the aim of which was to raise awareness about the existence, functions and accessibility of the court and to formulate a movement to place pressure on the government to make an Article 34(6) declaration which will allow citizens' access to the Court. In addition to ratifying the Protocol governing the African Court, a country has to deposit a declaration to allow individuals and NGOs to bring cases to the court. Although South Africa has ratified the Protocol, it has yet to deposit the declaration.

On 2 December 2015, we as Co-Chairpersons joined a number of other observers at the Maseru High Court in solidarity with Lesotho practitioners who had reported threats and harassment against themselves and their clients, being Lesotho Defence Force (LDF) soldiers who were alleged to have mutinied earlier in 2015.

The LSSA was informed by the Law Society of Lesotho that defence lawyers had been experiencing threats to themselves and their families, court orders had been ignored and judges intimidated. Lawyers had also been denied access to their clients.

In a press statement in November 2015, we called on the Lesotho authorities to uphold and respect the rule of law, the independence of the judiciary and of legal practitioners at all times. Also, we stressed that the Lesotho authorities must ensure that due process of the law is respected in this matter without subjecting the accused to any form of abuse of their rights, which included the right to have access to legal representation.

Our presence in the High Court that day was greatly valued by our Lesotho colleagues.

Election observation: As part of its advocacy programme, the LSSA has applied to the Electoral Commission (IEC) to observe the highly publicised 2016 local government elections. This follows the success of the LSSA's election observer mission in the 2014 national elections. The LSSA intends to field its team of trained attorneys on the ground on election day to serve as the eyes and ears of our citizens. An observation report will be compiled by the LSSA and submitted to the IEC immediately after the elections.

We thank those dedicated attorneys who have volunteered to join our team to observe and report on the elections at their local voting stations on election day in 2016.

In the meantime, the LSSA sent an election observer team of attorneys to the local government elections in Tlokwe, Potchefstroom on 24 February 2016.

Xenophobia: Soon after we took office, we joined other bodies in condemning the horrific violence that arose out of xenophobic, Afrophobic and opportunistic criminality which engulfed our country and played itself out in the local and international media. We were proud to offer the



Arnold Tsunga, Africa Director at the International Commission of Jurists; Vuyo Morobane, past president of the Law Society of the Free State; LSSA Co-Chairperson Busani Mabunda; Lesotho attorney Tumisang Masotho and LSSA Co-Chairperson Richard Scott, outside the Maseru High Court on 2 December 2015.

services of attorneys *pro bono* to victims and also made a R50 000 donation to Gift of the Givers Foundations towards assistance for victims who were displaced by the violence. We thank members of the profession who were willing and able to offer assistance to the needy at that stage.

The Office of the Public Protector: In 2015 the LSSA co-hosted a colloquium on the powers and functions of the Office of the Public Protector with the Centre for Human Rights at the University of Pretoria. Although this issue is currently before the Constitutional Court, the LSSA used the colloquium discussion as guidance for its support of the Office of the Public Protector and to seek ways for the profession to render such support.

In its position paper – available on the LSSA website – the LSSA resolved to

- do its part to urge state organs to respect their obligations in terms of the Constitution when dealing with findings and recommendations from the Office of the Public Protector;
- engage in discussions to explore means through which national respect for the Office of the Public Protector can be created and promoted;
- engage in a consultation with the Office of the Public Protector to explore possibilities where the legal profession can be of assistance in improving the efficiency of the office; and
- assist in creating and promoting a proper forum, consisting of all key stakeholders, for constructive interaction regarding findings and the appropriate implementation of recommendations.

The profession

Our profession has also come under increasing attack from various quarters. The Minister of Health and other organisations in the healthcare sector are discussing the possible limitation of the right to fair compensation of medical malpractice victims on the basis that lawyers are aggressively fueling the claims process against State institutions. A similar criticism has been levelled against lawyers claiming against abuse by the South African Police Service. We have openly stated that the victims of medical and other malpractice – who are often the poor and vulnerable – cannot be expected to have the specialist knowledge, money or power to take on the State through an ‘administrative process’ if they have suffered life-changing and critical damage at the hands of State institutions and employees. Such victims have the right to legal representation and to be compensated fairly for their losses. They must have parity of arms if they are going to challenge the very institutions that caused their loss in the first place. That is the duty of lawyers. We have requested to meet the Minister of Health, and a meeting is on the cards after a first meeting was cancelled at short notice.

The LSSA had a very productive meeting with the MEC for the Gauteng Department of Health, who has been mandated by the Gauteng Premier to convene quarterly discussions with all professional boards to establish ways in which the relationship of the boards and the Gauteng Provincial Government can be strengthened. She also informed us of the interventions by the Gauteng Department of Health to minimise risk litigation. The key aspects are that mediation will be considered as the first port of call; law firms have been appointed to do an audit of all files and where matters can be settled, they will and for the rest, mediation will be the preferred option; training will be assessed; and mechanisms will be put in place in hospitals to prevent circumstances that give rise to litigation. Follow-up meetings will be held.

One of the other main stakeholders which we have dealt with this year has been the Road Accident Fund (RAF). The LSSA has held various meetings with the Management of the RAF. Of specific concern is the delay in payment of claims as well as the approach by the RAF to give preference to small claims under R100 000 in order to clear the backlog. Another concern is the RAF’s continuing and unabated postponement of cases relating to RAF matters in courts. We will continue to monitor the situation and make interventions, where necessary.

The LSSA had engagement with various delegations from neighbouring countries, inter alia the Uganda Law Reform Commission, who visited the LSSA on an exercise to benchmark Uganda’s Evidence Act and members of the Judiciary of Botswana, who are investigating, researching and benchmarking various jurisdictions who have made strides in the quest to attain institutional independence. A Ugandan delegation of parliamentarians also visited LEAD to discuss the education of legal practitioners.

In August 2015 we, as Co-Chairpersons, led a delegation of LSSA councillors to the SADC Lawyers Association conference in Dar es Salaam. The LSSA sponsored a session on regulation of the profession and representation of practitioners with the aim of learning how these dual roles function in other jurisdictions in the region.

We are delighted to report the SADCLA resolved that the next SADCLA conference will be held from 17 to 19 August 2016 in Cape Town. This will provide a valuable opportunity for practitioners to interact with their colleagues from the region. To facilitate this, we are arranging a special networking ‘trade mission’ session for local firms to meet SADC lawyers as an add-on to the conference.

At the end of 2014 in Brasilia, the LSSA signed the Brasilia Declaration as a member of the BRICS Legal Forum. This indicated the start of a closer working relationship with the legal professions in the BRICS countries. In August the Co-Chairpersons signed a memorandum of understanding between the LSSA and the Brazilian Bar Association for mutual

support and exchange of information. Richard Scott paid a courtesy visit to the Brazilian Bar Association in September and Busani Mabunda attended the 85th anniversary of the Brazilian Bar Association in November 2015.

Also in August 2015, the LSSA held two meetings with representatives of the profession in China. One was with representatives and academics from the East China University of Political Science and Law, which was organising the Second BRICS Legal Forum held in Shanghai, China in October 2015. The LSSA was represented by council members Max Boqwana, Krish Govender and David Bekker at the second BRICS Legal Forum in Shanghai in October 2015.

In January 2016 Busani Mabunda represented the LSSA at the Opening of the Legal Year on invitation of the Malaysian Bar Association. It was gratifying to witness the cohesion in the annual proceedings which included the judiciary, the profession and government.

For the first time in 2015, the LSSA was involved as a participating recognised controlling body and media partner in the annual Tax Indaba. The aim of our involvement is to establish the legal profession as an important player in the tax landscape.

As part of its drive to promote women in decision-making positions in the profession, the LSSA has appointed women committee members across all its committees.

Professional affairs

A summary of the activities of the LSSA's specialist committees appears in the 'Specialist Committee Reports' section in this annual report. We would, however, like to highlight the following specifically:

Besides spearheading a number of the initiatives referred to above, the LSSA's Professional Affairs department coordinates the activities of the specialist committees and liaises with key stakeholders. Through its Professional Affairs department and specialist committees, the LSSA has commented on various pieces of legislation and initiated changes where appropriate. There was an increase in the number of stakeholders we liaise with on behalf of the profession and in the interest of the public.

The LSSA regularly liaises with a number of stakeholders, such as the SA Police Service, the Department of Correctional Services, Legal Aid South Africa, the Department of Environmental Affairs, the Department of Rural Development and Land Reform and also attends the national and regional SARS stakeholder meetings and liaises with them on issues of mutual concern.

The LSSA made submissions, amongst others, on the following Bills, rules, discussion papers and policy documents during this year:

- Refugees Amendment Draft Bill 2015
- Judicial Matters Amendment Bill [B2-2015]
- Proposed Professional Body Recognition and Professional Designation Registration of Forum of Immigration Practitioners of South Africa (FIPSA)
- Proposed amendment to Magistrates' Courts Rule 43: Execution against immovable property
- Financial Intelligence Centre Amendment Draft Bill, 2015
- Proposed amendment to Uniform Rule 38 and Form 16: Subpoenas
- Proposed amendment to Uniform Rule 36 (8): Provision of a time period within which a party causing an examination to be made must furnish the report
- Draft amendments to Chief Master's Directive 3 of 2006
- Proposed extension of *dies non*
- Protection, Promotion, Development and Management of Indigenous Knowledge Systems Bill, 2014
- Draft Language Policy (issued by the Justice Department)
- Project by the Department of Science and Technology on a national recordal system for Traditional Knowledge
- Liquor Act (59/2003): National Liquor Policy
- SA Law Reform Commission Discussion Paper 131 (A Review of the Law of Evidence)
- Amendment of Rule 58 and Form 42 of Magistrates' Courts Rules
- Debt Collectors Amendment Bill.

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

Costs: Section 35 of the Legal Practice Act and its implications is of major concern to practitioners. The Costs Committee is of the view that, as presently framed, the provisions of the section are unsustainable as they inhibit access to justice and the freedom of economic activity. The LSSA is working on proposals for an amendment to the section.

Voluntary court-annexed mediation has been rolled out as a pilot project in specific courts in Gauteng and North West since 1 December 2014. The intention is that the project will be rolled out to other courts in conjunction with the Justice Department rationalisation process. At this stage, it is unclear how successful the pilot project has been. Reports are that in certain courts considerable progress has been recorded, whereas in others, despite efforts by magistrates to get attorneys to mediate before going to trial, negligible results have been achieved. The LSSA embarked on site inspections to identify the factors that are making mediation practical in some areas and not in others.

Legal process outsourcing: The LSSA is investigating the prospects for legal process outsourcing and the benefits this could bring to South African practitioners.

Legal education

The LSSA's School for Legal Practice celebrated its 25th anniversary in 2015. From a humble pilot project of 51 candidates in Pretoria in 1990, the School has grown to nine residential centres and a distance training centre in cooperation with Unisa. It has seen more than 23 000 graduates move through its lecture rooms, supported by some 300 trainers who are mainly legal practitioners. The profession owes a debt of gratitude to Nic Swart, the members of the Boards of the various School centres and all the trainers for turning the pilot project into one of the great success stories of vocational training for candidate attorneys.

LEAD continued to enrol a growing number of participants in its programmes with more than 10 000 persons enrolling in 2015 and 1 489 graduates attending the School for Legal Practice. New projects include construction law, medical negligence, mediation and case management. LEAD is partnering with the law deans in developing ethics and e-law curricula for the LLB curriculum and for LEAD programmes.

Electoral democracy and voter education (EDV): The new EDV subject was launched, in partnership with the IEC, in 2015 with the first lecture taking place at the Pretoria School for Legal Practice in March 2015.

Significant Leadership Programme for Experienced Women Lawyers: The second programme for women lawyers was held in Johannesburg during the first week of August and October 2015.

The Sassetta was placed under administration this year. The LSSA and the administrator called a meeting of stakeholders in August 2015 to consider the skills needs in the legal profession. We trust that this will restore the good working relation between the organisations and contribute to skills development at various levels in the profession.

The LSSA was accredited by SAQA as a 'professional body' this year. This will give the profession more input to qualifications that are relevant to practitioners.

The strengthening of relations between the profession and university law deans was one of the factors that contributed to the publication of new standards for the LLB degree which were published last year. A task team comprising the LSSA, law deans and university law teachers continues to consider matters of importance to the quality of legal education.

The BLA and LSSA hosted a conference for the National Bar Association (NBA) from the United States in May 2015. The event that was well attended and discussed briefing patterns relating to black attorneys as well as the serious issue of human trafficking.

Attorneys can now enrol online for training in customary law and company law through LEAD's e-LEADER online portal.

Communication

This year *De Rebus* implemented the first phase of its ongoing digital strategy with the launch of a new responsive website and app. *De Rebus* remains the primary communication and educational vehicle for the profession and the digital strides made will assist in ensuring that the journal remains relevant, while positioning itself as a continuing professional development (CPD) tool. *De Rebus*'s print version currently circulates to some 24 553 attorneys, candidate attorneys, judges and other lawyers. The journal also boasts a substantial subscriber circulation figure amounting to approximately 1 000 and is circulated to lawyers in the SADC region. *De Rebus* is the only journal made available for free to attorneys and candidate attorneys courtesy of the Attorneys Fidelity Fund and one where attorneys can express their views and read newsworthy articles that are of relevance to the profession. Practitioners are encouraged to continue sending articles, letters, case notes, practice notes, comments and opinions to the journal to ensure that relevant information is published.

The LSSA launched its new responsive website in November 2015. The website now allows for easy access from various devices such as tablets and smartphones. In addition, the LSSA and *De Rebus* have both broadened their social media reach by launching Twitter feeds in 2015 in addition to LinkedIn sites. We urge practitioners to follow these for the latest developments: @LawSociety_SA and @DeRebusJournal. In the meantime the LSSA communicates with practitioners through *De Rebus* in print and digital formats, the LSSA e-newsletter, e-mail advisories and the weekly *Legal-brief LSSA Weekly*.

The *De Rebus* app can be downloaded from the AppStore and Googleplay.

Pro bono

We wish to thank practitioners for their ongoing *pro bono* services to the public – particularly those who serve as commissioners in the Small Claims Court – and all practitioners who participated in the Access to Justice Week in August, those who coached teams for the National Schools Moot Court Competition and the thousands who drafted free wills during National Wills Week in September 2015.

A word of thanks

We wish to thank our fellow Council members as well as the management and staff of the LSSA for their unwavering support throughout our term. We also wish to thank our respective firms for allowing us the space to carry out this important national duty to the profession and the public.

Busani Mabunda and Richard Scott
Co-Chairpersons

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

LSSA constitution

Councillor	Constituency	Meeting attended
Busani Mabunda*	Co-Chairperson	05, 07, 10, 11, 02
Richard Scott*	Co-Chairperson	05, 07, 10, 11, 02
Ettienne Barnard*	CLS	05, 07, 10, 11, 02
Eric Barry	KZNLS	05, 07, 11, 02
Max Boqwana*	Nadel	05, 07, 11
David Bekker*	LSFS	05, 07, 10, 11, 02
Dave Bennett	LSNP	05, 07, 10, 11, 02
Llewelyn Curlewis	LSNP	05, 07, 11
Nolukhanyiso Gcilitshana	BLA	05, 07, 10, 11, 02
David Geard	CLS	05, 07, 10, 11, 02
Krish Govender*	Nadel	05, 07, 10, 11, 02
Peter Horn	CLS	05, 07, 09, 11, 02
Jan Janse van Rensburg*	LSNP	05, 07, 10, 11, 02
Maake Kganyago ²	Nadel	05, 07, 10, 11
Strike Madiba ¹	Nadel	05, 07, 10, 02
Davies Mculu	BLA	05, 11, 02
Mimie Memka*	BLA	05, 07, 11, 02
Anthony Millar ⁴	LSNP	02
Sam Mkhonto	Nadel	05, 02
Lister Nuku ³	BLA	
Nolundi Nyati	BLA	07
Jan Stemmett	LSNP	05, 07, 10, 11

Key:

- 05 – May 2015
- 07 – July 2015
- 10 – October 2015
- 11 – November 2015
- 02 – February 2016
- 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 Madiba was an acting judge during the reporting period.
2. Mr Kganyago was an acting judge during the reporting period.
3. Mr Nuku was an acting judge during the reporting period. He was replaced by Ms Nyati.
4. Mr Millar replaced Dr Curlewis from the February 2016 meeting.

* Member of the Management Committee (Manco).

2030: Will the legal profession be sustained?

Of course! So we believe ...

It should, provided our profession remains strong and independent, and undoubtedly, in the words of the late Chief Justice Pius Langa, it must continue to provide the 'guarantee for the integrity and identity of the nation'. However, it will not come easy.

Our destiny as a profession will be determined by the significance of our leadership and bold action over the next decade.

The legal profession worldwide is being challenged by dramatic changes in government policies, economic trends, client expectations, technology and practice systems. In addition to this, the South African profession must deal with local factors that impact – often forcefully – on how we practise and how we conduct our business as an organised profession. These include increased cost, competition, compliance requirements, risk and complex new laws. Also, as a profession, we are tasked with promoting our Constitution and addressing issues relating to transformation.

Our leadership must be alert and always ready to respond innovatively to these realities and imperatives. Circumstances often require courage and outspokenness.

Through my observation over the past few years, I submit that the following are critical in terms of the actions or adjustments we need to make:

- Practitioners are represented by a variety of organisations. We must find common ground. The future requires of us to determine shared goals on issues such as standards of service as well as



Nic Swart

Chief Executive Officer

access and fundamental rights and values; and to demonstrate this in creating new national governance and membership structures. It is essential that our thoughts and actions become 'open' as we reinvent our profession and its identity for the road ahead.

- We must lead beyond the Legal Practice Act! Albeit of great importance, the Act is merely one stop in the journey – only the end of the beginning. Sound regulatory practice, and high-level skills and post-qualification development are but some imperatives of the new dispensation. The rules will be written, but the actions must follow.
- We must be much more public and people-centred. A greater understanding of client expectations and how we meet these is a matter of survival as a profession. However, in terms of the broader public, we must show more than awareness. We must develop profound understanding that social issues are part of our legal practice environment. Living conditions, poverty, health and education are some issues which we should debate more, and for which we should take greater responsibility.

Essentially, it is about relevance.
Access. Value. Advocacy.

Nic Swart,

Chief Executive Officer

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

COMMUNICATION

Social media grows exponentially every year in its reach and impact. The legal profession appears to be conservative in its adoption of social media as a communication tool for business use. However, as Generation Y or Millennials join its ranks, that trend is bound to change rapidly. They will increasingly demand short, concise bites of information delivered and consumed seamlessly across various devices.

Taking that into account, the LSSA and *De Rebus* both launched Twitter handles @LawSociety_SA and @DeRebus-Journal. This is in addition to LinkedIn pages launched earlier for the LSSA, *De Rebus* and LEAD. Practitioners are urged to 'get social with us' by following these platforms for regular news and other relevant updates.

A good example of the reach of social media was the use of the channels to promote the National Wills Week in September 2015.

To make it easier for practitioners to access information across all devices, the LSSA, LEAD and *De Rebus* launched new, improved 'responsive' sites that reformat to the device. Greater attention is also being paid to search engine and website optimisation in order to drive traffic to the sites.

De Rebus launched a *De Rebus* app for both Apple and Android. More on this in the *De Rebus* report below. This will be considered for the LSSA and LEAD in 2016 as a new channel for communication.

The Co-Chairpersons, Busani Mabunda and Richard Scott, issued press releases on issues that required public comment by the profession such as raising concern about attacks on lawyers, particularly lawyers and judges in Lesotho, irregularities relating to prescribed claims at the Road Accident Fund, the compromise of the rule of law, the Afrophobic and xenophobic attacks. They also announced the launch of the LSSA's challenge on the SADC Tribunal and expressed their sadness at the passing of Constitutional Court Justice Skweyiya.

The LSSA communicates crucial developments to attorneys through its regular e-newsletter and electronic advisories on specific issues. It also sends an update of legal news events to all practitioners every Friday morning through its *Legal-brief LSSA Weekly* – thanks to Juta Law for its cooperation in this joint venture.

As regards the Legal Practice Act 28 of 2014, the LSSA has sent an e-mail advisory after every National Forum (NF) meeting to keep practitioners informed on developments. The LSSA website has a specific section on the Legal Practice Act which covers all the current developments as well as the chronological history that led to the passing of the Act, and information on NF member's and NF committees. At the appropriate time, the LSSA will arrange road shows to interact direct with practitioners on developments around the Act.

All advisories, newsletter and press releases are accessible on the LSSA website at www.LSSA.org.za

The website also includes a 'resources' section for legal practitioners with relevant guidelines and advisories.

The LSSA's specialist committees suggest information brochures on a regular basis. In 2015 two new brochures were added to the LSSA's information brochures collection – *Admission of Guilt Fines* and *Applying for a Temporary or Permanent Residence Visa*. Like the other brochures, these have been translated into other languages and are available for public information on the LSSA website. They are also made available to attorneys as marketing and information brochures. The focus of the brochures is to encourage members of the public to use the services of attorneys.

Barbara Whittle,
Communication Manager

DE REBUS

The SA Attorneys' Journal

Editorial Committee: Mohamed Rander (Chairperson), Giusi Harper, Peter Horn, Danie Olivier and Lutendo Sigogo

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

The journal plays an important educational role and its content is authoritative, credible and enables practitioners to

practise more efficiently and effectively. It reinforces a sense of belonging in the profession, which in turn promotes and maintains high professional standards.

Circulation

By December 2015, *De Rebus*' circulation was 24 533, made up of 18 894 attorneys, 3 533 candidate attorneys, 959 paying subscribers and 1 147 complimentary recipients, as well as the sale of individual copies.

As part of the LSSA's broader digital strategy, the *De Rebus* website was relaunched as a responsive website with a modern look and feel. Previously the website was updated by LexisNexis; currently the *De Rebus* team updates the website enabling the team to make updates at any time, which makes the website current. By January 2016, the website had a total of 328 registered subscribers. The website can be accessed at www.derebus.org.za.

De Rebus also launched an application (app) as part of its digital strategy. The app is available for Android and iOS users. The information on the app is updated through an RSS feed from the website. Those who have installed the app on their devices receive a notification as soon as the app is updated. By January 2016, the installation statistics of the app stood at 127 for iOS and 140 for Android, adding up to 267 downloads. For iOS devices, the app can be found in the App Store; for Android devices, the app can be found in the Play Store.

As a complement to the hard-copy printed version, the journal is also available in a PDF version. The PDF 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 2015, *De Rebus Digital* mailing list consisted of 14 015 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), MyLexisNexis Library and in Sabinet's African Journal Archive.

Financial information

As *De Rebus* is provided free of charge to all practising attorneys and candidate attorneys in South Africa, the *De Rebus* staff is mindful of the need to manage the costs incurred in producing the journal each month. In 2015 *De Rebus*' advertising sales had a nett income of R5 097 218 (unaudited fig-

ures) generated for both the journal and the classifieds supplement, which was slightly below the budgeted amount of R 5 139 200.

The decline in advertising sales can be attributed to advertisers opting to advertise on digital platforms. This is one of the reasons *De Rebus* implemented the first phase of its digital strategy in 2015 so as to begin to attract digital income.

De Rebus and the classifieds supplement saved approximately R587 649 (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 2015.

Attorneys continue to submit an increasing number of articles and this saw the journal printing an average of four feature articles per issue while being able to stay within its budgeted 64 pages per issue. The journal also saw the 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 –

- keeping of pets in sectional titles;
- spousal maintenance after divorce;
- court-annexed mediation;
- Twibel;
- the appointment of acting judges;
- the maxim of *res ipsa loquitur*;
- ukuthwala;
- emolument attachment orders;
- the Pension Funds Act 24 of 1956;
- assisted suicide; and
- the use of Internet-based technologies in legal practice.

During the period under review, the production team and the editor wrote a number of news articles as the news editor was on maternity leave. The production team'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 Danie Olivier for serving as a member of the *De Rebus* Editorial Committee. Mr Olivier served on the committee from June 2004 until November 2015; he also served as the committee's chairperson during the 2013/2014 period. His insights and guidance, spanning over 11 years, has helped produce a journal that is topical and of interest to the attorneys' profession.

2015 prizewinners

Two practitioners were recognised in 2015 for their contributions to *De Rebus* during 2014. Polokwane attorney, Magdeleen de Klerk won the 2014 LexisNexis Prize for Legal Practitioners for the best article by a practising attorney published in *De Rebus*. She won the award for her article titled 'Fair divorce: Misconduct does not play a role in forfeiture claims,' published in 2014 (April) *DR* 37. The article dealt with the fact that forfeiture of the benefits of a marriage is not about 'punishment' of a party for substantial misconduct or, in other words, a moral judgment. The article looked at how, even if substantial misconduct is proved, forfeiture will not be granted (against the alleged 'guilty' party) if he or she has contributed namely, financially, by way of assets or in the traditional sense (as housewife and mother).

In addition, Johannesburg candidate attorney, Tafadzwa Mukwende won the 2014 Juta Prize for candidate attorney for his article titled 'Reform, reintegrate, rehabilitate – Balancing restorative justice and juvenile offender rehabilitation,' which was published in 2014 (Oct) *DR* 33. The article was based on whether imposing the custodial sentencing regime on juvenile offenders is an effective mode of rehabilitation and restorative justice.

The *De Rebus* team members are acknowledged for their excellent work during 2015 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.

Mohamed Randera,
Chairperson, Editorial Committee

Mapula Thebe,
Editor

FINANCE

The financial report covers the period from January to December 2015. The audited financial statements (AFS) are completed after the publication of the annual report and, for completeness, they are available as a separate annexure.

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

Internal audit: The oversight of internal audit is considered by the Internal Audit Subcommittee (IAS), with direct reporting to ARC.

Internal control principles and policies are below.

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

ARC tables recommendations to the LSSA Council via the LSSA Management Committee (Manco) and other governance and operational committees.

Schedule of ARC meeting attendance

Excludes subcommittee meetings.

Member	Number of meetings
Ashwin Trikamjee (Chairperson)	5
Jan van Rensburg (Vice Chairperson and Budget Subcommittee Chairperson)	5
Igna Klynsmith (IAS Chairperson)	3
Mohamed Husain (Remuneration Committee Chairperson)	2
Vincent Faris (Consultant member - SAICA)	3
Peppy Kekana	3
Jan Maree	4
Roland Meyer	3
Willie Scholtz (ICT governance expert)	3
Richard Scott (LSSA Co-Chairperson)	4
Total number of meetings in 2015	5

Summary of macro financial information

AFF subvention in R 000's

This has been fixed at the 2012 level until 2017. The LSSA has access to unused AFF project funds on prior years funding to recover shortfalls in terms of the funding agreement with the AFF.

	LSSA	De Rebus	LEAD	TOTAL
2014	9 669	5 656	50 293	65 618
2015	9 675	5 650	50 293	65 618

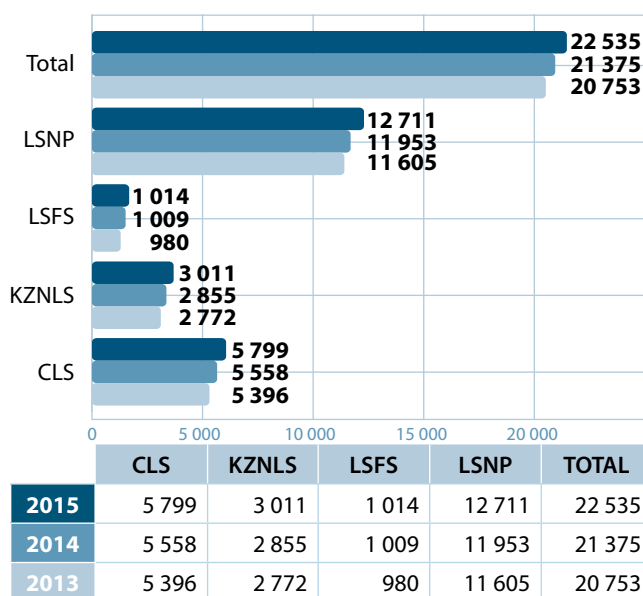
- AFF budget allocation for 2015 including prior year unused project funds R73 735k
- AFF 2014 actual funding utilised R59 811k
- AFF 2014 budget allocation (includes AFF unused project funds) R68 846k

For the 2015 year, it is estimated that the AFF budget allocation (including unused project income) will not be fully utilised due to cost containment processes within the LSSA (refer to audited AFS for amount).

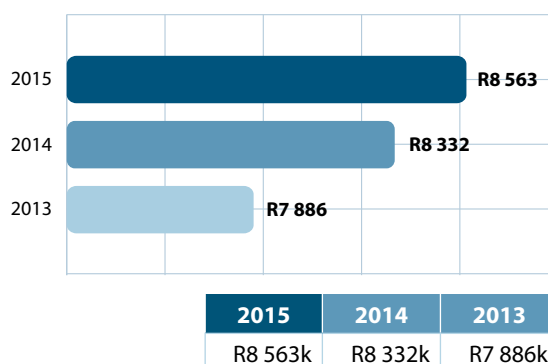
Capitation levies

Levies for 2014 and 2015 were R380 per attorney member (VAT exclusive), with the budgeted increase for 2016 to R405 (VAT exclusive) per attorney member.

Capitation: Attorney numbers



Capitation: Levies in R000's



Internal control environment

The LSSA's focus on the internal control environment is to minimise risks and is based on the AICPA (US) internal control framework of the 14 principles indicated in the table below. This is subject to oversight by the LSSA Internal Audit subcommittee (IAS).

The framework requires annual review and analysis of deficiencies and resultant corrective action.

	Action	Result / Output
Supports the system of internal control		
The LSSA demonstrates a commitment to integrity and ethical values.	Council and Manco ensure emphasis via specific and defined delegation to other governance committees.	The various operating sections of the Management and staff of the LSSA demonstrate the integrity and ethical values of the organization through their directives, actions and behavior.
Standards of conduct	The expectations of the Council relating to integrity and ethical values are defined in the LSSA's Code of Business Conduct. Adherence to standards of conduct. Deviation from standards.	This is understood at all levels of the LSSA and by outsourced service providers and business partners. Processes are in place to evaluate the performance of individuals and teams. These are identified and remedied in a timely and consistent manner.
Exercises oversight responsibility		
The Council demonstrates independence from Management and exercises oversight via governance committees for the development and performance of internal control. The Council identifies and accepts its oversight responsibilities in relation to established requirements and expectations.	Council and governance structures: Define, maintain and periodically evaluate the skills and expertise required for the effective implementation of policies. Probe management actions and ensure commensurate actions where applicable.	Risk assessments are scheduled and conducted. Control activities: Oversight of senior management in the development and performance of control activities. Information (ICT): Review achievement of objectives. Assessment of monitoring activities and remediation of deficiencies.
Establishment of structure, authority and responsibility		
Management is subject to Council/governance committee oversight and is delegated to ensure the implementation of governance structure decisions in relation to the establishment of structures, reporting lines, and appropriate authorities and responsibilities to achieve objectives.	Senior management design and evaluate lines of reporting to enable the execution of authorities and responsibilities and flow of information to manage the activities of the LSSA to support the achievement of objectives. Council retains effective control of strategic, important and policy decisions including structures and the delegation of authority.	Enables execution of authority and responsibilities as well as flow of information to manage the activities of the LSSA Limits of delegation of authority in place and reviewed annually.
Demonstrates commitment to competence		
Commitment to attract, develop and retain competent individuals in alignment with objectives.	Establishes policies and practices.	Policies and practices reflect expectations of competence necessary for achievement of objectives.
	Evaluates competence and addresses shortcomings for achievement of objectives.	Retention policy in place. Evaluation of competence across entire LSSA. Mentoring, succession and training policies are effective for internal control purposes.
Enforces accountability		
Individuals are held accountable for their internal control responsibilities in the pursuit of objectives.	Effective structures, authority, responsibilities and processes are established.	Mechanisms in place to communicate and hold individuals accountable for performance of internal control responsibilities across the LSSA. Implement corrective action as necessary. Performance measures, incentives and rewards are established across all levels. Performance management is aligned with the fulfilment of internal control responsibilities. Exercise of disciplinary action as appropriate.

	Action	Result / Output
Specifies suitable objectives		
The LSSA Council via governance structures specifies clear objectives for the identification and assessment of risks relating to objectives.	Operations objectives clear and defined.	Performance evaluation Risk tolerance - acceptable levels of variation relative to the achievement of operational objectives. Includes operations and financial performance goals.
	External financial reporting objectives.	Comply with applicable accounting standards. Reflect activities.
	External non-financial reporting objectives.	Complies with externally established standards and frameworks (laws etc.)
	Internal reporting objectives	Reporting provides Management with accurate and complete information required to manage the LSSA.
	Compliance objectives	Reflect external laws and regulations. LSSA compliance checklist is in place and regularly reviewed and signed off. Complies with applicable accounting standards. Financial reporting objectives are consistent with accounting principles.
Identifies and analyses risk		
The LSSA Council and other governance structures identify risks to the achievement of objectives across the LSSA and analyse risks as a basis for determining how the risks should be managed.	The IAS ensures the identification and assessment of risks at organisational, division, operating unit and functional levels relevant to and the impact on the achievement of objectives.	LSSA risk register and matrix in place and regularly reviewed. Strategic register signed off by responsible committee. Effective risk assessment processes that involve appropriate levels of management. Process that includes estimating the potential significance of the risk. Risk interventions on basis: to accept, avoid, reduce or share the risk.
Assesses fraud risk (cross-referenced to the LSSA's Fraud Prevention Plan)		
The governance structures of the LSSA consider the potential for fraud in assessing risks.	Fraud assessment includes fraudulent reporting, loss of assets and corrupt activities. Includes elements of incentives and pressures. Assesses attitudes and rationalisation. Communication and education.	Fraud prevention policy in place and effectively implemented. Regular review on applicability of fraud prevention policy.
	Assesses changes in the business model, including leadership changes.	At strategic level consideration of the Legal Practice Act (structural impact), ICT and funding on functions, programmes and structure is prioritised and managed effectively at Council and governance structure level.
Identifies and analyses significant change		
The LSSA Council including governance structures identify and assess changes that may impact significantly on the system of internal control.	Assesses changes in the external environment.	The established risk identification process (Management responsibility with reporting via IAS) considers changes to the regulatory, economic, and physical environment.
	Assesses changes in the business model, including leadership changes.	At strategic level consideration of the Legal Practice Act (structural impact), ICT and funding on functions, programmes and structure is prioritised and managed effectively at Council and governance structure level.

Selection and development of control activities		
The governance structures ensure selection and development of control activities to mitigate risks for the achievement of objectives at acceptable levels.	Integrated with risk assessment on specific LSSA factors (<i>sui generis</i>) so as to ensure effective business processes.	Control activities assist risk responses to mitigate/prevent/detect via the LSSA Risk Matrix for confirmation, including scope and topology. Control activities to have a mix to ensure mitigation, prevention and detection via manual and automated processes at appropriate levels within the LSSA. Segregation (incompatible functions) of duties is in place and effective. Where not practical, Management ensures the implementation of alternative control activities.
Selects and develops general controls over technology		
The governance structures ensure the selection and development of general control activities over technology to support organisational objectives.	Determination of dependency between the use of technology in business processes and technology general controls to help ensure completeness, accuracy and availability of technology processes and functionality.	Effective review by ARC and IAS, resourced by an independent expert ICT governance member with the <i>ad hoc</i> IT committee, which reports via the IAS.
		Management understands and determines the dependency and linkage between business processes, automated control activities and technology general controls. Report via IAS. Audits are conducted to ensure control activities are designed and implemented to restrict technology access in terms of user rights and protected from external threats; included in SLA with managed outsourced ICT service provider/s. Controls in place over the acquisition, development and maintenance of technology and its infrastructure. Report via IAS.
Deploys through policies and procedures		
Council and governance structures ensure deployment of control activities through policies on the expectations and procedures to ensure implementation of policies.	Establishment of policies and procedures to support the deployment of management directives, with lines of accountability and responsibility.	Protocol policies including internal control in place, reviewed annually and approved. Staff performance evaluated to include competency. Review and corrective action by responsible staff.
Uses relevant information		
Governance structures ensure that the LSSA obtains or generates and uses relevant, quality information to support internal control.	Process is in place to identify the required and expected information for all components of internal control to ensure the achievement of LSSA objectives.	Annual interim audit focused on internal controls and report via IAS. Information integrity is key priority. Evaluation of costs and benefit. Reports by Management.
Internal communication		
Governance structures ensure that management processes are in place to communicate information internally to all employees, including objectives and responsibilities for internal control.	Effective communication exists between Management and the Council as well as other governance structures of the LSSA so that all parties have information required to fulfil their roles with respect to the LSSA's objectives.	Council and Manco agendas include minutes of ARC and IAS, with relevant ARC and IAS agenda items with details of discussions. Separate communication channels, such as whistleblower hotlines, are in place as per the LSSA's Fraud Prevention Plan. Methods of communication consider the timing, audience and nature of the information.

Ashwin Trikamjee,
Chairperson, Audit and Remuneration Committee

Anthony Pillay,
Finance Director

HUMAN RESOURCES

Members: Busani Mabunda (Chairperson), Krish Govender and Richard Scott

This report covers the period from 1 January to 31 December 2015.

The LSSA has always striven to place an emphasis on ensuring employee wellbeing within the organisation. May 2015 saw the formal launch of the LSSA's Health and Wellness Programme. The programme's objective is intervention and assistance that targets the individual's physical, social, economic, psychological and legal requirements. A number of awareness campaigns were conducted which sought to provide information and educate employees on issues like wellness, cancer awareness, HIV/Aids, financial matters and others.

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

Whereas Management strives to keep all employees informed about the changes in relation to the LPA, Manage-

ment with the support of Manco, was required constantly to manage the high risk of staff turnover and loss of critical skills by allaying employee's uncertainties and discomfort through constant engagement with them.

The training and development priority was to capacitate the junior management level and their seconds in charge with all-round leadership skills in order for them to run their departments more effectively. The other emphasis was in ensuring that each department head identified and equipped their 'back up' (short-term/emergency) in their respective departments.

Human resources plan for 2016

- Strengthen the impact of the Employee Wellness Programme that will speak directly and provide potential solutions to needs including change management, financial/economic, psychological, social and legal requirements.
- Continued empowerment of all staff, especially junior management and upwards, through training and development in areas of specialisation and beyond. The focus has also been on ensuring all staff members are equipped and ready for the new dispensation.
- Increased communication and engagements with employees on the new dispensation.

Staff numbers: 2015

Consolidated staff numbers					
	Total as at 31/12/2014	Budget	Less Resignations	Add Appointments	Total as at 31/12/2015
LSSA	29	34	1	3	31
De Rebus	5	6	0	1	6
LEAD	52	60	5	10	57
Total: actual	86	100	6	14	94

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

Staff movement

Appointments

Title	Name	Section	Post	Date	Equity
Ms	Merlin September	LEAD: New Business Development	Course Administrator	5 January 2015	C/F
Ms	Isabel Janse van Vuren	<i>De Rebus</i>	Sub-Editor	5 January 2015	W/F
Ms	Tamara Sihlangu	LEAD: Courses and Distance Learning	Mediation Project Coordinator	5 January 2015	A/F
Ms	Babalwa Nchekwube	LEAD: Quality Assurance	Learning Material Developer	19 January 2015	A/F
Ms	Ntombikayise Fakude	LEAD: Seminars	Seminar Coordinator	1 March 2015	A/F
Ms	Amukelani Mdluli	LEAD: Seminars	Seminar Administrator	1 May 2015	A/F
Ms	Rachael Gaffane	LSSA: Finance	VIP Payroll Administrator	1 May 2015	A/F
Mr	Ricardo Wyngaart	LSSA: Professional Affairs	Senior Legal Official	3 August 2015	C/M
Ms	Eugenia Sookane	LEAD: Practice Management	Senior Training Coordinator	1 September 2015	A/F
Ms	Hanlie Bezuidenhout	School for Legal Practice: Bloemfontein	Night School Administrator	3 August 2015	W/F
Ms	Vijaya Bhowan	LSSA: Finance	Finance Officer (Data Capturer)	3 August 2015	I/F
Mr	Motsamai Mokoena	School for Legal Practice: Johannesburg	Day School Administrator	1 October 2015	A/M
Mr	Ali Haji	School for Legal Practice: Pretoria	Day School Administrator	1 November 2015	A/M
Ms	Barbara Makhandia	LEAD: Seminars	Senior Seminar Coordinator	1 December 2015	A/F

Terminations

Title	Name	Section	Post	Date	Reason for Termination
Ms	Alana Abrams	LSSA: Finance	VIP Payroll Administrator	31 January 2015	Deceased
Ms	Nomfundo Mbinambina	LEAD: Practice Management	Senior Training Coordinator	30 April 2015	Resigned
Ms	Sharon Lee	LEAD: Seminars	Manager Seminars	31 May 2015	Deceased
Mr	Paul du Plessis	LSSA	IT Administrator	12 June 2015	Resigned
Ms	Melanie Reddy	School for Legal Practice: Johannesburg	Day School Administrator	22 August 2015	Absconded (pending an investigation)
Mr	Modi Vinger	LEAD	Skills Development Officer	28 September 2015	Resigned

Vacant positions as at 31 December 2015

- Skills Development Officer (LEAD)
- Night School Administrator (School for Legal Practice: Pretoria)
- Night School Administrator (School for Legal Practice: East London)
- IT Manager (Post redundant due to outsourced managed services).

Training

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

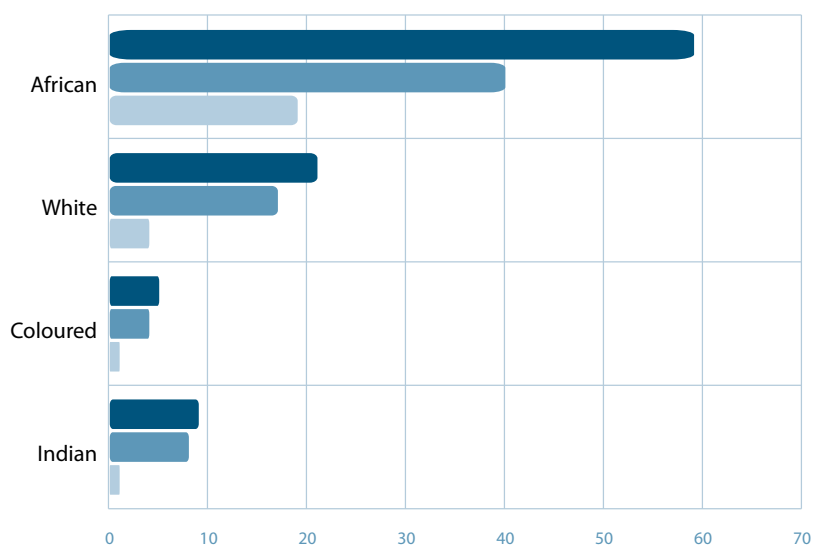
Training	Attendance by staff members
Advanced Excel	3
Advanced caseware	1
Advanced commercial law	1
Assessors' course	1
Branding and marketing course	1
Bookkeeping	1
Business communication skills	1
Business etiquette	6
Business literacy	1
Business and report writing	10
Customer relations	1
Commercial Contracts	1
Copy editing and proof reading	1
Credit management	1
Customer relations management	4
DCC logistics and supply chain	1
Develop your leadership course	23
Develop new business training	1
Development programme for office professionals	1
Diploma in paralegal studies	1
Economic management science	1
Effective office management	1
Emotional intelligence in the workplace	1
English business writing	11
Essentials of digital media management	1
First aid level 2	3
Health and safety	8
How to generate stories for specialised reporting	1
Adobe InDesign	2
Internet marketing essentials	1
Labour seminars	4
Legal cost training	1

Training	Attendance by staff members
Magic makers training for cleaners	3
Marketing scanning	1
Marketing fundamentals	1
Training management training	1
MBA for office professionals	2
Mentorship training	2
Moderator course	3
MS Word level 1, 2 and 3	1
Payroll workshop	1
Photography	1
Photoshop training	1
Presentation Skills	1
Project management	4
Public and development management	1
Recxpress	3
Risk management	1
Seminar – Wills and estates	1
Social media as a source and platform	2
Stress management	1
Training coordination	3
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 2015:	R321 000

Employment equity

The graphs below indicate the workforce and employment equity profiles with the occupational levels. In the interest of transparency and transformation these graphs are more detailed than prior years.

Employee race and gender profile

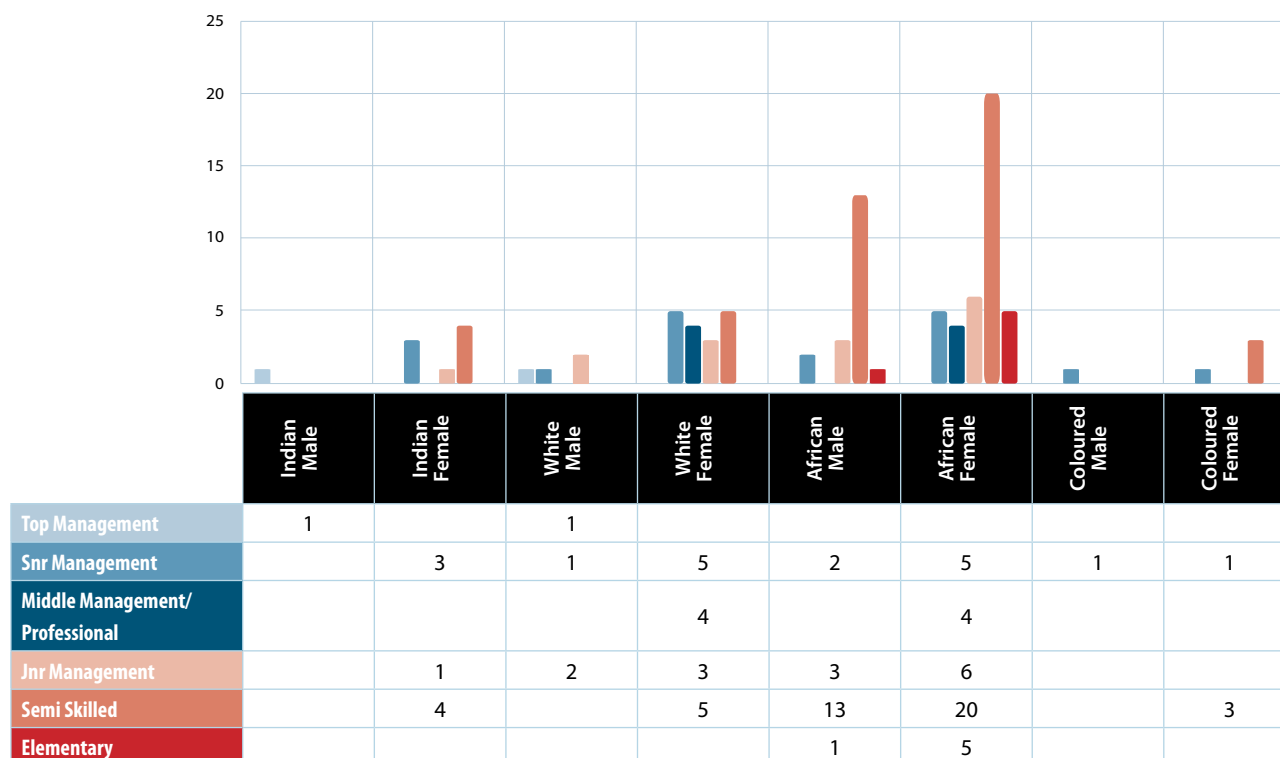


	African	White	Coloured	Indian
Total	59	21	5	9
Female	40	17	4	8
Male	19	4	1	1

Female	Male
74%	26%

African	White	Coloured	Indian
64%	22%	5%	9%

Occupational levels



Three employees are non-South African citizens (2 African females and 1 African male).

Nkhensane Nthane,
Human Resources Manager

LEGAL EDUCATION AND DEVELOPMENT

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

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

- The School for Legal Practice celebrated its 25 years of existence.
- More than 10 000 persons enrolled for LEAD programmes in 2015.
- 1 489 graduates attended the School for Legal Practice - more than ever before.
- Major progress has been made with regard to e-learning through the provision of online courses in bookkeeping, legal office administration, legal writing, customary law and company law.
- Electoral democracy was introduced as a subject at all School centres.
- The Council on Higher Education published new standards for the LLB degree after substantial input from the profession. The LLB Task Team convened by the LSSA will monitor implementation.
- Following an LSSA summit on ethics, the law faculties at South African universities commenced with the development of a new curriculum for the LLB.
- The LSSA joined a working group of the South African Law Deans to consider the proper integration of e-law into the law curriculum.
- A very successful workshop was held with the National Bar Association and the Black Lawyers Association to discuss human trafficking and briefing patterns.
- 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.
- Students from the School centres were involved in social responsibility programmes throughout the country (see below).
- LEAD offered training for institutions such as the Department of Rural Development and the Competition Commission.
- To date more than 1 000 persons have received training 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 2015 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. Amukelani Mdluli (from 1 May 2015), Anthony Matimbe, Babalwa Nchekwube (from 19 January 2015), Barbara Makhanda, Bettie Lubbe, Beverly Chueu, Boitumelo Maluleka, Dodo Dubazane, Dianne Angelopulo, Euginia Sookane (from 1 September 2015), Gail Mason, Grace Mukuru, Jackson Ndlovu, Kezzy Chauraya, Lolita Pieterse, Maria Mokuwape, Martha Baloyi, Merlin September (from 5 January 2015), Modi Vinger (until 28 September 2015), Molalatladi Modiba, Moses Sikombe, Nomfundo Mbinambina (until 30 April 2015), Norman Khudi, Nomsa Sethosa, Ntombi Fakude (from 1 March 2015), Pelcrine Mathibi, Phyllis Mphasha, Ria Mahlangu, Selina Ramano, Sharon Lee (until 31 May 2015), Soko Mnguni (from 12 January 2016), Stephne Pieterse, Tamara Sihlangu, Tasha Roestoff, Tshagofatso Mogajane, and William Khunou.

LEAD staff at Schools for Legal Practice

Bloemfontein: Willem Spangenberg, Euginia Sookane (until 1 September 2015) and Hanlie Bezuidenhout (from 3 August 2015).

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

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

East London: Bongzi Nkohla, Sue Donovan, Neliswa Dibela and Phumza Dlabati.

Johannesburg: Chandika Singh, Titus Mbatha, Connie Malinga, Melanie Reddy, (until 22 August 2015), Dorah Dumane and Motsamai Mokoena (from 1 October 2015).

Polokwane*: Molatelo Mashabane, Louisa Motana, William Mathe and Salome Maloka.

Pretoria: Ursula Hartzenberg, Ali Haji and Sisanda Bam (from 12 January 2016).

Potchefstroom*: Marlene Steyn and Helanie Jonker.

Port Elizabeth*: Lionel Lindoor and Anita Strydom.

LSSA–UNISA distance learning school: Dilshaad Gani, Parma Govender, Dorcas Hamido and Zukiswa Kala (until 30 January 2016).

*Coordinators at these centres are appointed by universities.

Instructors and presenters involved in LEAD activities: More than 700 practitioners and other experts were involved in the activities of LEAD in 2015.

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. 2 109 candidate attorneys attended in 2015.

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. 1 489 persons attended the day, night and distance programmes in 2015.

Conveyancing and notarial training: 326 persons participated in 2015.

Seminars: 2 924 persons attended LEAD seminars in 2015. The following topics were offered:

- Administrative law: Tender scrutiny
- Advanced case management
- Consumer Protection Act
- Conveyancing: New developments
- Debt collection
- Drafting of wills
- Engineering and construction contracts
- Labour law
- Litigation techniques
- Media writing
- Medical malpractice litigation
- National Credit Act
- Opinion writing

- Opinion writing: Practical
- Pension law
- Positioning your new firm as a successful business
- Women in leadership
- Ethics.

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

E-learning: The following programmes were offered:

- Legal bookkeeping
- Legal writing
- Introduction to medical law
- Office administration and client care
- Customary law (to all School students)
- Forms of business enterprise and medical law to all School students.

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

New business development (ACT): A total of 1 214 persons received training in 2015. The following courses were offered:

- Legal support staff training
- Business rescue
- Commercial contracts
- Medical law.

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. The report now includes information on the judiciary and advocates. (Statistics documents are available of the LSSA and LEAD websites.)

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 including practice manuals, e-PLT CDs and seminar material.

Social responsibility at School for Legal Practice

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

Cape Town School: The 2015(1), 2015 (night) and 2015(2) semester students all actively participated in LEAD-Making a Difference (MAD) social responsibility programmes. There are two main projects which students undertook. 2015(1) and 2015 (night) partnered with the Euclid Society to do community outreach via a 'winter warmers' drive during the harsh Cape winter on the Cape Flats and townships. Students collected blankets and contributed to soup kitchens in the communities.

The second term project by 2015(2) students had its origins in an article in *De Rebus* where the focus was the child. It had been brought to our attention that the local Sexual Offences Court at the Wynberg Magistrate's Court, was in need of toys and books in the evidence room for the victims of child rape and sexual abuse. The Chief Magistrate at Wynberg Court had indicated that, unfortunately, many victims come to the court to testify and cling to the toys in the room. They could not allow the young children to keep the toys as they needed a constant supply. This was an opportunity to make a difference in the criminal justice system. The students took up the challenge during Women's Month and collected soft toys and books. The School staff also participated keenly in the project.

East London: The 2015-1 day and night students collected food to donate to the School's adopted centre, The Heaven.

Durban: In the first semester of 2015, students organised a sport's day for the children at the Durban Children's Home in Glenwood Durban. This is an orphanage that takes care of some 76 children between the ages of 1 and 18. The children attend schools in the area but are not exposed to many sporting activities.

In the second semester students organised an event for the Durban Child and Youth Care Centre in Durban, which included a meal, games and donations of necessary items such as school supplies and toiletries.

The Durban School continues to take part in a number of national and local initiatives such as the Sunflower Fund Bandana Day, Reach for a Dream's Wear Your Slippers to Work, Mandela Day and Casual Day by the National Council for Persons with Physical Disabilities. The School also participates in a feeding scheme at Wembley Primary School in Phoenix, where lunch is provided every Friday for 25 underprivileged young learners.

Polokwane: The Polokwane School held its social responsibility initiative on 6 May 2015 when food parcels were donated to the Samaritan Centre. The centre provides care and support for orphans and vulnerable children left in destitute circumstances. It currently accommodates 34 children placed by a children's court.

Potchefstroom: The Potchefstroom School selected its social responsibility project as the Bophirima Pre-school, Ikageng, Potchefstroom. The aim of this project was to raise funds or other forms of donations to assist the school in meeting its needs.

The students of the Potchefstroom School participated in a fun day for children, teachers and parents of the school on 11 July 2015. Children were entertained with a jumping castle and fun activities arranged by the students, while the parents and teachers were engaged on children's rights, maintenance, basic human rights and legal aid. The pre-school was supplied with basics such as blankets, bowls, mugs, clothes, educational toys and food. The jungle gyms were repaired and painted.

Bloemfontein: The 2015(1) students at the Bloemfontein school did a presentation with the Department of Education at the Tshoseletso High School to parents from 15 schools to educate incoming school governing body members in the Bloemfontein district of their rights and duties in terms of the South African Schools Act 84 of 1996. Feedback from the presentation was positive and recommendations were given that the School and the Department need to provide further legal education and training sessions.

Johannesburg: The students from the Johannesburg School do *pro bono* work at the Wits Law Clinic for two weeks per term. This enables them to consult with clients in person under supervision. Not only is it a good practical exercise for the students, but it also assists the clinic while its students are on leave. Groups of 10 to 12 students go to the clinic every day during the two weeks.

The 2015(1) day students collected tinned food and bread for street children, whereas the 2015(2) day students collect bread and made sandwiches every second Friday to hand out to street children and other homeless people in the area. The balance of the sandwiches are donated to a soup kitchen in Braamfontein. Students take this opportunity to talk to the street children about the effects of drug abuse and improving their lives.

The day and night students have a donation box to collect books, clothes and dry food. This is to be donated to an orphanage. The women students also collect sanitary pads to donate to abused women.

Pretoria: The students at the day school partners with St Michaels All Angels Anglican Church in Sunnyside to pro-

vide meals to some 70 people living on the street. They serve meals every Friday, when the programme permits.

The night school students collect groceries in general, and toiletries and cleaning materials in particular, for the Kingdom of Life Children's Home in Saulsville. The students also sell snacks at the School to collect funds for the same cause. Funds are also utilised to buy the above materials. The project has been running since 2013.

Port Elizabeth: Despite the challenges normally associated with a night school, the Port Elizabeth students were involved in *pro bono* work and social responsibility. The School continued its relationship with the Port Elizabeth Children's Home. Under supervision of Moerida Louis, the instructor in wills and estates, the students drafted wills for the staff of the Children's Home free of charge. They also presented talks to staff, as well as motivate orphaned and neglected children. A number of student leaders arranged for a music trivia event held at the Children's Home on 1 August 2015. The proceeds were donated to the Home.

Students also participated in the Bread Tags for Wheelchairs project.

Summary of attendance of all LEAD programmes for 2015

	2015	2014
School for Legal Practice	1 489	1 468
Conveyancing and notarial training	326	356
25-day courses for candidate attorneys	2 109	2 093
Diplomas and certificates (distance)	254	206
Practice management training	967	937
Seminars	2 924	4 790
Mediation	289	0
Other training	1832	1 353
<i>Commercial law (Law Society of Ireland)</i>	<i>20</i>	<i>20</i>
<i>E-learning (online to School - 1 615)</i>	<i>546</i>	<i>240</i>
<i>Practice development seminars</i>	<i>0</i>	<i>28</i>
<i>International Senior Lawyers Project</i>	<i>52</i>	<i>70</i>
<i>Support staff training</i>	<i>592</i>	<i>547</i>
<i>Business rescue</i>	<i>207</i>	<i>187</i>
<i>Other external training</i>	<i>415</i>	<i>215</i>
Total	10 190	11 203

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 continues to be very busy. Through its specialist committees, the LSSA made submissions on various pieces of legislation, discussion papers and policy documents, and met with a number of stakeholders.

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

Practitioners are welcome to send comments and proposals on any legislation and policy document to professionalaffairs@lssa.org.za for consideration by the relevant specialist committees.

Of concern is that the deadlines for comments to Parliament and government departments are invariably extremely short. This is an ongoing problem and the LSSA will take it up with the relevant stakeholders.

The LSSA's Parliamentary Liaison Officer attended meetings of various Parliamentary Portfolio Committees and keeps us well-informed of activities in Parliament. The LSSA was invited to address the Parliamentary Portfolio Committee on Finance on the Financial Services Act Amendment Bill.

The committees liaise regularly with a number of stakeholders, such as the Road Accident Fund, the Rules Board for Courts of Law, the Office of the Chief Justice, the South African Police Service, the Chief Master's Office, the various Deeds Offices, the National Prosecuting Authority, the World Bank, the Financial Services Board, Legal Aid South Africa and the Banking Association of South Africa. The LSSA also attends the national and regional SARS stakeholder meetings and liaise with them on issues of mutual concern.

During the year 42 face-to-face committee meetings were held and a number of telephone conferences and *ad hoc* meetings, where a range of issues were discussed and attended to. The activities of the committees are reported on under 'Specialist Committee reports' in this report.

The committees are ably assisted by Ricardo Wyngaard (Senior Legal Official), Kris Devan (Personal Assistant), Edward Kafesu (Committee Secretary) and Nonhlanhla Chanza (Parliamentary Liaison Officer). The LSSA is indebted to the committee members, who voluntarily offer their expert knowledge and service for the benefit of the profession. Thank you for your dedication in serving the profession and in making a difference.

Lizette Burger,

Manager: Professional Affairs

ATTORNEYS DEVELOPMENT FUND

Board of Directors: Etienne Horn (Chairperson), Michelle Beatson, Luvuyo Godla, Nomahlubi Khwinana, Vincent Matsepe, Gavin McLachlan, Mimie Memka and Roland Meyer

The Attorneys Development Fund was established in 2010 made up of contributions from the four statutory law societies. The total sum of contributions made were matched by the Attorneys Fidelity Fund, thus our biggest shareholder. The contributions made were used to resource an independent company, the Attorneys Development Fund (ADF).

The primary purpose of the ADF is to ensure access to justice and access to the profession by ensuring that entrants to the profession who apply to the ADF are adequately resourced to enter the profession without any hurdles.

Value proposition

In the main the ADF assists firms of attorneys with – but not limited to – the following items:

- office furniture;
- computer equipment;
- advertising;
- rental deposit; etc.

Payments are made directly to suppliers and no cash is paid out to the applicants directly.

Applications

Applications are processed throughout the year. Interested applicants can download electronic version of the application form and get further details about the application process and criteria from the ADF website: www.adfonline.org.za

2015 operations

National Credit Act

After its strategic session held on 17 April 2015, the Board took a decision that the ADF should not charge interest to

its beneficiaries. However, the statutory default rate would apply should action be taken to recover overdue amounts.

Day-to-day running

The ADF manager runs the day-to-day functions of the company. The Board of Directors provides an oversight and advisory function over and above its fiduciary duties. The Board convenes on a quarterly basis and is in constant electronic or telephonic communication with the manager. Any matter of urgency is managed as per the committee system, depending on the nature of the issue, either by telephone conference or e-mail, and is ratified at the next meeting of the Board.

Annual general meeting 2015

In keeping with the provisions of the Companies Act 71 of 2008, the Board of the ADF convened an annual general meeting on 26 November 2015. The notice and accompanying documentation disseminated to all invited attorneys complied with the MOI and Act.

Financial model

The financial model remains the same with the LSSA advancing a loan to the ADF annually to further its operations, a loan which is repaid on approval by the Board subject to the auditors' sign off of the annual financial statements.

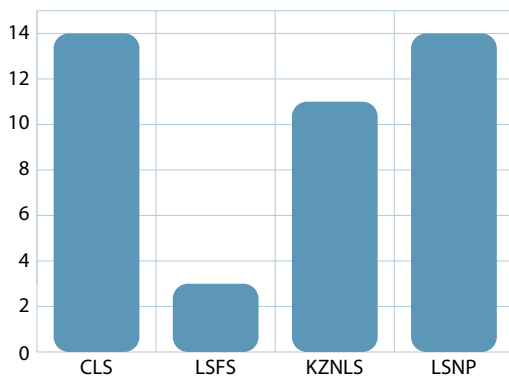
Operational model

The operational model remains the same with the applications received being vetted by the manager and forwarded to the sub-committees for input and final approval on a round robin basis.

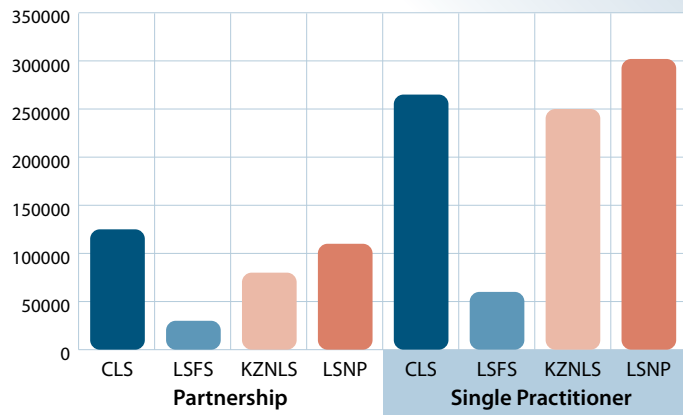
The applications landscape is depicted below per provincial law society and the total exposure based on the financial spread of the ADF per province.

This data is aimed at providing a synopsis of how the ADF is stretched throughout the various provinces and the level of interaction required with the beneficiaries in order to offer a comprehensive business advisory service while managing expectation of repayment of the loan and survival of the firms.

Count of beneficiary by Law Society



Total loans per firm



Funding established firms

As part of the ongoing innovation and keeping the ADF's relevance to the profession, a pilot project was initiated to gauge the viability of funding established firms. The project yielded positive results. However, its final approval will be sought as the practice materially deviates from the ADF initial mandate and founding documentation.

With this predicament facing the ADF, an available option would be to refer the matter to the constituents for a decision in this regard, bearing in mind that the clientele in question are a great source of cash flow as they often settle their loans in full and before they are due to repay the loans.

Highlights

Since inception, we have managed to sign off on all audit reports, an indication that the organisation is performing as intended.

All regulatory compliance matters with the Companies and Intellectual Property Commission and Financial Intelligence Centre Act 38 of 2001 have been resolved. All current directors are listed so in the Company's Registrar's database.

Governance

The ADF continues to uphold the highest governance standards. We are able to achieve this in the way that we are structured away from the operations, but keeping abreast through constant round-robin decision making and reporting commentary, while meeting as regularly as required by the memorandum and in keeping with availability of funds to do so.

Thanks to the constituent partners, our stakeholders, for ensuring that the Board is duly constituted through representation as depicted below. The directors do not receive salaries, but remuneration in the form of honoraria equal to that of members of the LSSA committees, for each meeting attended.

In order for the Board to function in as far as providing oversight, it is important to be attuned to the level of activities that take place in the operational as well as strategic sphere. To do so successfully, the following persons also attend ADF Board meetings per invitation:

- Anthony Pillay (Law Society of South Africa);
- Praveen Sham (Chairperson, LSSA Practice Development Committee) and
- Ogilvie Ramoshaba (Senior Manager: LEAD, Practice Management Training).

Among other critical functions that the LSSA affords the ADF are the services of Edward Kafesu (LSSA Professional Affairs Department), who ensures that our meetings are recorded, which is useful and appreciated.

Article 18.1 of the Articles of Association stipulates that at any given time, the number of directors shall be not fewer than seven. The ADF Board has been compliant with this provision since inception.

Governance committees

The Board appointed the following committees, and the membership of these committees is as indicated below:

Executive Committee			
Etienne Horn (Chairperson)	Nomahlubi Khwinana	Michelle Beatson	Vincent Matsepe
Finance and Investment Committee			
Gavin McLachlan	Etienne Horn	Roland Meyer	Mimie Memka
Legal Committee			
Roland Meyer	Luvuyo Godla	Vincent Matsepe	Gavin McLachlan
Loans Committee			
Michelle Beatson	Etienne Horn	Gavin McLachlan	Nomahlubi Khwinana
Procurement Committee			
Gavin McLachlan	Luvuyo Godla	Mimie Memka	Roland Meyer
Human Resources Committee			
Etienne Horn	Nomahlubi Khwinana	Mimie Memka	Roland Meyer

Members	Constituency	Meetings	Attendance
Etienne Horn	AFF	5	5
Nomahlubi Khwinana	NADEL	5	5
Michelle Beatson	LSNP	5	2
Mimie Memka	LSSA	5	5
Roland Meyer	CLS	5	5
Vincent Matsepe	LSFS	5	5
Gavin McLachlan	KZNLS	5	4
Luvuyo Godla	BLA	5	2
Other Members			
Ogilvie Ramoshaba	LSSA PDC	2	2
Praveen Sham	LSSA PDC	0	0*
Anthony Pillay	LSSA	2	2
Mackenzie Mukansi	ADF Managing Director	4	4**

Key:

- * Mr Sham is an ADF Board invitee and was not invited on two occasions due to an oversight, and excused on one instance.
- ** The one meeting not attended by the Managing Director relates to discussions of his performance by the Exco and HR Committee.

Conclusion

In 2016 on conclusion of the annual strategic planning session, a communication will be sent out detailing among others:

- revised services available to applicants;
- key focus areas for the period;
- targets and projects; and
- key dates and initiatives.

We are confident that we will reach more applicants in this period particularly those in areas not accessible to the market.

Etienne Horn,

Chairperson, Board of Directors

LEGAL PROVIDENT FUND

Trustees: Andrew Stansfield (Chairperson), David Bekker, Jacques Basson, Vincent Faris, Thinus Grobler, Gavin John, Ilan Lax, Edwin Letty, Martha Mbhele, Rampela Mokoena, Anthony Pillay and Michael Pinnock

The Legal Provident Fund (LPF) was created by the attorneys' profession to satisfy the retirement funding needs of support staff in legal practices. As a result, the bulk of the membership are employees in attorneys' offices and in advocates' chambers. In addition, a substantial number of legal professionals are also members. The LPF will be celebrating its 50th anniversary in 2016, having grown to accommodate 4 300 members and 550 participating employers.

The LPF has a Board of Trustees, the majority of whom are appointed by the LSSA. The Trustee Board is obliged by legislation to act always in the best interests of members. The LPF is regulated by the Financial Services Board (FSB) as a Type B umbrella fund, which means that the fund operates under one set of rules. This simplifies the administration of the Fund and promotes cost-effectiveness for members. The FSB conducted a routine inspection during 2015 and the LPF received a clean bill of health. Audited financial statements were finalised for the year ended 31 March 2015 and were submitted to the FSB on time.

The fund administrator, Alexander Forbes Financial Services, is contracted by the Board to perform administration and actuarial consulting services. The performance of the administrator was assessed by the Board during the course of 2015, and I am pleased to report a positive outcome to this exercise.

The LPF's principal officer, Erika Nieuwoudt, provides guidance to the Board in many areas where specialist independent input is required. Her performance in this role was assessed by the Board in 2015, with a very positive outcome.

The performance of the Board itself was conducted by way of a self-assessment process. Areas requiring attention have been identified. Some important aspects are:

- **Communication with members:** Before the era of electronic communication, the structure of a Type B umbrella fund with 550 participating employers posed a challenge to communicating with the membership. The LPF has contracted with the administrator to develop a platform using smartphone technology, to facilitate regular communication with the membership. The administrator is busy collating cellphone details, and at the time of writing this report, the process was 75% complete.
- **Trustee elections:** The FSB has indicated that members should elect the Trustee Board going forward. The smartphone communication system will accommodate trustee nominations by the membership, and also the trustee election process.

2015 has not been without its challenges. The operational requirements of a retirement fund become more complex with each passing year, and it stands to the credit of my fellow trustees, the principal officer and the administrator that the LPF has delivered yet another year of excellence to its membership.

Andrew Stansfield,

Chairperson, Board of Trustees

ALTERNATIVE DISPUTE RESOLUTION COMMITTEE

Members: Charles Cohen (Chairperson), Daryl Burman, Fazel Bulbulia, Maribe Mamabolo, Letuba Mampuru, Jerome Mthembu, John O'Leary, Ugeeta Pala, Ebrahim Patelia and Sue Pillay

2015 proved to be a very active year for the LSSA's training initiative. As set out below a number of training workshops were held which, judging from the feedback, were consistently well received.

The problem that has dogged these efforts is the fact that at this stage there appears to be insufficient mediation work for trained mediators. The hope that the introduction of court-annexed mediation would somehow dramatically change the position has proved to be illusory. This, in itself, should not be a cause for pessimism. It is not dissimilar to what has been experienced in other countries to a greater or lesser extent.

During the course of 2015 four workshops were held in respect of divorce mediation and 12 on court-annexed mediation.

Court-annexed mediation

We are reliably informed that, should the court-annexed mediation pilot scheme 'succeed' over a two-year period, mediation will become mandatory in both the High and Magistrates' Courts. What constitutes 'success' is difficult to determine. Certainly there does not appear to have been a rush to utilise the available facilities for court-annexed mediation.

A Report on Progress on the Court-Annexed Mediation Project, dated 11 August 2015, and issued by Judge Cassim Sardiwalla, Chairperson of the Minister's Mediation Advisory Committee, states that mediation is on track, but one gleans from the report that numbers are relatively miniscule.

For the system to work there has to be an active partnership

between government and the private sector, but attempts made to establish such contacts have regrettably come to nothing. These included a meeting with Prof Cheryl Loots who, until her recent resignation, was head of the Court-Annexed Mediation Office; contact with Linda Meyer, Head of the Justice College, and a reference to the Mediation Advisory Committee.

Arbitration

On the face of it, there is an exciting development in the field of arbitration with the establishment of the China-Africa Joint Dispute Resolution Mechanism. This arises from the projected massive injection of Chinese investment in Africa.

The proposed body will be based in Shanghai and Johannesburg. The Arbitration Foundation of Southern Africa (AFSA) has been appointed as the representative body for Africa.

Coupling this initiative with the proposed changes to our 1965 Arbitration Act, it appears that there could be a great deal of work generated for legal practitioners in South Africa. How this will pan out, remains to be seen.

The way forward

In addition to running workshops to train mediators, the LSSA should consider running similar workshops to train attorneys in the skills of arbitration. Most importantly, practitioners need to align themselves with modern trends in arbitration, namely the recognition of party autonomy and recognition that the court's role should be limited purely to supervision.

Under the current Arbitration Act the court's role is far too intrusive, which detracts from South Africa as a venue for Sub-Saharan African countries to refer disputes to its jurisdiction.

On the mediation front, this Committee needs to make a concerted effort to make meaningful contact with the Department of Justice and Constitutional Development to stimulate mediation as a dispute resolution mechanism. The contact must result in positive action rather than polite acceptance of ideas with no follow up. The fact is that government and the private sector are on the same page, but much is lacking with regard to grassroots implementation.

It has been proposed that our trainers, on a voluntary basis, visit individual firms of attorneys and attorneys' circles in the rural areas in order to give a two-hour presentation on the workings of mediation. Such a programme has been devised and the material will be made available at no cost to the LSSA, the only requirement being that the LSSA set up the meetings.

A final suggestion is the appointment of a full-time marketing coordinator with experience in mediation who will be available to promote the mechanism. This goes far beyond the administration of workshops and lectures and in my opinion is a must for the furtherance of ADR in general and mediation in particular.

Appreciation

I wish to express my appreciation and thanks to the Committee members, the workshop presenters and the staff of the LSSA for their enthusiastic cooperation shown and given over the past year. In particular, I wish to record appreciation to Nic Swart, who has been a stalwart in supporting us in our efforts to promote ADR without which we would not have made anything like the progress we have made thus far.

Charles Cohen,

Chairperson, Alternative Dispute Resolution Committee

COMPANY MATTERS COMMITTEE

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

The Company Matters Committee is a committee which operates on an *ad hoc* basis as and when considered necessary.

The Committee is still awaiting any report back from the Specialist Committee on Company Law on the two submissions made by the Committee.

The chairperson, representing the LSSA, attended a symposium arranged by the Department of Trade and Industry (DTI). The keynote speakers included two judges of the English Appeal Court

- the Right Honourable Lady Justice Arden who gave a fascinating address on corporate veil: 'old metaphor, modern practice', as well as participating on panels which discussed business rescue and similar regimes, the duties and responsibilities of non-executive directors; and

- the Honourable Mr Justice Richards who gave an address on the business judgment rule, as well as participating on various panels which discussed business rescue and similar regimes as well as the duties and responsibilities of non-executive directors.

Judge Owen Rogers gave an address on conflicts of interest including an analysis of s 75 of the Companies Act 71 of 2008, whereas Judge Dennis Davis gave an address on the derivative action and other shareholder remedies. Judge President Dunstan Mlambo gave an address on relief to harassed employees in the business rescue regimes and the failure to ensure justice, as well as the problem of business rescue post financing.

The DTI must be congratulated on facilitating the attendance at such conferences of the most eminent company law jurists from around the world. The symposium was very well attended in 2015 – unlike the previous year – by many more practising attorneys. Again the strong attendance at the symposium demonstrates the interest in company law in South Africa and the thirst for international input.

Miranda Feinstein,

Chairperson, Company Matters Committee

COMPETITION LAW COMMITTEE

Members: Paul Coetser (Chairperson), David Bekker, Hussan Goga, Gavin Gow, Jan Janse van Rensburg, Petra Krusche, Eric Mbhele, Lunga Peter, Matshego Ramagaga, Howard Stephenson and Kagi Tladi

In 2013 the Competition Tribunal, in a matter of the Cape Law Society (CLS) to which the LSSA was joined, found that the CLS's professional rule against touting does not *per se* constitute a contravention of the Competition Act 89 of 1998 (the Act). This matter paved the way for similar disciplinary proceedings for breaches of the statutory law societies' professional rules, which were temporarily in a hiatus, to proceed against the implicated members of the relevant law societies.

One such matter is the application for striking off the roll brought by the Law Society of the Northern Provinces (LSNP) in July 2008 against one of its members. The application alleged that the member breached several of the LSNP's professional rules including touting, rendering inducements to intermediaries, inappropriate solicitation of work, fee and office sharing, and purchasing of conveyancing work. In the High Court the defence was raised that the LSNP's professional rules constituted a contravention of the Act, particu-

larly in view of the Competition Commission's rejection of the LSSA's exemption application relating to the disciplinary rules applicable to attorneys (which this Committee reported on in previous years). As a result, the High Court referred to the Competition Tribunal the question as to whether or not the LSNP's impugned rules were in contravention of the Act and ought to be set aside. The matter then proceeded at the Tribunal.

The LSNP applied to the Tribunal to join the LSSA to the Tribunal proceedings and the LSSA Council referred to this Committee the question whether the application for joinder should be opposed or not and, if it is joined, how the matter should be conducted. The Committee deliberated on this matter and advised Council that the LSSA should not oppose the joinder application since the LSSA has a distinct interest in upholding the pragmatic arrangement which it had reached with the Competition Commission relating to the interim enforcement of the existing professional rules until new rules are issued in terms of the Legal Practice Act 28 of 2014.

In the meantime, the LSSA has continued its engagement with the Competition Commission relating to the new uniform rules for the attorneys' profession, which will be implemented on 1 March 2016 by the statutory law societies. A decision now needs to be made on whether an exemption should be lodged in terms of the Act in respect of those new rules which the LSSA believes are necessary for the ordinary function and maintenance of standards in the legal profession. The Committee will continue to advise Council on these aspects during 2016.

The Committee was invited to represent the LSSA at the prestigious 4th BRICS International Competition Conference held in Durban from 10 to 13 November 2015. It was the first time this conference was held in South Africa. Petra Krusche and Mimie Memka attended the conference on the LSSA's behalf. They reported back as follows –

- The conference was well attended by representatives of all the BRICS countries' competition authorities, delegates from the European Union and the United States competition authorities, and from many African countries. The South African Competition Commission and Tribunal, as co-hosts of the event, were also well represented.
- Tuesday, 10 November 2015 was given over to joint academic workshops co-hosted by the South African Competition Commission, the Competition and Regulation European Summer School and the University of KwaZulu-Natal, as well as various speakers on competition economics and some novel findings.
- The second day of the conference doubled as the annual competition conference of the South African competition authorities. Various local and international speakers and

panellists dealt with a variety of competition topics, such as behavioural economics, collusion and cartels: successes and challenges, alliances and horizontal agreements. The break-away sessions in the afternoon included discussions on the implications of the growth of supermarket chains in South Africa, the impacts of quality on choice of a fixed-line telecommunications service, the role of competition in fostering and protecting economic growth and innovation, competition policy and economic development, and the promotion of competition law in BRICS countries.

- The main BRICS conference started on Thursday, 13 November 2015 with addresses by Minister Ebrahim Patel, and the Chinese and Russian competition authorities as well as an address by Prof Eleanor Fox of Columbia University in New York. In the afternoon, plenary sessions on a variety of competition topics were held including on the development of competition, economy and trade, enforcement of abuses of dominance, abuses by state-owned enterprises, and public interest issues in competition (a feature of competition law in developing economies).
- The main event on the final day of the conference included the signing of the BRICS Statement.
- Noteworthy was that our local competition authorities are held in high esteem and respect throughout the world and that their development and work over the past 15 years have been of the highest quality and at the forefront of competition law and expertise. The development of a proper competition law framework and enforcement in South Africa is held up as a good example to emulate by any fledgling competition authority.

Paul Coetser,

Chairperson, Competition Law Committee

CONSTITUTIONAL LAW AND HUMAN RIGHTS COMMITTEE

Members: Busani Mabunda (Chairperson), Daryl Burman, Max Boqwana, Saber Jazbhay, Sonja Labuschagne, Macdonald Moroka, Xolile Ntshulana, Danie Olivier and Shamila Singh

During the year under review the Committee met face-to-face on 19 June and briefly on 14 September 2015. A number of important legislative developments took place on the constitutional front during 2015, including

- the Expropriation Bill, which is under consideration at Parliament and many contentious issues have already been

raised and debated by various stakeholders;

- the Draft Policy on the Customary Practice of Initiation in South Africa was considered by the Committee;
- the proposed regulations made pursuant to the South African Language Practitioners' Council Act 8 of 2014 which the Committee considered and supported; and
- the South African Law Reform Commission's Discussion Paper 132: The Practice of Ukuthwala was considered and the Committee noted that it is important for the SALRC to consider taking its meetings to the people within the affected communities for their input. The Committee was encouraged to note that the SALRC has indeed scheduled meetings in different regions across the country affected by the practice of ukuthwala.

The Committee agreed that all relevant pieces of legislation should be tabled before the Committee to decide whether there are pressing constitutional issues arising from them.

I wish to commend the LSSA and the African Court on Human and People's Rights for having hosted the Colloquium on the African Court on Human and Peoples' Rights in Kempton Park during October 2015. The colloquium is a good example of the contribution that the South African legal profession can make in promoting human rights development beyond South Africa's borders.

Given the wide scope of the Committee's mandate and the often short deadlines for public comment, we resolved to meet at least four times a year..

Busani Mabunda,

Chairperson, Constitutional Law and Human Rights Committee

CONTINGENCY FEES COMMITTEE

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

The Contingency Fees Committee had two meetings during the year. At the second meeting it was joined by representatives from the Personal Injury, Magistrate's Court, Costs and High Court Committees, to formulate a common view on behalf of the entire profession. What follows is a summary of the discussions. Where apposite, reference is made to the deliberations of the plenary meeting.

The Committee clarified that the Contingency Fees Act 66 of 1997 provides for two types of agreements:

- the first is a no-win, no-fee agreement (s 2(1)(a)); and
- the second is an agreement in terms of which the attorney is entitled to fees higher than the normal fee if the litigation is successful (s 2(1)(b)).

The second type of agreement is subject to limitations – the attorney may charge higher fees, but those fees may not exceed the normal fees of the attorney by more than 100% and, in the case of claims sounding in money, may not exceed 25% of the total amount awarded. Attorneys are entitled to charge only the lesser of either double their normal fees, or 25% of the capital.

Attorneys may enter into one or the other of the two agreements with their client, but not both, as the two are mutually exclusive.

The cap on fees applies only to the second type of agreement (s 2(1)(b)) and not the first type of agreement (s 2(1)(a)). In other words, in the case of the first type of agreement, attorneys may not charge more than their normal fees, and only if the proceedings are successful; but in that event their normal fees may be more than 25% of the capital. It may even be more than the capital.

In terms of s 2(1)(a), an attorney is not entitled to any fees if the action is unsuccessful. In terms of s 2(1)(b), if the action is successful, the attorney may charge fees that are more than his/her normal fee, but the fees may also be less than the normal fee, depending on the agreement with the client.

Insofar as party-and-party costs are concerned, these belong to the client. An attorney may, of course, agree with the client, if successful, that the party-and-party costs recovered from the losing party be set off against the attorney's fees and disbursements. The Contingency Fees Act prohibits an attorney from recovering both the maximum fee in terms of the Act, as well as the party-and-party costs.

The plenary meeting could not reach agreement on the position in regard to VAT. It was agreed to obtain an opinion whether or not VAT is included in the statutory cap of 25% of the capital imposed on an attorney's fees. The view of the Contingency Fees Committee is that the Act should be interpreted so as to include VAT in the calculation of the 25% cap on fees.

The plenary meeting requested the Magistrate's Court Committee to prepare a proposal regarding the application of the Act to debt collecting, and the extent to which it could or should be excluded from the operation of the Act.

The plenary meeting considered the requirement in the Act that, once a matter settles, both the attorney and client must file an affidavit either at court or the law society. It concluded that the requirement to lodge documents at the law society serves little purpose.

It would be far preferable if the Act simply obliged an attorney to keep a copy of the agreement on file for five years after the matter has settled. The law societies do not have the capacity to archive and index that many documents, and they do not, in any event, scrutinise the documents upon submission. The attorney is better placed to keep such records.

The plenary meeting agreed that attorneys should take care to keep a thoroughly written record of their discussions with their client regarding the reasons for entering into a contingency fee agreement (considering that in certain instances a client is better served by not entering into such an agreement, or obtaining alternative means of funding for the litigation) and the recommendation by the attorney to the client to conclude a settlement. These records are all relevant should a dispute arise later between the attorney and client. In that respect, a matter which is conducted on the basis of a contingency fee agreement is no different to any other matter in an attorney's practice.

The plenary meeting also considered whether the Act applies to non-litigious commercial matters, for example where an attorney is briefed to advise on a property development 'on spec'. Is the attorney restricted to a success fee of no more than double the normal fee? Is the Act not only concerned with litigious matters? The preliminary view was that the Act applies only to litigious matters.

The Committee hopes to be in a position to issue definitive guidelines to the profession in the course of 2016, and to approach the Department of Justice and Constitutional Development in regard to possible amendments to the Act and the Regulations.

George van Niekerk,

Chairperson, Contingency Fees Committee

COSTS COMMITTEE

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

The Costs Committee held meetings on 16 January 2015 and 26 June 2015, and also participated in a joint meeting of the Contingency Fees, High Court, Magistrate's Court, Costs and Personal Injury Committee held on 16 September 2015.

The Committee facilitated a panel discussion at the annual general meeting of the Law Society of South Africa held at Durban in March 2015.

The focus of the Committee is, among other things, on the implications of s 35 of the Legal Practice Act 28 of 2014. Research was undertaken by a specialist costs consultant, Alet Lubbe, having regard to, inter alia, the history of legal costs, litigious and non-litigious costs, fee agreements and mandates, as well as other considerations relevant to the issue of costs. At its meeting on 26 June 2015, a position paper was drafted for submission to the LSSA's National Forum Committee.

It will be necessary to engage with the various stakeholders so as to ensure that the costs regime in the context of the Legal Practice Act is properly considered, having regard to the different disciplines within the context of the definition of 'legal practitioner'.

The Committee has also given consideration to the simplification and increases of the current statutory party-and-party tariffs.

Asif Essa,

Chairperson, Costs Committee

CRIMINAL LAW COMMITTEE

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

The Criminal Law Committee met on two occasions during 2015 and discussed a number of very important issues relevant to the profession.

Some of the issues included

- envisaged changes to the bail legislation dealing with Schedule 7 offences;
- the issue of admission of guilt fines regularly issued at police stations when arrested persons are not informed of their rights. In this regard, a pamphlet was drawn up by the LSSA for distribution to all interested persons and is available on the LSSA website;
- seminars and workshops with the South African Police Service (SAPS) as well as the Department of Correctional Services to deal with issues of mutual significance;
- the Prison Visit Project where legal practitioners visit prisons to advise prisoners of their rights, particularly with regard to plea and sentence agreements;
- legislation, specifically the amendments to the Sexual Of-

fences Act, 2007 and the Cybercrimes and Cybersecurity Bill. The Committee, where possible, deals with problematic legislation and makes meaningful comment;

- attendance at the National Efficiency Enhancement Committee meeting. The meeting had originally been set for 3 October 2015, but was cancelled and the Committee will ensure that it has representation at the next meeting; and
- the conduct of judicial officers, prosecutors and administrative staff at the Justice Department towards legal practitioners and members of the public.

For 2016 the Committee will endeavour to arrange specific seminars and workshops with the SAPS and the Department of Correctional Services as well as attend all relevant meetings with stakeholders in the criminal justice system. The Committee will endeavour to play a meaningful role in establishing regular contact with the Justice Department and address issues that have a direct bearing on both legal practitioners and the public.

William Booth,

Chairperson, Criminal Law Committee

DECEASED ESTATES, TRUSTS AND PLANNING COMMITTEE

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

The Deceased Estates, Trust and Planning Committee met once during the year under review. The meeting was held on 17 September 2015.

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

- Recognition of customary marriages.
- Davis Tax Committee's First Interim Report on Estate Duty.
- Access to Information on Trusts (Chief Master's Directive 2 of 2009).
- Review of legislation administered by the Department of Justice and Constitutional Development: Wills Act 7 of 1953; Administration of Estates Act 6 of 1965; Intestate Succession Act 81 of 1987 and other legislation.
- Establishment of channels of communication with the Department of Home Affairs.

- Annual performance statistics and reports by the Masters' Offices.
- The establishment of Master's Liaison Committees by the provincial law societies.

The Committee made written submissions during June 2014 to the Department of Justice and Constitutional Development on the proposed amendments of fees and tariffs prescribed in terms of the Administration of Estates Act, 1965 and the Trust Property Control Act 57 of 1988. A response to these submissions is still awaited.

The Committee made written submissions during June 2015 to the Office of the Chief Master of the High Court on the final draft amendments to Chief Master's Directive 3 of 2006 which deals with the appointment of executors and/or Master's representatives in deceased estates. The submissions were well received and almost all of them were duly taken into account by the Chief Master when issuing Chief Master's Directive 2 of 2015 (which recalled Chief Master's Directive 3 of 2006).

The Committee made written submissions during November 2015 on the First Interim Report on Estate Duty by the Davis Tax Committee. The Committee obtained comment to its draft submissions from the LSSA's Tax Matters and Exchange Control Committee. The First Interim Report on Estate Duty will, if the recommendations are accepted, have far-reaching consequences and will change the landscape of taxation in South Africa.

There is no accountability by a representative appointed by the Master in estates which are administered in terms of s 18(3) of the Administration of Estates Act, 1965. Beneficiaries in smaller estates often require more protection than beneficiaries in larger estates as the poor and disadvantaged are often the more vulnerable members of society. There is, therefore, a compelling case for an executor to be appointed in each and every estate. The appointment of an executor would reduce the risk of fraud. Moreover, accountability by the executor to the Master in such estates would provide a measure of protection for these beneficiaries.

The National Wills Week was held between 14 and 18 September 2015. Some 1 300 firms participated in the programme. Almost R1 million worth of positive media print and broadcast coverage was received for the profession and educational value for the public.

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

	Subject matter	Effective date
1 of 2015	Appointments in terms of the National List of Insolvency Practitioners	1 April 2015
2 of 2015	Appointments of Executors and/or Master's Representatives in Deceased Estates by the Master (Recalls CMD 3 of 2006)	1 August 2015
3 of 2015	Interpretation of Increased Jurisdiction	17 August 2015
4 of 2015	Guardian's Fund Support (Effectiveness of Risk Management)	2 November 2015

Hussan Goga,

Chairperson, Deceased Estates, Trust and Planning Committee

E - LAW COMMITTEE

Members: Gavin McLachlan (Chairperson), Brendan Hughes, Peppy Kekana, Ilan Lax, Ian McLaren, Lynette Marais, Wilfred Phalatsi and Sizwe Snail

The Committee had various physical meetings as well as some telephone conferences during the year. Although video-conferencing would be more effective, connectivity availability and cyber capability is still not sufficient to allow us to dispense with physical meetings.

We dealt with various information technology (IT) related questions addressed to the LSSA and *De Rebus* as and when necessary and supported the LSSA's laudable initiative to establish a group of young IT expert practitioners as a resource for the profession. Cyberlaw and general cyber competency are increasingly important for lawyers, and we are continually involved in encouraging wider competence in the profession and working wherever possible with LEAD to achieve these aims. The Attorneys Development Fund (ADF) will also be increasing its efforts to set up fledgling practitioners with essential equipment, cyber connectivity and support. The Committee will also work with the ADF.

The Committee provided comments on the current review by the South African Law Reform Commission on the law of evidence, with specific reference to e-evidence. We also provided comments on the rather far-reaching Cybercrime Draft Bill. The comments on the law of evidence were largely written by Brendan Hughes with the assistance of Mark Heyink,

and those on the Cybercrime Bill by Sizwe Snail, who is the LSSA's representative on the National Cyber Security Advisory Panel and who is very involved in cybercrime-fighting initiatives in this country and elsewhere, often being asked to speak to gatherings of experts in various other countries.

Both the chairperson and Mr Snail were also appointed to the Information and Communications Technology (ICT) Social Services Chamber, the e-Justice Chamber and the e-Governance Chamber, all of which have been set up by the State to encourage ICT development and draw on expertise outside the State. The chambers held some meetings in 2015 and should be quite active in 2016. The profession has been welcomed as an active and useful participant in these initiatives. We will also be at the forthcoming workshop on the integration of IT law relating to the LLB curriculum and will work closely with LEAD on this, in addition to participating wherever possible in its initiatives to improve IT law knowledge in the profession during 2016.

We have been involved with the LSSA's Property Law Committee on various matters and will be deepening our collaboration with that committee as electronic and cyber issues become increasingly important for conveyancers. The chairperson attended a meeting of that committee and the current service provider developing an e-conveyancing system for the State. We have continued to work together on that and will work with other committee on common issues. It appears that we may have jointly made progress with getting a digital signature verified by the Law Society and will be seeing the Banking Council and banks about this in the first few months of 2016. We are also exploring initiatives with the Master of the High Court and will also involve the Deceased Estates, Trusts and Planning Committee if things develop further.

We will continue to try and improve the cyber confidence and competence of all legal practitioners and to work with LEAD as much as possible to educate colleagues and help protect them and their clients from cyber criminals

Gavin McLachlan,

Chairperson, E-Law Committee

ENVIRONMENTAL AFFAIRS COMMITTEE

Members: Catherine Warburton (Chairperson), Zukisani Bobotyana, Norman Brauteseth, Hajira Kara, Ilan Lax, Jerome Mthembu, Zoleka Ponoane and Terry Winstanley

Rhino poaching intervention

The Committee has been particularly active this year. It wrote to the Department of Environmental Affairs (DEA) and the National Prosecuting Authority (NPA) and offered its support in the fight against rhino poaching. A brief article on this initiative was published in 2015 (Jul) *DR* 24. This article attracted the attention of a few legal practitioners who wish to assist and support the Committee with this initiative and it was agreed that it would be permissible for legal practitioners, who were not Committee members, to support the Committee on specific projects or initiatives such as this one. One of the interested practitioners, Rudi Aucamp, has been involved in rhino poaching-related issues in his personal capacity and agreed to assist the Committee where required.

The Committee conducted a meeting with key representatives from the DEA on 19 August 2015, directly after the Committee's annual meeting. The DEA presented on key enforcement challenges faced regarding biodiversity crimes and set out potential areas where the LSSA could provide support.

In addition to the areas of assistance discussed at the meeting with the DEA, the Committee held a telephone conference on 29 October 2015 to, inter alia, discuss the potential for members of the legal profession to assist with training initiatives, where necessary and relevant. It was agreed that the LSSA would first need to ascertain what training has been conducted or is planned for inspectors and prosecutors, in order to establish whether there is a need for this kind of intervention.

Mr Aucamp had been in contact with Adv Douw Jacobs, a senior prosecutor dealing with biodiversity crime prosecutions in the North West, who informed him that the DEA had received funding from the United States government for a week-long training session for over 120 prosecutors dealing with biodiversity cases at the Indaba Hotel in Johannesburg and that he would be happy to meet during the course of the training programme to discuss some of the challenges faced by prosecutors in these cases. The chairperson attended this meeting with Mr Aucamp on 17 November 2015 and Adv Nigel Carpenter, the Senior Deputy Director of Specialised Prosecutions in the North West, also attended the meeting with Adv Jacobs. Valuable insight and information was provided at this meeting from which it appeared that the main reason for the failure to secure convictions in cases

where arrests have been made is poor investigation and case preparation by the South African Police Service. Adv Carpenter suggested that the Committee meet with Senior State Advocate Joni Spies, who is the National Nodal Point for biodiversity crimes in South Africa. This meeting will be arranged by the LSSA in early 2016.

Comments on proposed amendments to the Planning Professions Act 36 of 2002

Committee member Norman Brauteseth attended a workshop on the proposed amendments to the Planning Professions Act in Durban on 16 November 2015 on behalf of the Committee. He drafted comments on the proposed amendments, which were submitted on behalf of the LSSA.

Participation in Legal Forum on China-Africa Cooperation (FOCAC)

The chairperson presented on 'South African biodiversity legislation and a snapshot of enforcement and compliance' at the 6th Legal Forum on China-Africa Cooperation (FOCAC) held in Johannesburg on 26 November 2015 on behalf of the Committee. The presentation focused on rhino poaching and was well received by the Chinese and South African legal practitioners.

Catherine Warburton,

Chairperson, Environmental Affairs Committee

ETHICS COMMITTEE

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

The LSSA, through its Ethics Committee continues on its arduous journey to advance its campaign to make lawyers adhere to ethical standards in all aspects of their professional work and conduct. The omission of the use of the word 'highest' in conjunction with the words 'ethical standards' says enough.

One cannot remove the legal profession from the current landscape of South Africa and expect lawyers to operate in some sort of pure and perfect vacuum. The landscape of our country is changing every year, sadly, not for the better. The few fertile areas for the small and mainly black law firm have diminished. Legal aid and road accident claims used to provide many of the small practices, excluding the rapacious cottage industry exponents, a basic income to survive. Criminal work was also always a source of income for small prac-

tioners. However these days, only crime lords and the rich can easily afford legal fees. The person in the street facing criminal charges is almost always out of pocket through unemployment or lack of financial support. Black conveyancers constitute a small group, and even they have to scramble for the crumbs that the big banks throw their way to keep up appearances of promoting black economic empowerment. This is an area that needs investigation by the authorities and the profession.

The South African landscape is mired in inequality, poverty and unemployment and widespread corruption. The high levels of crime are a natural consequence. These are incontrovertible facts supported by statistics, analyses, studies and experts within State agencies and in the private sector. The thirst for unbridled profit coupled with unconscionable greed are the hallmarks of our economy and the diet of the captains of industry. Our economy, which is fast declining, is firmly in the hands of white monopoly capital buttressed and supported by international monetary agencies and Western governments. Political leadership and trade unionism are both on a downward curve. Much needed capital for growth and development leaves the country as profits rather than being ploughed back into our economy. Our world class Constitution is an asset to the rich and privileged. They can afford the best lawyers and take up endless years in litigating against a relatively poor developmental State, using every principle of freedom, namely, free enterprise, a free media, free speech, freedom to trade, freedom to generally exercise any right in the Constitution and test it to its most enforceable limit in the highest courts in the land using the most expensive legal representation.

In so far as the legal profession is concerned, the big six or more white-owned legal firms ensconced in Sandton and surrounds, in Cape Town and Umhlanga are swallowing up the smaller competitors and bright young black women and men for their purposes of both monopoly and 'political' legitimacy. The irony is that they also serve Government in many of its most serious matters.

These firms exercise enormous influence in the slow pace of transformation of the legal profession through their briefing patterns as evidenced in all the divisions of the High Court. This impacts also on the quality and experience of candidates who seek appointment to the Bench.

The stark reality is that many young black and some poor white lawyers as well, face a bleak prospect of survival in this hostile unequal terrain facing them. They would either have to close practice and seek employment wherever they can or 'dip' into their meagre trust accounts and face the consequences of being struck off the roll of practitioners. The default option has seen the growth of the phenomenon of 'cottage industries' in the fields of collection work, medical negligence claims against both the State and the private

sector, claims against the police for unlawful arrest and related police actions, and masses of claims against a failing State for delayed services or no service, relating to social grants, identity documents, and the like. The combination of a superb Bill of Rights, a fledgling constitutional democracy bound by principles of the Rule of Law and a defendant State which, despite fast diminishing means to pay its debts, is manna from heaven for that band of slick lawyers who live on the edge and know the dead pace of law societies and State agencies in catching up with their unethical practices. These lawyers often use a combination of abuse of the contingency fees regime, corruption and crude methods of touting in securing so-called clients. Their books of account will reveal massive income from the State running into tens of millions of Rands. The harsh but real counter to this is the cry of access to justice and access to legal advice for the thousands of victims who cannot afford legal fees to assert their rights guaranteed by our Constitution. All of this is increasing the hostility between the State and the legal profession. This could precipitate a constitutional crisis if lawyers are seen to be undermining and exploiting a weakened and failing State.

While the State grapples to bring honour and integrity into service delivery for all its people, the legal profession has an equally onerous task to do the same among all its members. Both sides have the commitment and a small core trying to do so, but the problems are massive. However, the legal profession is better able to put its house in order and if it does not, then the State will do so, through the Legal Practice Act 28 of 2014, and other means.

Despite the difficulties mentioned, the legal profession is committed to the instilling of ethical practices among aspirant lawyers, by influencing the teaching of ethics in tertiary institutions in different subjects and teaching ethics as a separate subject in itself. The profession also runs ethics programmes through continuing legal education for practitioners, via seminars and conferences. Practitioners are also active in the pre-admission training programmes of aspirant attorneys, through the School for Legal Practice where ethics is a separate course followed up by an examination for admission to practise.

Ethics is a fundamental tool for promoting and driving fairness, transparency, accountability responsibility and good governance in all its forms in all aspects of our lives and activities, in all our organisations, especially the LSSA and all its constituent members. Ethics will remain a lifelong project. Let us keep it alive.

Krish Govender,

Chairperson, Ethics Committee

FAMILY LAW COMMITTEE

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

A formal meeting of the Family Law Committee was convened on 28 April 2015. The minutes of the meeting reflect the issues which are dealt with by the members of the Family Law Committee, on a regular basis. These include

- Rule 43 applications;
- the Children's Act 38 of 2005;
- cooperation with the South African Police Service;
- the Traditional Courts Bill;
- the relationship between the LSSA and the Commission for Gender Equality;
- anticipated sex-work investigative hearing;
- South African Law Reform Commission Issue Paper 28: Review of the Maintenance Act 99 of 1998 and the Maintenance Amendment Bill;
- South African Law Reform Commission Discussion Paper 131: Review of the Law of Evidence;
- South African Law Reform Commission Discussion Paper 132: The Practice of Ukuthwala;
- South African Law Reform Commission Discussion Paper 133: Statutory Law Revision: Legislation Administered by the Department of Home Affairs; and
- family law arbitration.

It is important to understand that the work of the Family Law Committee continues apace throughout the year. Members are called upon to comment on the legislation, as it arises.

Apart from that, members attend various workshops convened by the Department of Social Development, the South African Law Reform Commission, and the Rules Board.

Family law arbitration

The issue of family law arbitration has become extremely important, and foremost in the field of family law. Members of the Committee were involved in preparing draft rules for family law arbitration, which have been circulated to the relevant LSSA committees.

The chairperson of the Committee, Susan Abro and Committee member Zenobia du Toit attended the Johannesburg Family Lawyers Conference, and addressed delegates on the issue, together with members of the Scottish and English legal professions. The proposal was met with resounding approval.

They also attended the Cape Law Society (CLS) annual general meeting on 30 October 2015, where they addressed members of the CLS. The response there was also very positive.

A presentation will also be made at the LSSA annual general meeting in April 2016.

A submission was made by the members of the LSSA Family Law Committee to LEAD with regard to training in 2016, which the Committee hoped would be possible to be conducted in conjunction with the LSSA. This has been rejected by LEAD and the members of the Family Law Committee will now need to consider whether or not to arrange for training to be performed elsewhere.

There has been a query from the chairperson of the LSSA Alternative Dispute Resolution Committee with regard to the rules relating to arbitration and applications to court. The members of this Committee will arrange a meeting with the members of the ADR Committee to deal with their queries.

In the report on its activities for 2014, the Committee undertook to attend to various issues. It has done so.

The Committee will continue to deal with any issues which might arise, which are relevant to family law and related matters in South Africa.

Susan Abro,

Chairperson, Family Law Committee

FINANCIAL INTELLIGENCE CENTRE ACT COMMITTEE

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

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

The Committee met three times during the year, in June, November and December.

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 submitted comments to the FIC.

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 will afford a 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 can be problematic, as one person can be overly zealous whereas the other's standards are more relaxed. However, the standards can be taken care of in the guidelines of the profession. The Committee proposed

- a hybrid approach in terms whereof, in some instances, a relationship can 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; and
- there must be sufficient phase-in time allowed.

On the issue of the 'beneficial ownership' of clients, the Committee was not in favour of a blanket requirement to interrogate the identity of the beneficial owners of clients that are corporate vehicles. This issue will, to a large extent, be dictated by the scope of the mandate between the attorney and his/her client, that is, the attorney will call for certain information to enable him/her to execute the mandate properly. Furthermore, the risk will be determined through the risk matrix of the practitioner.

The question was also posed in the consultation paper whether FICA should provide expressly for situations where an accountable institution (practitioner) is unable to complete the identification and verification requirements (client due diligence (CDD)). This Committee was not in favour of providing expressly for such situations. Practitioners should be allowed to commence to execute their mandates while verifying clients, if CDD is required in terms of their risk matrix. If the accountable institution suspects a suspicious transaction, a report in terms of s 29 must simply 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 had no problem with express provisions to be inserted in FICA to determine how accountable institutions should treat PEPs (politically exposed persons) as customers.

Pursuant to the consultation paper, an amendment draft Bill was published. The Committee considered the Bill and submitted comment to the Parliamentary Portfolio Committee on Finance.

The Committee decided

- to start working on a practice manual for attorneys, which can assist as a guideline when the new amendments are introduced;
- that training will have to be given to attorneys on risk management and compliance in terms of FICA, and LEAD has already confirmed that they are giving attention to this;
- to raise concern that not all criminal sanctions have been amended to administrative sanctions, as mentioned in the consultation paper; and
- to point out that no proposed amendments were introduced to address the new category of practitioner provided for in the Legal Practice Act 28 of 2014 – the advocate with a trust account – so as to ensure that they are accountable institutions and subject to registration and reporting.

Specific comment by the Committee included the following:

- 'Beneficial owner': not all attorneys have the resources to comply with the cumbersome proposed requirements. Separate regulation in respect of attorneys was proposed, which will create certainty and ensure better guidance and training of practitioners.
- 'Single transactions': FICA should follow the Financial Action Task Team (FATF) recommendations that a certain monetary limit be placed on single transactions and that the definition of 'client' be coupled to such exempted amount. The word 'transaction' is also not sufficiently defined. In the context of attorneys' work, in conveyancing matters instructions are received from the seller of the property (who is the client). Payment of the purchase price is received from the purchaser. Is the receipt of this payment a transaction? Is receipt of a payment from a debtor in debt-collecting matters a transaction?
- 'Domestic prominent influential person': the definition should conform to the global terminology, and in such definition certain particular South African concerns can be addressed.
- 'Risk based approach': the FIC must have the duty to supply risk management and compliance programmes for the different sectors. Section 42(2)(2B) requires the programmes to be reviewed at 'regular intervals' and if the FIC supplies these programmes for the different sectors, it will ensure that the objectives of FICA are reached and that there is uniformity across all sectors. The attorneys' profession consists mainly of small practices with limited resources.

Compliance issues to run a practice impact on the sustainability of such practice. Again, it is preferable to have separate regulation for the attorneys' profession and certain monetary limits with regard to clients or transactions.

- 'Know your client': cooperation with the Department of Home Affairs should be improved to ensure that the accountable institutions can vet the identity and residential address of a potential client. Alternatively, proof of residence should not be required. Attorneys act on a mandate. The representative's identity and the authority to act on behalf of their principal is established. Where necessary, the founding documents are requested. To also obtain the identity document of all directors will be cumbersome and time consuming.
- 'Domestic prominent influential person' and 'foreign prominent public official': it is not easy to establish who these persons are from the public domain. The FIC should provide registers of these persons to allow easy identification.
- The LSSA welcomed the assurance by the National Treasury (NT) and the FIC that 'processes are under way to develop a national risk assessment'.
- It also welcomed the assurance that a transitional phase will be introduced and submitted that such time period for attorneys be set in consultation with the attorneys' profession.
- In respect of certain provisions, the NT and the FIC advised that 'guidance will have to provide examples'. The mere fact that guidance will be given indicates that the specific provisions in the Bill are insufficiently described or provided for.
- The training of personnel of accountable institutions poses a serious threat to training organisations, as they might be cited as co-defendants should a trained person be sued for damages flowing from incorrect assessment of compliance.
- The Committee also had sight of some of the other stakeholders' submissions to the Portfolio Committee, many of whom made meaningful comments, and those were supported.

The LSSA's submission to the Parliamentary Portfolio Committee appears on the LSSA website at www.LSSA.org.za.

David Bekker,

Chairperson, Financial Intelligence Centre Act Committee

GENDER COMMITTEE

Members: Martha Mbhele (Chairperson), Susan Abro, Michelle Beatson, Krisha Candasamy, Amanda Catto, Llewellyn Curlewis, Deirdré Milton, Khanysa Mogale, Annabelle Mphahlele, Janine Myburgh and Nolwazi Zulu

During the year under review the Committee met face-to-face on 7 April and 13 October 2015. Although gender transformation in the legal profession has improved over the years, the momentum has to increase in order for meaningful and visible results to manifest.

We have noted, with delight, the Significant Leadership training being offered to women, something which the Gender Committee advocated for in past years. Previous participants were of the view that the programme was empowering and beneficial as it enhanced their skills in terms of practice management. This is encouraging.

The Committee also expressed the view that the initiative by the LSSA Council to have additional female practitioners on specialist committees is commendable, but not adequate. This initiative should be expanded to the inclusion of women in positions of authority. The simple reality is that more female practitioners must occupy positions of authority within the structures of the profession. The mandate of the Committee remains important and adequate female representation on the structures of the South African Legal Practice Council must be a prerequisite.

We have resolved to continue researching the experiences of women in law and to include more female practitioners and former practitioners in a new survey. We also resolved to resuscitate the concept of an indaba for female practitioners. We are excited about the prospects of liaising with key stakeholders to expand educational programmes on constitutional and gender-based violence topics beyond the legal profession.

I resigned as Chairperson and committee member at the October 2015 meeting as I have been appointed to the Bench. I wish to thank the LSSA and especially my colleagues at the Committee for their support while I served as Chairperson of the Committee. Nolwazi Zulu was appointed as the new chairperson of the Committee and I wish her and the team all of the best in the pursuit of gender justice.

Martha Mbhele,

Chairperson, Gender Committee

HIGH COURT COMMITTEE

Members: Adam Pitman (Chairperson), Graham Bellairs, Anver Bhayat, André Bloem, Asif Essa, CP Fourie, Peter Horn, Umesh Jivan, Neil Joubert, Dan Matlapeng, MacDonald Moroka and Dudu Mthimunye-Hluyo

The High Court Committee enjoyed another productive year with most members attending all the meetings. The LSSA has assembled a proactive committee that has a very positive approach. Dudu Mthimunye-Hluyo joined the Committee this year.

The Committee confirmed its close engagements with the Rules Board for Courts of Law.

The High Court structure and caseload management throughout the country as a general rule continued to improve thanks largely to the Provincial Efficiency Enhancement Committees (PEEC) that were initiated by the Chief Justice.

The templates that are being used to report to the National Efficiency Enhancement Committee (NEEC) at present are not user friendly and could be improved dramatically. The Committee is engaging with the Justice Department in this regard. It is only through focusing on the problem areas that improvement can take place.

It remains vital that our Committee has representation on the PEECs and NEEC to ensure that our members' needs are addressed.

The need to establish subcommittees to assist in vetting acting appointments to the Bench continues to be a challenge. This issue needs intervention by the Chief Justice as an effective, uniform practice needs to be established throughout the country.

It is clear that a new threat to the profession from the Debt Collectors Amendment Bill will dominate 2016 and will require engagement from the Committee members.

Finally, a special word of thanks to Lizette Burger and her team for all the excellent work that they put into making the functioning of our Committee a success.

Adam Pitman,

Chairperson, High Court Committee

IMMIGRATION AND REFUGEE LAW COMMITTEE

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

During the year under review the specialised immigration law fraternity has experienced numerous ups and downs, not all of them positive.

The Immigration Amendment Act 13 of 2011 was implemented, together with new regulations, rather suddenly in 2014. On the Thursday preceding implementation, our colleagues became aware that there was a regulatory change imminent, on the Friday the *Government Gazette* was published and on Monday, 26 May 2014, the new regulations came into operation.

The profession was not included in the consultative process leading up to these new regulations as had been envisaged and embodied in the Immigration Act 13 of 2002 and in the run up to creation of that legislation.

Therefore, to say that all parties were caught unawares, would be an understatement. The amendments were, to put it bluntly, largely a disaster – intended or unintended.

Without going into much detail about this, as the media has dealt with these issues comprehensively during 2015, the main areas related to the requirements for children to travel, that is with unabridged birth certificates, and the numerous unintended consequences that flowed from that, had a very negative impact not only on tourists to the country, but on investors re-thinking potential investment in South Africa.

Pressure was brought to bear through our Committee and numerous other stakeholders for the Minister of Home Affairs to reconsider these new provisions, but the Minister remained intransigent. It was interesting, therefore, to note in media statements that through the initiative by Tourism Minister Derek Hanekom, and in a Cabinet media release, the regulations were being revisited and in 2016 we are seeing some movement in this regard.

Again, largely based on the unintended or intended consequences of these amendments, the Minister of Home Affairs created a ministerial task group which included most stakeholders. One of our Committee members, Chris Watters, represented the organised legal profession on that Committee.

It is believed that, largely because of the recommendations made at that Committee, the changes referred to above are now taking place.

During the period under review an LSSA seminar on the visa changes, which was to have taken place in July 2015, was postponed because of the confusion surrounding the amendments. This will hopefully take place in the coming year.

During November 2015 the Deputy Minister of Home Affairs convened a stakeholder meeting to deal with inputs on the amendments to the Refugees Act 130 of 1998. One of our Committee members, William Kerfoot, represented the Committee on this task group.

During the period of under review the Committee has continued to interface with various government departments relevant to the practice of immigration and refugee law, and specifically with the South African Qualifications Authority (SAQA) and the various professional councils.

A number of our Committee members have appeared on television, been interviewed on radio and in the media on a regular and ongoing basis. Specific mention must be made of our colleagues, Chris Watters and Ashraf Essop, who together with the chairperson, continue to be interviewed on a regular basis in the media.

On a final note, the International Bar Association held its 7th Biennial Global Immigration Conference in London during the period 18 to 20 November 2015 and our Committee deputy chairperson, Chris Watters, addressed a working session on the question surrounding whether one can take one's family along in an immigration and visa law context. We thank him for his participation in this regard.

One of the challenges facing not only the immigration law specialist attorney community, but also other sectors, are the ongoing and blatant attempts to get clients to interface directly with the Department of Home Affairs on visa issues. It has become as blunt as the clients being told not to use an attorney as this service can be rendered by the Department itself. What is not being said to the client is the possible disastrous consequences that could flow from this. To say the least, it is my view that the onslaught on the profession is not simply going to let up.

Hopefully the coming year will be a less rocky one in our relationship and interface with the Department of Home Affairs.

Julian Pokroy,

Chairperson, Immigration and Refugee Law Committee

INSOLVENCY COMMITTEE

Members: Vincent Matsepe (Chairperson), Sally Buitendag, Mpoyana Ledwaba, Reshoketsoe Malefo, Ebi Moolla, Peter Whelan and Constant Wilsnack

This Committee met on 15 November 2015. Its activities were minimal, largely due to the fact that the dynamics around the policy on appointment of liquidators on the Masters' panel had been challenged in court and that the Supreme Court of Appeal had granted leave to the Master to appeal.

We thus concentrated on issues which we considered to be addressed as critical for 2016. Some of the issues are the following:

- How the profession can influence the easier acquisition of bonds of security for previously disadvantaged individuals, who often struggle to acquire these after being appointed.
- Closer liaison between organisations such as the South African Restructuring and Insolvency Practitioners Association (SARIPA) and the Association for the Advancement of Black Insolvency and Business Rescue Practitioners (AABIBRS) to enable the industry to share experience and knowledge.
- The training of emerging insolvency practitioners: This was extensively discussed and identified as a priority needing urgent attention.
- Several interesting suggestions were made addressing different categories of training of emerging insolvency practitioners through the involvement of LEAD. These programmes can be embark upon with the collaboration of the BLA and NADEL.
- The need to have the Committee link up with the International Association of Restructuring, Insolvency and Bankruptcy Professionals (INSOL).

The Committee was also alerted to the judgment of Bozalek J in the ex parte application of the following cases: *Ex parte: Concato; Van Staden; Goliath and Another; Oberholzer; Botha* (19753/2014; 19756/2014; 19754/2014; 19795/2014; 19755/2014) [2015] ZAWCHC 136 which seems to suggest (though not pertinently so) displeasure by the court at the role that certain lawyers play in voluntary surrender insolvency/sequestration applications, which is not in the interest of creditors.

The message we can get from this decision is that our noble profession should not be seen to be colluding with dodgy debtors *in fraudem creditorum*.

The Committee also resolved to investigate the possibility of preparing a brochure on the effect of insolvency on employment contracts to be distributed to trade unions.

We also pondered about what the status of the Committee will be when the Legal Practice Act 28 of 2014 is fully applied.

Vincent Matsepe,

Chairperson, Insolvency Committee

INTELLECTUAL PROPERTY LAW COMMITTEE

Members: Esmé du Plessis (Chairperson), Johnny Fiandeiro, Paul Ramara, Baitse Rangata, Jan-Henrik Senekal, Lesane Sesele, Waheeda Shreef and André van der Merwe

The Committee on Intellectual Property (the IP Committee) was constituted in 1998 in the light of the increasing relevance of intellectual property law also to general practitioners. At that time, there was a specific need, on national level, for IP lawyers to have a channel of communication to government departments and other official bodies in the area of IP law and practice. On international level, with the implementation in 1995 of the Agreement on Trade-Related aspects of IP Rights (the TRIPS Agreement) of the World Trade Organisation (WTO) and the obligation on member countries to revise their IP laws to make them TRIPS compliant, several IP-related legal developments were in the pipeline.

Broad mandate

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

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

The Committee members also raised the lack of awareness, on the side of the public, in regard to the importance and potential value of IP as an important aspect to be addressed, and agreed to operate on the basis of an extended mandate to cover this aspect. In particular the importance was raised of the potential benefit of raising awareness also amongst law students, so as to promote career possibilities in that field of law.

Extended mandate

In 2012 the Committee made a submission to the LSSA, in which the Committee informed Council of its view that there is a lack of awareness, on the side of the public, of 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, for example, at universities, of IP as an area of law and as a career option, without incurring costs to the LSSA;
- to attend and report back to the Committee and the LSSA, conferences and seminars on IP without incurring costs to the LSSA.

Activities of the committee

In assessing the activities of the Committee, it should be borne in mind that the Committee is responsible for a specialised but divergent area of law. Legislative changes could, therefore, apply to different specific areas of law, for example, the different laws on patents, trade marks, copyright, industrial designs, ambush marketing, anti-counterfeiting measures, etc. Statutory changes could also impact on the structures and procedures for the registration and enforcement of different 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 2015

The Committee compiled the following broad work plan for 2015:

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, i.e. the National Policy on Intellectual Property for South Africa, which was being formulated by the Department of Trade and Industry (DTI);
- the review process of the IP legislation of South Africa that is being planned by the DTI, and to monitor and comment on draft IP-related legislation when published for comment;
- the proposed amendment of the Trade Marks Act, 1993 in order to implement the Madrid Protocol to which South Africa may accede;
- the proposed amendment of the Designs Act, 1993 in order to implement the Hague Agreement to which South Africa may accede;
- the implementation of the Intellectual Property Laws Amendment Act 28 of 2013 and its effect on the four IP Acts referred to in that Act;
- to promote IP awareness initiatives in South Africa, particularly at universities, and 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 WIPO Development Agenda, particularly in countries on the African Continent; and
- the further developments in the WTO Doha Round of talks and proposals for potential amendments of patent laws, 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 earlier reports 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).

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. 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 (IPLAA Act). However, this Act has not yet been implemented, mainly because the necessary regulations had to be drafted (to fit in with the existing regulations issued under the four IP statutes concerned), and a national management framework system had to be established.

Individual Committee members were designated to consider the potential impact of the IPLAA Act on the four IP statutes concerned, so that the Committee would be prepared and ready to comment when draft regulations are published and/or the Act is implemented. André van der Merwe submitted comments on the Trade Marks Act.

It is understood that a set of draft regulations under the IPLAA Act has been prepared and will be made available within the near future for public comment. 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 IP for 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 a revised Draft National Policy on IP was published in GG 36816 of 4 September 2013 for 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.

It is understood that, although a revised version of the IP Policy has been prepared, this has not yet been made available to the public. Once the IP Policy has been approved by Cabinet, it will constitute the policy position 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.

Copyright Amendment Bill

The string of events around the Copyright Amendment Bill, 2015 started with a Roundtable Discussion on Copyright arranged by the DTI on 24 February 2015; the meeting was informed that a Copyright Amendment Bill was in the process of being finalised and would be published for public comment. The Copyright Bill was published in the *Government Gazette* of 27 July 2015 and was circulated to the Committee members for comment. The Bill was a lengthy document

containing many novel and some potentially contentious and controversial provisions. A limited time period was stipulated for comments to be submitted. A further public consultative meeting was arranged by DTI for 12 August 2015; Committee members were informed and invited to attend. This was followed by a public conference also arranged by DTI on 27 August 2015; Committee members were again invited to attend.

By reason of the many contentious provisions proposed by the Bill, such as the resale royalty right, the reversion of assignment right, the vesting of ownership of copyright in the State, etc it is expected that the Bill may still elicit extensive debate.

Although the period for submitting comments was subsequently extended (also through efforts by the LSSA), the time allowed was not sufficient for a meeting of the Committee to be convened and submissions to be prepared on behalf of the LSSA. Individual law firms, therefore, made their own submissions; close to 120 submissions were lodged.

It is expected that a revised Copyright Amendment Bill will be published for further public comment.

Promotion and Protection of Investment Bill

The Committee took note of the fact that certain provisions in the Promotion and Protection of Investment Bill, 2014 would have the effect of providing that the cancellation or limitation of IP rights by the State would not be regarded as expropriation of property. A submission was prepared by Esmé du Plessis in her personal capacity and circulated to the Committee members. The outcome of the submission was that the controversial provision was removed from the Bill.

Bill on the Protection, Promotion and Management of IK Systems, 2014

This Bill, which emanated from the Department of Science and Technology, covered subject matter similar to the IPLAA Act, namely Indigenous Knowledge Systems, but envisaged the creation of a recordal system to preserve the IKS. The Bill was distributed to Committee members for comment; Esmé du Plessis prepared a first draft submission that was circulated to Committee members for consideration

It is expected that a revised Bill will be published for comment.

Request for assistance by DIRCO

The Department of International Relations and Cooperation (DIRCO), through its State Law Adviser, addressed a request to the LSSA for assistance in regard to the deliberations within the Standing Committee on Patents of WIPO in regard to

the confidentiality and/or privilege of communications between patent advisers and their clients. Esmé du Plessis had prepared a Memorandum on this issue and that was made available to DIRCO.

Developments on international level

Discussions continue to take place within the two most relevant international bodies in the area of intellectual property, i.e. 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 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 and the legislation currently still pending (see above).

The issue of effective international control over, and the effectiveness of the legal bodies responsible for, the seizure and detention of counterfeit and/or infringing goods, including also generic medicines, 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.

Meetings of the Committee during 2015

Only two meetings of the Committee took place during 2015, namely on 13 February and on 10 June 2015. The Committee considered

- the report on the work done by the Copyright Review Commission on broadcasting and 'needle time', now that the report has been approved by Cabinet and has become available to the public;
- the Roundtable Discussions about, and the impact of, the Copyright Amendment Bill, 2015;
- the need to consider the finalised version of the IP policy instrument (when that becomes available), and to recommend aspects to be addressed when the instrument is implemented;
- enactment of, and implications on IP Acts of, the IP Laws Amendment Act, 2013 to protect TK;
- the effect of the Promotion and Protection of Investment Bill on intellectual property, and the positive outcome of the submission made in regard to the provision on the expropriation of IP;

- the possible effect of the Legal Practice Act on the IP profession;
- 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;
- the effect of the amendment to the Exchange Control Regulations on IP-related transactions;
- the Roundtable Discussion on, and the effect of, the introduction of a substantive search and examination system for patent applications;
- 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 the

- Trade Marks Amendment Bill (to introduce the Madrid Protocol system);
- Designs Amendment Bill (to introduce the Hague Agreement system);
- Copyright Amendment Bill in revised form (to implement recommendations of the Copyright Commission and to effect other changes to the Copyright law); and
- Regulations to implement the IP Laws amendment Act, 2013.

The Committee will also monitor, and where appropriate, recommend submissions regarding the IP laws review process; and will assess the revised National IP Policy instrument, when that is put open to the public.

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

Members: Iqbal Ganie (Chairperson), Jan de Beer, Frank Dorey, Asif Essa, Etienne Horn, Jan Janse van Rensburg, Peppy Kekana, Clayton Manxiwa, Francois Mvundlela and Andrew Stansfield

The first joint meeting with the accountants and auditors was held on 15 April 2015 and the second on 21 October 2015.

As is the usual format and as a cost-saving measure, the attorney members met immediately prior to the joint meeting. Matters raised by the provincial law societies and the agenda of the Joint Attorneys and Accountants Committee (JAAC) were 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 Body for Auditors (IRBA), the Attorneys Fidelity Fund (AFF), the provincial law societies and the LSSA, as well as with other stakeholders.

The accountants were updated on the Legal Practice Act and it was reported that Parts 1 and 2 of Chapter 10 of the Act, dealing with the National Forum had come into operation on 1 February 2015. The NF was launched and has set up an infrastructure.

It was also reported that the implemented of the uniform Rules for Attorneys across all jurisdictions had been approved by the Chief Justice and that the intention was for the rules to come into operation on 1 March 2016.

Jan de Beer, the Forensic Executive at the AFF who heads the Internal Audit Programme, informed the accountants that there was a high ratio in relation to external reports coming through. The differences were too large to be coincidental and he believed that, in many instances, audit reports which should have been qualified, were not. He said that these cases would be referred back to the relevant law society to deal with through the usual processes.

The meeting confirmed that Law Society of Namibia, as was usually the case, would continue to be invited to meetings through its duly authorised representative. The latter indicated that the Reform Audit Support System project was alive and well in Namibia.

IRBA was to consolidate all issues for consideration in preparation for the *IRBA Guide to Attorneys Trusts Audits*.

In relation to the complaints by certain attorneys that auditors were overcharging them, a task group is to be set up to collate the concerns of the legal profession. Such discussions would include

- how audit fees should be determined;
- a risk-based approach to be adopted;
- reportable irregularity for attorneys' audits; and
- guidance to auditors on how to deal with bank confirmations.

Based on the outcome of the report from the task group, SAICA, IRBA and the LSSA, will send out a communication to their respective members setting out, inter alia, the concerns of the legal profession and providing guidance to attorneys on the appointment of auditors, as well as how to deal with situations where they believe auditors are overcharging them on audit fees.

The Committee's meetings for 2016 will take place on 4 May and 18 October.

Iqbal Ganie,

Chairperson, Joint Attorneys' and Accountants' Committee

JOINT LSSA/AFF GATS COMMITTEE

Members: Esmé du Plessis (Chairperson), Max Boqwana, Iqbal Ganie, Wilfred Phalatsi, Clayton Manxiwa, Shanaaz Mohamed, Motlatsi Molefe, Silas Nkanunu and Lister Nuku

The GATS Committee was initially created by the LSSA in 2002 to conduct a study of the General Agreement on Trade in Services (GATS) Agreement of the World Trade Organisation (WTO), and to advise the LSSA Council and Government (through the Department of Trade and Industry (DTI)) on the potential impact of GATS for purposes of deliberations at the 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 Committee and has also incorporated members of the 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 and indemnity insurance, the focal area of the Committee has

become more complex. The issue of cross-border delivery of services within the SADC countries has also become more relevant now that the Government has signed the SADC Protocol on Trade in Services. The mandate of the Committee has expressly been extended to consider and address the issue of cross-border delivery of legal services within SADC.

Furthermore, with the advancement of the Legal Practice Act, 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. Although a mandate to deal with the provisions of the Legal Practice Act, 2014 relevant to the prospective practising rights of foreign lawyers has not formally been given to the GATS Committee, the Committee will continue to monitor this aspect.

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 DTI in preparing for, in formulating a position in regard to, and in presenting such position in the course of the negotiations regarding GATS (insofar as it applies to legal services) in the context of the WTO negotiations;
- to meet with representatives of DTI and other government departments (such as the Department of Justice and Constitutional Development) and other role players (such as the 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;
- with the Ad hoc Committee on Foreign Qualifications, to consider requests from foreign governments and/or persons or societies for the recognition of foreign qualifications for purposes of exemption under the Attorneys Act, 1979; and
- to report to the LSSA on these matters.

Extended mandate

The LSSA Council considered the issue of cross-border practice rights in the SADC region, and specifically in the context of South Africa's rights and obligations in terms of GATS. On the basis 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 Act 28 of 2014. Reports were submitted to the LSSA Council in 2011 and 2012. Now that the Government has signed the SADC Protocol on Trade in Services at the 2105 Summit of the SADC Heads of State, the Committee has already, as part of its mandate, addressed this issue at its last meeting for 2015.

In addition, the Legal Practice Act includes 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 also from Government departments requesting advice and assistance. Chapter 10 (the transitional phase) of the Legal Practice Act has been implemented as from 1 February 2015. Once the transitional phase has been concluded and the other provisions of the Act are implemented, the issue of the recognition of foreign lawyers will have to be addressed.

Activities of the committee

Very little has happened in recent years on the international WTO front which impacted on GATS and legal services. The Committee thus agreed to continue to monitor the progress of the WTO deliberations, and to monitor the two matters referred to below 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 2015

The LSSA regularly requests committees to submit a broad work plan for the ensuing year. The GATS Committee submitted the following outlines for 2015:

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 the negotiations regarding the draft SADC Protocol, which document is expected to contain provisions in regard to the cross-border delivery of services and thus possibly to deal with the granting of cross-border practice rights to lawyers within the SADC region;

- to develop in more detail the structuring of an assessment and recognition model to be used in the context of recognising legal qualifications and granting 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 implementation of 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.

Further developments of relevance

Two further developments took place during 2015 that merited consideration by the Committee.

On 24 and 25 February 2015 the OECD (Organisation for Economic Cooperation and Development) held a consultative workshop in Pretoria (organised by the DTI) to consider and discuss the so-called Services Trade Restrictiveness Index (STRI). The OECD is an international body linked to the United Nations. I was invited in my personal capacity to make a presentation regarding the position in South Africa in regard to the liberalisation of the rules regarding cross-border service delivery of legal services. The OECD findings related also to the adherence (by 40 countries, including South Africa) to the GATS requirements as to cross-border delivery of services. In view of the importance of this report, this matter was raised at the Committee meeting in May 2015.

A draft document was issued by SAQA on the Policy and Criteria for Evaluating Foreign Qualifications and the LSSA requested me to comment. A document was drafted by me and submitted to the LSSA, and since the SAQA document suggested that professional bodies can be recognised by SAQA to be consulted when foreign qualifications are to be assessed, I recommended that the LSSA apply for such recognition. The positive outcome is that the LSSA has been given such formal recognition. In view of the relevance of this matter, it was raised at the Committee meeting in May 2015.

In a Cabinet statement issued in August 2015 it was confirmed that the SADC Protocol on Trade in Services had been signed, also by South Africa. In view of the importance of this development to the legal profession and the mandate of the Committee, this matter was raised at the meeting of the Committee in October 2015.

Meetings of the Committee during 2015

Two meetings of the Committee took place during 2015, namely on 8 May 2015 and on 20 October 2015.

The October meeting was attended also by a member of the LSSA Management Committee (Manco), Ettienne Barnard. At these meetings the Committee considered the following matters:

- the relevance and potential impact of the OECD report on the restrictiveness index in regard to the legal services, which indicated that the sector was still relatively restricted as regards local as well as foreign lawyers;
- the implementation of the transitional phase of the Legal Practice Act and the need to monitor the implementation of those provision relating to the recognition of the qualifications of foreign lawyers and their access to local practice;
- the potential impact of the SADC Protocol on Trade in Services, and particularly the timelines when the liberalisation of legal services will be addressed;
- the 6th Legal Forum on China-Africa Cooperation (FOCAC), held in Cape Town in November 2015, the theme being to address various issues relating to inter-country movement of goods and services and enforcement of rights.

Future work

The Committee was primarily established to monitor GATS-related developments in the international arena. Although the WTO negotiations have faltered in recent years, the GATS Committee will continue to monitor the developments. The Committee will also 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(s) 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 these matters, such as Fidelity Fund cover and professional insurance. It will be necessary to analyse the manner in which these issues will be dealt with under the Act.

Finally, as progress is made with the implementation of the SADC Protocol and with the liberalisation of cross-border practising 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

LABOUR LAW COMMITTEE

Members: Jerome Mthembu (Chairperson), Llewelyn Curlewis, Adriette Dekker, Lloyd Fortuin, Peter Hobden, Motseki Morobane, Melatong Ramushu, Jan Stemmett and Jason Whyte

The Committee held one meeting during 2015.

Liaison with the Labour Court: The Committee met with the Judge President of the Labour Court during 2014, but no follow up meeting was held in 2015. The Committee resolved to meet with the Judge President early in 2016.

Meeting with the Commission for Conciliation Mediation and Arbitration (CCMA): The Committee did not meet with the CCMA Director during 2015. New developments have occurred since the last meeting with the present Director in that she had not availed herself for re-appointment and would vacate her office on 16 December 2015. Between the vacation of the office of the present Director and the appointment of a new one, there would be an Acting Director with whom the Committee would endeavour to meet.

Labour Relations Act 66 of 1995: The Committee noted the amendments to s 198 and was concerned that practitioners may not be *au fait* with its implications. The rules of conduct of proceedings before the CCMA as gazetted on 17 March 2015, were considered and the contents noted.

World Labour Congress: The Chairperson attended this congress in Cape Town and filed a report.

Objectives of the Committee: The Committee believes that it has achieved its objectives for 2015 and resolved to retain them as they are still relevant. These include regular meetings with stakeholders such as the CCMA and the Labour Court to discuss matters of mutual concern and to consider and make comment on behalf of the profession regarding amendments to labour legislation.

Training of candidate attorneys in labour law: The Committee believes that there should be a labour law component in practical legal training and is pursuing the matter.

The Committee noted with concern how some practitioners circumvent Rule 25 of the CCMA. It was agreed that the matter be forwarded to the Ethics Committee of the LSSA, suggesting that an opinion be obtained.

Access to justice: The Committee resolved to prepare a brochure on labour law. The brochure will have the logo of the LSSA and could be placed at the CCMA offices, Labour Courts and other labour law tribunals.

Panel discussions: Enquiries are being made as to whether there are conferences taking place in 2016 in which the profession can partner with a view to participating in panel discussions so as to raise the profile of the profession.

Communication with the profession: It was agreed that regular letters be written to *De Rebus* for publication to stimulate debate on labour law issues. Practitioners are invited to participate in these debates.

Jerome Mthembu,

Chairperson, Labour Law Committee

LEGAL AID COMMITTEE

Members: Mimie Memka (Chairperson), William Booth, Johan Gresse, Jan Janse van Rensburg, Maake Kganyago, Philippa Kruger, Moshanti Makgale, Jan Maree, Abe Mathebula and Asanda Pakade

The Legal Aid Committee of the LSSA held one meeting on 13 November 2015.

Brian Nair and Peter Hundermark, who are part of the executive management team of Legal Aid South Africa, attended the meeting by invitation from the Committee in order to address certain issues that were of concern to the Committee.

The Committee requested Mr Nair and Mr Hundermark to address them on the requirements of Legal Aid South Africa for attorneys in private practice desiring to do judicare work on its instructions. These were made available to the Committee and the Committee was advised that the information is also available on Legal Aid South Africa's website.

The possibility of a joint project between Legal Aid South Africa and the Committee to coordinate visits to prisons by legal practitioners to bring awareness to prisoners of their rights, as well as to look at their living conditions in prisons,

was discussed at the meeting. It was agreed that this project would be initiated in 2016.

The Committee was further advised that the new Legal Aid Act 39 of 2014 had come into effect in 2015. In terms of the Act, the number of Board members has been reduced, with the result that there will be one representative of the attorneys' profession on the new Board and no representative from the advocates' profession. The new Board will come into effect on 1 March 2016.

The new Legal Aid Act has repealed the 1969 Legal Aid Act, and it sets out in detail the type of matters for which legal aid will be granted to those requiring legal assistance and the threshold for qualifying to receive legal aid assistance. In due course, the Minister of Justice and Correctional Services will promulgate the regulations to the Act, but until such time, the current *Legal Aid Guide* will be in operation, which is where the tariff of fees for legal aid work is set out.

Finally, it was agreed that there should be more regular meetings of the Committee to deal with issues affecting the Committee as they arise, and not to wait for one meeting in the year.

Mimie Memka,

Chairperson, Legal Aid Committee

LIQUOR MATTERS COMMITTEE

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

The Liquor Matters Committee held its annual meeting on 3 November 2015. A number of important issues were discussed at length at the meeting, which included a roundup of all provincial Liquor Acts and the functioning of all the provincial authorities, the National Liquor Policy, reported cases, the National Liquor Authority and the published norms and standards.

It was reported by Guy Dakin that, in the Eastern Cape, the applicable legislation remains the Eastern Cape Liquor Act 10 of 2003 and the Regulations. The provincial legislator published a draft Bill in July 2015, which in essence is designed to replace the current Liquor Act 27 of 1989. The contents of the draft Bill were considered and a substantial reply submitted to the Department of Trade and Industry. Of importance are, among other aspects that the Bill intends to introduce, aspects contained in the National Liquor Policy

document published in 2015 for comment. These include B-BBEE aspects which are believed to be unconstitutional and a cause for concern by virtue of the potential to exclude individuals wanting to trade at entry level. The Bill is unfriendly towards both tourism and business in the Eastern Cape. It contains inadequate provisions, and in general reflects a case of sloppy drafting. Our Committee offered its assistance regarding drafting inputs.

However, the administrative functioning of the existing liquor authority continues to result in generally acceptable turnaround times for the finalisation of applications. Grocers' wine licenses have lapsed in the province, seeing that their status was decided upon by a Constitutional Court judgment, which confirmed the provisions regarding their lapsing after 10 years as is contained in the current Liquor Act. The sale of liquor for off-consumption is, therefore, restricted to liquor stores.

According to Solly Epstein, the Western Cape Liquor Authority has improved the handling of applications for new licenses, which now take between six to eight months to consider. The delay is due mainly to the large backlog of applications and the fact that all applications must be considered by a full sitting of the Liquor Tribunal. This scenario is being addressed in legislation presently pending before the Western Cape Parliament. This should improve the situation. The caliber of the staff of the Liquor Authority has improved markedly and they are regularly accessible to attorneys by telephone or e-mail. The Tribunal itself has adopted a policy of not interacting with attorneys or the public to avoid being influenced in their decisions. This policy is to be respected.

The most pressing problem at present is the large backlog of applications in terms of the old Liquor Act which must be finalised, as well as the fact that the Tribunal seems to be unable to find the time to deal with minor applications such as transfers, extensions of premises, etc. Hopefully the pending legislation will remedy the existing problems. In recent months, the Tribunal has tended to postpone an application to provide an opportunity to applicants to comply with its requirements, rather than rejecting the application out of hand if something is amiss. This is welcomed, although it prolongs the process.

The Free State Gambling and Liquor Authority and its administration have not improved their service delivery to an acceptable level, as many court applications have been brought over the past year to compel the Authority to attend to applications. This is most unfortunate. The Free State Gambling and Liquor Authority and other role players are still in a process of completing the much needed amendments to the Act. In terms of the Free State Gambling and Liquor Act 6 of 2010, all license holders in terms of Act 27 of 1989 must re-apply for registrations in terms of the Free State Gambling and Liquor Act. The intention is, however, to substitute the

process of re-applying with a conversion process that will be much simpler and less costly. To date, it has not yet been decided exactly what the conversion process will entail. It was planned that all amendments should be finalised at least at the end of 2015 and be published for public comment. Unfortunately this did not happen. Hopefully the matter will be attended to during the first half of 2016.

On 20 May 2015 the Department of Trade and Industry (DTI) published a National Liquor Policy Review document as General Notice 446 of 2015 in *Government Gazette* 38808. Many attorneys, on behalf of their clients, have submitted comments. Our Committee offered its assistance to the DTI.

On 13 February 2015 the DTI published the National Liquor Norms and Standards that must be complied with nationally in respect of manufacturing and distribution activities over which the National Liquor Authority has jurisdiction. They deal with issues such as age verification of minors; supply of liquor to a minor which makes it an offence for any person to purchase liquor for or on behalf of a person under the age of 18; the sale or supply of liquor to intoxicated persons; payment of income tax; police clearance certificates; the provision of free drinking water and free condoms; as well as the issue of weapon-free liquor premises. They also prescribe uniform trading hours and record keeping. It is argued that some of these issues have to be complied with only once they have been included in the provincial liquor legislation of each province, in light of the provisions of the Constitution, 1996.

The Northern Cape Liquor Authority does not experience many problems and its service delivery has improved markedly. Its administrative efforts are commended.

There seems to be a huge problem with the Mpumalanga provincial legislation and it is reported that the KwaZulu-Natal Liquor Authority is also struggling to provide much needed services.

Limpopo and North West still function under the previous Act, being Act 27 of 1989. It has been reported that they could also improve their service delivery. The North West Liquor Authority's knowledge of the enabling Act and its provisions and the procedures which much be followed by the authorities, is insufficient. This is of huge concern.

It is, therefore, clear that almost all of these provincial liquor authorities do not provide the services they are expected to provide. It is every citizen's constitutional right to receive a fair administrative process and to participate in an already struggling economy. Improved service delivery will assist in creating job opportunities and allow citizens to participate in the economy. Therefore, attorneys dealing with liquor matters are requested to provide the LSSA Liquor Matters Committee with their problems and, if possible, solutions to

these problems to enable the Committee to convey these to the different provincial liquor authorities to try and ensure that these boards improve their services dramatically..

Kobus Burger,

Chairperson, Liquor Matters Committee

MAGISTRATE'S COURT COMMITTEE

Members: Graham Bellairs (Chairperson), Johan Fourie, Vanessa Graham, Jan Janse van Rensburg, Niclas Mabus, Bukky Olowookorun, Gerhard Painter, Praveen Sham, Thami Tembe and Zenobia Wade

Whereas the Committee met only on two occasions in the reporting period, its agenda was lengthy on both occasions. Its work focused on two areas, namely the numerous amendments sent out for comment by the Rules Board for Courts of Law and the proposed legislative amendments in the Debt Collectors Amendment Bill.

The activities of the Rules Board and in particular of its Magistrate's Court and Costs Committees have been frenetic, and numerous proposed amendments to the rules and tariffs were received for consideration by the Committee. The most important of these were the following:

- The need for the attachment of a notice of intention to defend to a founding affidavit in support of an application for summary judgment and amendments to the rule to provide for 'service' of the notice to defend. This was necessitated as a result of certain defendants serving notices to defend but failing to file the notice at court. As a result, the courts have refused to grant summary judgment as the notice had not been 'delivered' as required by Rule 14 and plaintiffs would then be obliged to request default judgment after much time delay. The amendment to the rule, therefore, assists the plaintiff in ensuring that the court is placed in a position to grant summary judgment by referring to the notice to defend as confirmation of its service.
- The rule relating to barring of pleadings is being aligned with the High Court rule and consolidated in Magistrates' Courts Rule 21B. The final rule is awaiting the approval of the Department of Justice and Constitutional Development. The no-bar period is being consolidated into that rule as well. A comprehensive review of Rule 12 was undertaken by the Rules Board and the Committee submitted its comments to the board.

- The Rules Board is considering an alignment of the rules relating to sales in execution of immovable property with the introduction of terms and conditions in a similar format to those to be found in the Uniform Court Rules. The alignment is extensive and comment has been submitted in this regard.
- A request for comment on the methodology of taxing costs in applications for custody, maintenance and contributions towards legal costs under Rule 58 was received. The Committee has responded on the basis that the costs of applications of this nature should be taxed and allowed on the same basis and on the same tariff as any other application and, furthermore, that attorneys should be entitled to charge their clients on an attorney-and-own-client basis in the same manner as they would in any other aspect of a divorce matter. The Committee's response has gone further and has proposed that the provisions of the rule be amended to allow for the applicant to reply to the respondent's answering affidavit. The Committee holds the view that the issues covered by the rule are too important to be dealt with in a summary manner under the present rule.

The proposed amendments to the Debt Collectors Act are far reaching and a cause for grave concern to the attorneys' profession. The most concerning of these are the proposed alignment of the debt collectors' tariff with that of the attorneys' costs as set out in the Magistrates' Courts Tariffs, requiring attorneys to register as debt collectors and, furthermore, making attorneys who are registered as debt collectors subject to the disciplinary proceedings of both the Debt Collectors Council and of the relevant law societies. Much time and effort has been spent in obtaining and collating comment from the provincial law societies and attorneys' firms. A comprehensive collation of all comments was prepared by the Committee for submission to the Justice Department, together with the representations of the various contributors.

The work of the Committee continues.

Graham Bellairs,

Chairperson, Magistrate's Court Committee

PERSONAL INJURY COMMITTEE

Members: Jacqui Sohn (Chairperson), Lindy Langer, Jan Maree, Azwifaneli Matodzi, Vincent Matsepe, Benock Shabangu and Mikateko Ignatius Shirilele

Road Accident Fund Benefits Scheme (RABS)

In February 2015 the Parliamentary Portfolio Committee on Transport was advised that the Road Accident Fund Benefits Bill was not ready for implementation, following input sourced from the public consultation process. The chairperson of the committee, Dikeledi Magadzi, said that the committee had accepted the explanation from the Transport Department on the delay in finalising the Bill and that the public consultation process should not be a mere formality to conform with legislation. It was reported that the Department had indicated that family support, income and support benefit, funding model and the benefit levels – issues that all emanated from the public consultation process – were issues that delayed the finalisation of the RABS Bill and that issues raised by the community were still being researched.

Indications are that the Bill is still a priority for the Transport Department and is likely to resurface during the course of 2016.

Road Accident Fund Amendment Bill, 2014

This Bill was published for comment on 3 November 2014 and submissions were made by the LSSA. Since the closing date for comment, there has been no further public announcement regarding the fate of the Bill or any amended version.

General

The Road Accident Fund (RAF) has continued expanding its 'footprint' despite its ongoing cash flow constraints. Although payment of settled claims appears to have improved somewhat over recent months, the latest report on the RAF's financial status from its finance department warns that the deduction of the diesel rebate has resulted in a lower net fuel levy for the RAF for November 2015 than it received before the 50c increase came into effect in July 2015. Further, according to the report, as at 24 November 2015 the amount requested for payment exceeds R10 billion and is due to more than 6 000 'service providers'.

No doubt, the shortfall in cash flow will be used to good ef-

fect in motivating the urgent need for the implementation of a 'cheaper' system of RAF benefits. The problem is, however, that the current draft RABS Bill proposes benefits that probably cannot be accurately costed in advance of implementation, effectively provides a cross subsidy for a failing public health system which will be unable to cope with the influx of road accident victims denied private health care and denies those seriously injured road accident victims – who are entirely dependent on the benefits provided by the scheme – any real quality of life.

Add to this the removal of common law rights to recover from the guilty party – who in the majority of cases will probably be a commercial road user – then one could speculate whether the proposed system will not prove to be more inflationary, particularly for the innocent road accident victim as well as for the motorist, than a further increase in the fuel levy.

If the RABS Bill is to be implemented in anything like its current form, it is submitted that it should be only with the abolition of common law rights removed, thus allowing the innocent victim recourse against the wrongdoer for damages not covered in the Bill.

It is also suggested that the introduction of a compulsory top-up insurance scheme (preferably to be established in the private sector) to cover those 'common law' claims not covered by the proposed scheme, should be investigated either when Parliament considers implementing compulsory material damages insurance for motorists or in conjunction with the Bill. Even if the compulsory top-up insurance compensation thus provided is capped at a reasonable level, this should provide some measure of relief for the seriously injured, and the cost would be spread across the whole pool of motorists, thus providing economies of scale. Motorists who seek complete protection could do so by buying a third layer of cover, alternatively top-up disability/accident insurance.

Section 35 of the Legal Practice Act 28 of 2014

Parts 1 and 2 of Chapter 10 of this Act came into effect on 1 February 2015, thus triggering other time frames for the implementation of the remaining chapters, including Chapter 3 which regulates legal practitioners.

Practitioners should be aware in particular of the provisions of s 35 of Chapter 3 which, as currently drafted, will require that practitioners in litigious and non-litigious matters provide a client with a detailed fee estimate in writing before accepting an instruction. In the written estimate, details must be furnished of the financial implications including fees, disbursements and other costs, the hourly rate of the practitioner, the right to negotiate on rates, the work to be done at each stage of the anticipated litigation, the likelihood of

employing counsel and counsel's fees depending on seniority, the consequences of withdrawing at a later stage as well as the costs recovery regime. In addition, the content of the estimate must be explained verbally in full. Failure to comply with any of the provisions will be regarded as misconduct and, pending a determination from the Legal Practice Council as to what amounts are to be paid, the client is not liable to pay any fees, at all.

Although s 35 does state that the provisions do not preclude the use of a contingency fee agreement as per the Contingency Fees Act 66 of 1997, in terms of the latter Act, practitioners are required to set out their 'normal' fee arrangements which would, in turn, have to comply with s 35.

Although the written estimate will serve as evidence of itself, it will be open to any client to raise non-compliance with any aspect of this section and thus delay payment of fees and disbursements pending the determination of the Legal Practice Council, which may take several months to be forthcoming. The section is silent as to whether a client, who is now not obliged to pay any legal costs pending the determination, is or is not entitled to demand that the practitioner pay over the entire proceeds of the litigation pending the determination. It is suggested that this be addressed so as to make it clear that the proceeds are held in trust, in their entirety, pending the determination of the Legal Practice Council.

Jacqui Sohn,

Chairperson, Personal Injury Committee

PRACTICE DEVELOPMENT COMMITTEE

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

The Practice Development Committee (PDC) continues to give input to the Attorneys Development Fund (ADF) as the chairperson of the PDC attends all the ADF meetings.

The PDC views mentorship as one of the effective ways of skills transfer which can lead to development of practices. The Committee recommitted itself to introducing mentorship so as to develop the practices of small-firm practitioners.

The PDC supports the presentation of practice management-related seminars. Two practice development seminars are planned for 2016 with one topic presented in the first half of the year and the other in the second half.

A seminar on 'Grow Your Practice: Why and How' was offered in a few centres. This seminar was also presented in some of the remote areas. It was presented at a nominal fee to ensure that the targeted delegates, being single and small firm practitioners, were able to attend. Due to the great need that was expressed by attorneys in the areas where the seminar was not presented, we plan to present this seminar again in the near future.

A meeting of the representatives of the Practice Management Extension Committee (PMEC) from the four statutory law societies was held on 1 October 2015. This Committee is responsible to hear applications for extensions and exemptions relating to the practice management training (PMT) course. The purpose of the meeting was to discuss the challenges faced by the Committee and how processes at all four law societies could be standardised to ensure a uniform approach.

Due to the majority of students who are registered for the PMT course complaining about the course taking most of their time, a new format of the course was introduced in 2015. In terms of this format, students attend classes only for the three assessment modules, and do self-study and online self-assessment for the other five modules. This new format was debated thoroughly before its introduction to ensure that the standard of the training would not be compromised.

Experts will do DVD recordings which will be made available to students as part of the study material. The purpose will be to supplement the material and draw students' attention to practical scenarios. A facility is also set up on the online e-LEADer platform for students to pose questions to instructors, who will respond within a specified period.

2015 Practice management statistics

	First Intake: 365	Second Intake: 543
Attendance	61	82
Johannesburg	24	37
Cape Town	12	-
Durban	7	12
Pretoria	18	33
Distance	304	461
Johannesburg	84	136
Cape Town	47	66
Durban	54	59
Kimberley	9	7
Pretoria	65	103
Witbank/eMalahleni	12	11
Bloemfontein	11	8
Polokwane	13	24
East London	24	29
Potchefstroom	9	11
Port Elizabeth	6	7
Individual modules		
Risk and management insurance	25	31
Law business finance	30	32
Strategic management	25	26

The PMT course was offered in the above centres in 2015, and will be introduced also in Pietermaritzburg in 2016.

Praveen Sham,

Chairperson, Practice Development Committee

Ogilvie Ramoshaba,

Senior Manager: LEAD Practice Management Training

PRO BONO COMMITTEE

Members: Ilan Lax (Chairperson), Poobie Govindasamy, Shaun Hangone, Vincent Matsepe, Mfundiso Mavonya, Bongzi Mpitso, Mohamed Randera and Liesl Williams

The legal profession has made a commitment to improve access to justice. *Pro bono* services reflect a people-centred approach by the profession through voluntary service by practitioners to achieve this undertaking. All provincial law societies have adopted the mandatory *pro bono* scheme and, while significant progress is being made in the roll out of the scheme, much more can be done to broaden the participation of practitioners to ensure better and more effective access to legal services by those people most in need. The promulgation of the Legal Practice Act 28 of 2014 and the changes to the profession it will effect, offer a unique opportunity for transition and reflection around the scope and channels for implementation of *pro bono* services.

Ricardo Wyngaard had served as the chairperson of the Committee for a number of years and resigned at the end of July 2015 to take up a full-time post at the LSSA. We are indebted to him for his able leadership of the Committee. Ilan Lax and Mohamed Randera were appointed Chairperson and Deputy Chairperson respectively in October 2015.

The LSSA's *Pro Bono* Committee held two meetings during 2015, on 28 January 2015 and 22 October 2015.

Terms of reference

The Committee adopted revised terms of reference in October 2014 and these remained unchanged for the 2015 year as follows:

To assist and advise the LSSA Council with recommendations and to

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

The same terms of reference will guide the Committee in 2016.

Service as Small Claims Court commissioners

The proposed meeting with the LSSA Small Claims Court Committee did not materialise. However, communication was established and any matters of mutual interest or concern will be discussed via the LSSA Professionals Affairs department. Whereas there remains a need to encourage more attorneys to avail themselves as Small Claims Court commissioners, some progress had been made with additional Small Claims Courts being opened across the country. Recognition of long-serving members at law society annual general meetings provides an important encouragement for more members to participate in this important avenue for access to justice. Obtaining reliable statistics of the number of practitioners serving as commissioners remains an administrative challenge. The Committee will continue to prioritise this during 2016..

Pro bono at provincial law societies

At present the low numbers of members reporting on their *pro bono* activities is a serious problem which affects the reliability of the statistics being collated. In addition, each of the provincial law societies provide various statistics of the number of requests for *pro bono* assistance that their members deal with. In some case the matters are referred to ProBono.Org whereas in others they are referred to Legal Aid South Africa. Others are referred directly to members by the respective law society. There is a serious problem in collating the statistics as each entity gathers statistics in slightly different format. This makes reporting nationally very difficult. A priority for 2016 will be to harmonise the reporting methodologies to ensure consistency across the provincial law societies. This will include obtaining more reliable statistics of the number of practitioners serving as Small Claims Court commissioners.

Pro bono coordinators' meeting

The *pro bono* coordinators from the four provincial law societies have remained in close communication in an effort to share and resolve issues of mutual interest. (Not all societies have specifically tasked coordinators. This is not always optimal.) The October meeting again provided a useful opportunity in this regard. The coordinators were able to meet and discuss problem areas. They remain committed to finding ways to integrate and harmonise data-capturing, workflow processes and operational methods employed at their respective offices with a view to achieving uniformity where feasible. These endeavours will be reported to the Committee, which will be able to assist with policy and other advice.

Pro bono clearing house

As reported in the previous annual report of this Committee:

'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. The profession will have to commit, in no unclear terms, on how it will execute and promote *pro bono* services to the most vulnerable sectors in society.'

This remains a key priority for the Committee and the profession will need to find creative ways to ensure that effective and efficient mechanisms are found to ensure greater participation by all practitioners so as to better provide improved access to justice for the most in need.

Other matters considered during 2015

The Committee noted that the Legal Practice Act 28 of 2014 refers to 'community service' but makes no reference to *pro bono* service. The Committee agreed that it will be important to be proactive in relation to exploring the relationship between community service and *pro bono* activities. This will be a priority for 2016.

The Committee contributed to the development of the LSSA's Proposal on Remand Detainees. Due to problems around liaison with the Department of Correctional Services and Legal Aid South Africa, and shifts in focus requested by the Criminal Justice Systems Review Committee, the project has required further consideration and reformulation. Similarly, the issue of prison visits will also need to be revisited through the LSSA Criminal Law and Constitutional Affairs and Human Rights Committees.

Liaison with the General Council of the Bar's *Pro Bono* Committee and other stakeholders had taken place in an effort to harmonise approaches to *pro bono* services. These will be continued in the forthcoming year.

A number of policy issues emerged from the draft uniform rules. These related to varying approaches regarding the treatment and eligibility for *pro bono* assistance of some non-profit organisations. Unless this is addressed and clarified, it could have a significant impact on the provision of *pro bono* services to such entities, and the degree to which some members are able to claim time already being spent assisting such entities on a voluntary basis.

The Committee also discussed and considered criteria for recognition of practitioners who provided exceptional *pro bono* services. The development of a uniform approach to such recognition will be further facilitated in the year ahead.

A number of Committee members also serve as directors of ProBono.Org. This has proved as an effective liaison with this important partner and stakeholder. ProBono.Org has a joint project with the LSNP and acts as a de facto clearing house for referral of matters in some areas. It also has memoranda of understanding with the LSNP, KZNLS and CLS.

The Committee has requested the investigation of an internet-based workgroup forum to facilitate discussion between Committee members and to speed up communication.

Conclusion

The Committee believes that *pro bono* service by all members of the profession must be promoted and encouraged by the LSSA and its constituents (and given the transition to the new governance structure, the Legal Practice Council) so that the profession is able to demonstrate a meaningful contribution to broadening access to justice.

We express our appreciation to the many members of the four law societies currently rendering *pro bono* services as well as our partners in these endeavours, Legal Aid South Africa, ProBono.Org, the Department of Justice and Constitutional Development as well as the Department of Correctional Services.

Ilan Lax,

Chairperson, Pro Bono Committee

PROPERTY LAW COMMITTEE

Members: Selemeng Mokose (Chairperson), Dave Bennett, John Christie, Sharon de Lange, Hussan Goga, Anita Gounden, Xolani Mpeto, Ken Mustard, Kanyi Peter, Wilfred Phalatsi, Anri Smuts, Anton Theron, Charl Theron and Mp-ostoli Twala

Despite only three meetings being held during 2015, the Committee continues to be a very active one, dealing with issues in the profession.

Members of the Committee were invited to attend the annual Registrar's Conference, which was held in Centurion from 12 to 15 October 2015. Representatives of the provincial law societies per deeds registry were also invited by the Chief Registrar of Deeds to attend a portion of the conference. In this way, both local and national issues with the Deeds Offices in the respective areas were dealt with first hand. This was the first time that

the Chief Registrar has invited representatives per deeds registry. As always, the contribution of the profession to discussions on the policies of the Department of Rural Development and Land Reform were much appreciated.

The relationship with the South African Revenue Service (SARS) as a role player has continued during 2015. Regular meetings are held with SARS as and when issues arise around proposed changes in procedures relating to properties.

The Committee has continued to liaise with other role players, notably the National Home Builders Registration Council (NH-BRC), the Banking Association of South Africa (BASA) and the Estate Agency Affairs Board (EAAB) on matters of mutual interest. Such meetings have been fruitful and positive.

The Council of the LSSA raised concern that the claims against the Attorneys Fidelity Fund (AFF) relating to conveyancing matters are on the increase and the Committee was tasked to consider appropriate ways to settle the issue in order to protect both conveyancers and consumers, as well as to ensure that defaulting practitioners are dealt with appropriately.

Other matters that the Committee dealt with include

- the Spatial Planning and Land Use Management Act 16 of 2013;
- State guarantees;
- the Contaminated Land Register;
- the review and amendment of the Planning Profession Act 36 of 2002; and
- notices in terms of s 118 of the Local Government: Municipal Systems Act 32 of 2000.

Members of the Committee representing the profession continue to give input into the proposals and participate actively in the Deeds Registries Regulations Board and Sectional Titles Regulations Board.

Selemeng Mokose,

Chairperson, Property Law Committee

SMALL CLAIMS COURT COMMITTEE

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

The Committee met on 25 September 2015 and inter alia the following items were discussed:

Process to compel witnesses to appear in court

It was noted that, in terms of current legislation, no provision is made for a commissioner to compel a witness to attend a hearing of the court. The Department of Justice and Constitutional Development has now indicated that an amendment of the rules to make it possible for a commissioner to compel the presence of the witness at court is being considered.

Review of Small Claims Court judgments

Due to the costly procedure of taking decisions of a Small Claims Court commissioner on review to the High Court, as is required by the current legislation, it was recommended that decisions of the commissioners of Small Claims Courts should be reviewed by a panel of senior commissioners, who will then have the authority to review and, if necessary, overturn and replace the judgment of a commissioner with an appropriate sentence.

The Justice Department has indicated that this recommendation will be submitted to the Rules Board for Courts of Law for consideration.

Effect of recent legislation on the functioning of the Small Claims Courts

The Committee has taken note of the problems associated with the application of the Consumer Protection Act 68 of 2008 (CPA) as far as the jurisdiction of the Small Claims Courts is concerned. It was decided to obtain a legal opinion on the effect of the CPA on the jurisdiction of the Small Claims Courts. According to the legal opinion obtained, it would appear as if Small Claims Courts are not bound by the CPA, but it was nevertheless decided that further investigation regarding this matter must be conducted.

Training of clerks who issue summonses etc in Small Claims Court matters

The Committee took note of the fact that the current training of the clerks operating in the Small Claims Courts was not sufficient and that much time was wasted by commissioners in court when trying to ascertain what the exact nature of the dispute is as set out in the summons. The Committee recommended that senior and experienced commissioners be utilised to assist in the training of the clerks.

Disciplinary steps to be taken against a commissioner who fails to perform up to standard

The conduct of commissioners who do not perform satisfactorily should also be referred to the panel of senior commissioners envisaged above.

Tariffs

It was noted that, to a large extent, the aims of the Small Claims Court procedure were being frustrated by the tariffs levied by the sheriffs in executing process issued out of the Small Claims Courts. This matter has also been addressed by the Justice Department with a recommendation that unclaimed funds in the trust accounts of sheriffs should, after a period of time, be paid over to the South African Board for Sheriffs, and the funds could then possibly be utilised to pay for the cost of executing writs in the case of indigent judgment creditors.

Several members of the Small Claims Court Committee also serve on the National Steering Committee for Small Claims Court under chairmanship of the Deputy Minister of Justice and Constitutional Development, John Jeffrey. The Deputy Minister has, on numerous occasions, expressed his appreciation for the services rendered by members of the legal profession in serving as Small Claims Court commissioners. The Committee once again decided to appeal to all practitioners who qualify for appointment as Small Claims Court commissioners to make themselves available for service in the courts.

Johan Gresse,

Chairperson, Small Claims Court Committee

TAX MATTERS AND EXCHANGE CONTROL COMMITTEE

Members: Robert Gad (Chairperson), Jenny Faber, Iqbal Ganie, Nano Matlala, Vica Ngqasa, Hellen Phaleng-Podile and Dirk Terblanche

The Committee met during February 2015 to discuss a wide range of topics. One of the main action points concerned raising the profile of attorneys in tax practice. A national seminar was discussed.

Various interactions ensued with the South African Institute of Tax Practitioners (SAIT) during the middle part of the year in relation to SAIT's own national tax seminar for 2015. A meeting was held with SAIT representatives who agreed on a cooperative approach in appropriate instances. Our Committee was accordingly represented at the 2015 SAIT seminar albeit not as a presenter, although it is contemplated that tax attorneys would be invited to present at future seminars.

Previously, the Committee had initiated meetings with the South African Reserve Bank and the South African Revenue Service (SARS). In both instances the Committee was able to bring to the attention of the authorities areas of concern to the profession and the public. These matters were received in a positive manner from the authorities. It was agreed that such interactions would continue.

The Committee reviewed proposals made by the Davis Tax Committee in relation to the taxation of trusts and estate duty. A submission prepared by the LSSA Deceased Estates, Trusts and Planning Committee was reviewed and comments were made for inclusion in such submission.

Lizette Burger has a very good relationship with SARS and she has regular access in order to bring to their attention tax operational issues, such as the challenges being faced by attorneys in tax compliance and in reaction to the Tax Administration Act.

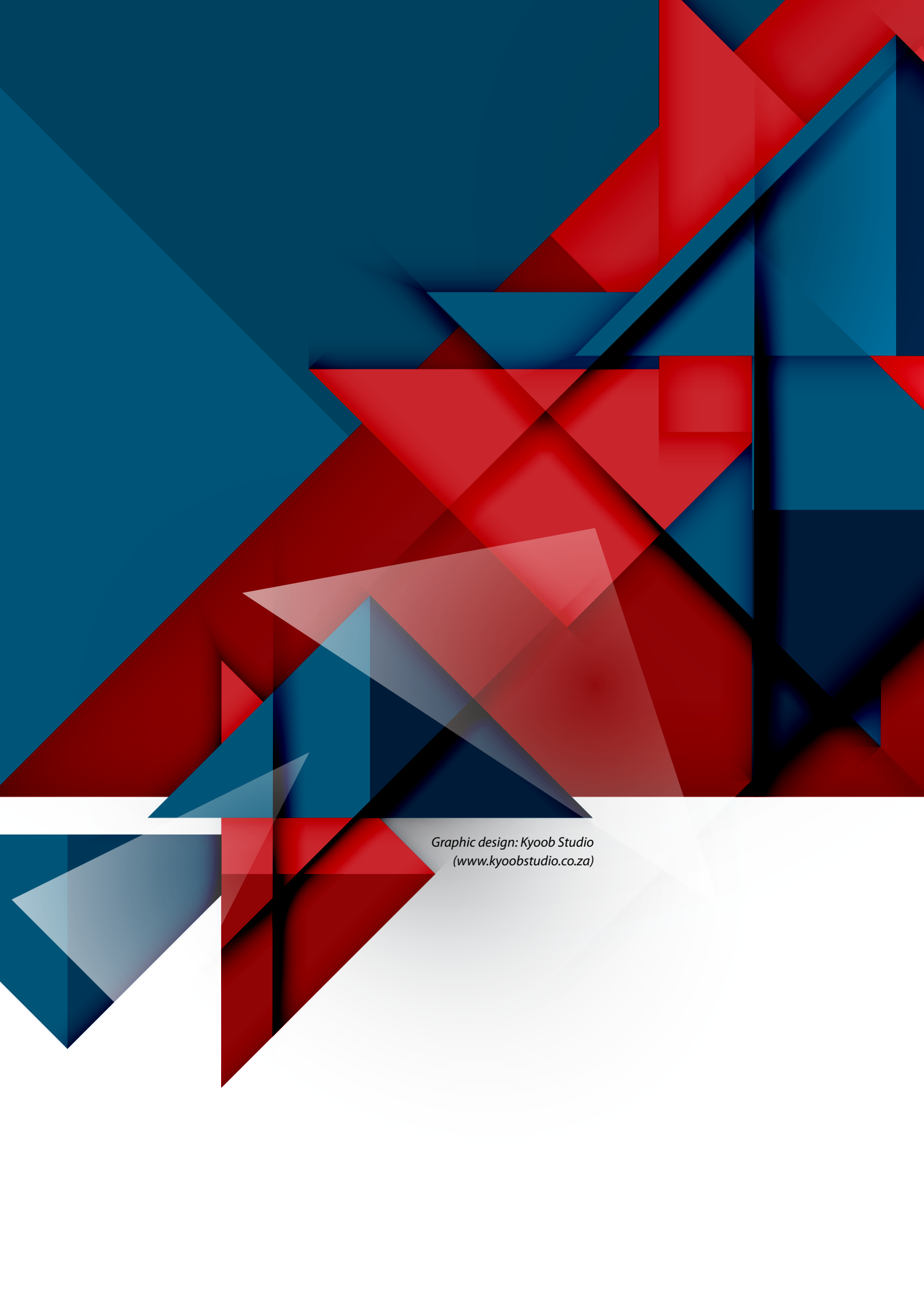
Members of the committee also attended to operational and substantial law 'stakeholder' meetings with SARS.

As chairperson, I would like to thank my Committee members for all of their input and efforts during the course of 2015. I would also like to thank Lizette Burger for her efforts as well as those of her personal assistant, Kris Devan.

Robert Gad,

Chairperson, Tax Matters and Exchange Control Committee





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