



LAW SOCIETY
OF SOUTH AFRICA

ANNUAL REPORT

2017/2018

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



Committed to
Building a Better
Legal Profession
for All



LAW SOCIETY OF SOUTH AFRICA

ANNUAL REPORT April 2017 to March 2018



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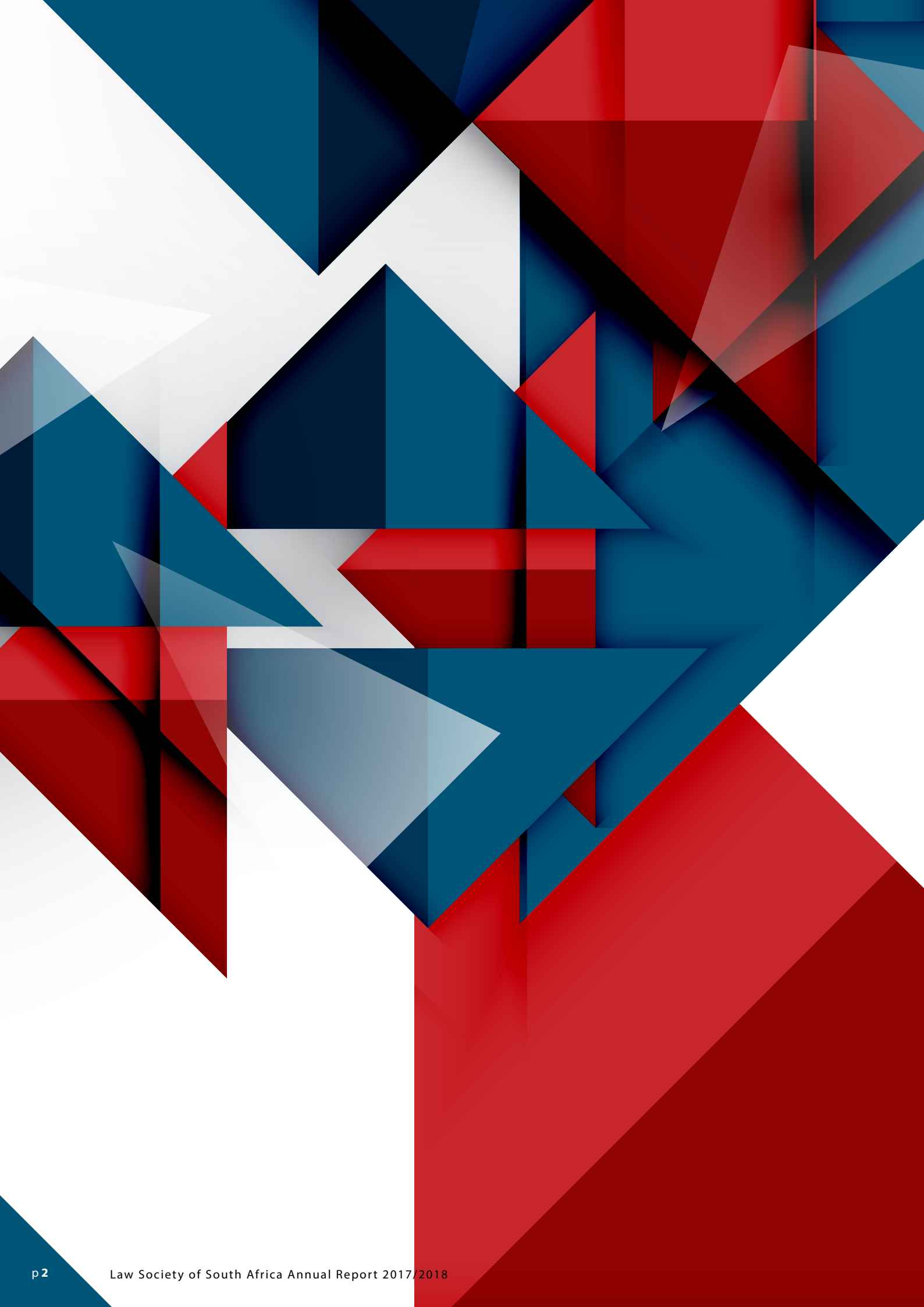
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We, the constituent members of the Law Society of South Africa – the Black Lawyers Association, the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces and the National Association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

Forum 1, Level 5, Braampark, 33 Hoofd Street,
Braamfontein, Johannesburg
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Cape Law Society

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Law Society of the Free State

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Law Society of the Northern Provinces

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E-mail: communication@lnp.org.za
www.northernlaw.co.za

National Association of Democratic Lawyers

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Since taking office in April 2017 at the Law Society of South Africa (LSSA) annual general meeting in Port Elizabeth, the Legal Practice Act 28 of 2014 (LPA) and its implementation have featured prominently on our agenda.

We have had to balance various competing interests and agendas in what has proven to be complex and emotional negotiations. We are, however, pleased to record that recommendations were submitted to the Minister in October 2017 and draft regulations were submitted to him at the end of January 2018. A historic moment was achieved when agreement was concluded between the four statutory provincial law societies for the transfer of their staff and assets to the Legal Practice Council (LPC) and their final winding down by 31 October 2018.

Throughout this process it has become clear to us that we, as the leaders of the legal profession, need to set aside our differences and politics in order to progress the agenda of the greater good.

The Legal Practice Amendment Act 16 of 2017 (LPAA) came into operation on 18 January 2018. The LPAA amended the Legal Practice Act by extending the lifespan and mandate of the National Forum to ensure a smooth handover from the provincial law societies to the LPC, envisaged to take place by the end of October this year.

At the LSSA our planning for an uncertain future has continued in order to anticipate the coming into operation of the LPC once the LPA is fully implemented.

We as a profession have agreed that there remains the need for a national body that will represent the interest of all attorneys, such as the LSSA. In order to assist such a new LSSA, the four law societies have successfully negotiated the retention of some of their nett assets in cash in order to plan for the future LSSA to continue performing its non-regulatory functions. After extensive negotiations, agreement was reached with the NF at the end of January 2018 that the law societies would retain R50 million to be transferred to the LSSA to support it during the transition period.

The LSSA set up a Transitional Committee to consider the way forward for the LSSA once the four provincial law societies cease to exist. This committee has been considering various options for the formation of a unitary national body to protect the interests of all legal practitioners.

We are convinced that the profession will require such a national unitary body – possibly including all legal practitioners one day – that will speak on behalf of the profession with one voice to the government, the future LPC, the public, the media and the international community. However, the formation of a unitary body can be achieved only once transformation imperatives are identified and political differences are set aside.

We have been and will be meeting with practitioners across the country to canvass their views for a national body to represent, support and empower them in the new dispensation.

Within this context of uncertainty, we must take a moment to reflect on the loyal and committed staff at the LSSA, who through these trying times continue to serve the profession with such dignity and professionalism. They do this without the security that we as the profession have failed to give them. They must be saluted. The LSSA Management is embarking on a change management process to prepare staff for the changes in the dispensation expected later this year.



David Bekker and Walid Brown, Co-Chairpersons

Training and development always remains a high priority at the LSSA, as is the wellness programme available to the staff. This is outlined further in the Human Resources report on page 18 of this Annual Report.

The late Nic Swart

We must record our deep sadness at the death of the Chief Executive Officer and Director of Legal Education and Development, Nic Swart on 10 August 2017. His loss has been keenly felt.

We wish to reiterate our public statement made on the day of his passing: The LSSA and the profession have lost a colleague, a friend, a mentor, a leader and an innovator passionate about the legal profession in general and legal education in particular.

Nic led the LSSA and its various departments ably as CEO since 2011 through times of growth and achievement locally, regionally and internationally, but also through the difficult and at times contentious processes around the transition to the new dispensation. A consummate educationist and professional, he spearheaded and nurtured legal education for the profession since 1989. He dedicated himself to ensuring that practical vocational training and continuing legal education continue to be accessible and affordable for aspirant legal practitioners and those already in practice. Nic was especially passionate about the empowerment of young lawyers.

Our profession owes an incalculable debt of gratitude to Nic Swart, as do the thousands of attorneys who have received training, guidance and support from the School for Legal Practice and the LEAD department over nearly three decades.

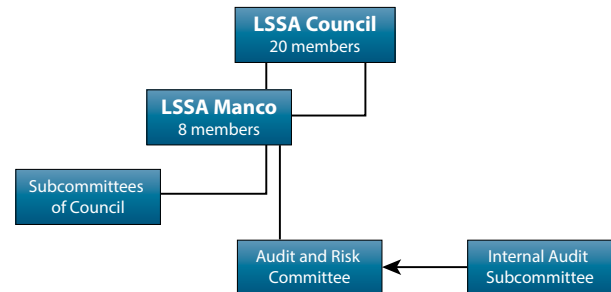
Governance

The LSSA Council is committed to the highest level of corporate governance, integrity and ethics. The Council is ultimately responsible for ensuring that governance standards are set and met. The Council is responsible for strategic direction, risk management and the achievement of the objectives and performance of the LSSA.

The Management Committee (Manco), is the executive committee of the LSSA Council. Manco is mainly responsible for determining policies, monitoring, with strategic oversight of the activities and executing the decisions and strategy of the Council. Other issues, as mandated by the Council and/or Manco, are dealt with at Senior Management level as permitted in terms of a formal delegation of authority that directs limits of delegation and approval mandates.

Manco, with the support of Senior Management, also aims

to imbue a culture of compliance and good governance throughout the LSSA.



Briefing patterns

One of the issues that has been high on the LSSA's agenda is transforming the profession and the challenge to change the skewed briefing patterns by the State and state-owned enterprises. The goal is to work towards eradicating the race and gender-based discrimination and the exclusion of black and women legal practitioners from obtaining meaningful legal work. The Action Group on Briefing Patterns, which includes representatives of the attorneys' and advocates' professions, the Justice Department and the large law firms, drafted the Procurement Protocols for the Legal Profession, which were adopted by both branches of the profession and which were launched formally at a function in Kempton Park at the end of June 2017. The newly appointed Deputy Chief Justice Ray Zondo was the keynote speaker.

We commend those attorneys' firms who have adopted the protocols and agreed to report on their briefing patterns. Those who have adopted the protocols undertake to positively promote the procurement of legal services of black and women practitioners; to actively create better access for black and women practitioners; to bridge the skill set deficits, if any, among black and female practitioners; to increase the exposure of black and female practitioners to all areas of the law; to help broaden the pool of black and women practitioners; to ensure that fair selection criteria are used in the briefing of black and women practitioners; to promote a change in attitude so as to promote the inclusion of black and women practitioners in the main stream of practice; to render bi-annual reports for the monitoring of compliance with the aims of the protocols; to be held accountable; and to widen the pool of practitioners and ultimately to transform the profession. A transformed profession will lead to a transformed judiciary and progressively realise the true potential of this profession.

Litigation

The LSSA is involved in three high-profile matters, two of which were heard in February 2018.

Proxi Smart Services (Pty) Limited v Law Society of South Africa et al: Proxi Smart has proposed a business model to render certain conveyancing-related services which are presently performed by conveyancers. The view of the LSSA and the provincial law societies, is that the proposal by Proxi Smart cannot be supported as the full conveyancing process is regarded as professional work, and should remain so in the interest of the public. The matter was heard by a Full Bench in the High Court: Gauteng as a special motion on 6 and 7 February 2018 and judgment was reserved. We must thank the Attorneys Fidelity Fund for agreeing to fund all costs which arise from this litigation. Their continued commitment to the profession is duly noted.

SADC Tribunal: The LSSA's matter 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, was heard by a Full Bench in the High Court: Gauteng on 5 February 2018. The 2014 Protocol deprives citizens in the SADC region – including South Africans – of the right to refer a dispute between citizens and their governments to a regional court if they fail to find relief in their own courts. Six Zimbabwean farmers joined the matter as applicants, and the Centre for Applied Legal Studies and the Southern Africa Litigation Centre were admitted as *amicus curiae*. The LSSA welcomed the judgment in its favour on 1 March 2018. This was a victory for all South Africans, and we hope for others in the SADC region too.

Women's Legal Centre Trust v President and six others: The LSSA has joined this matter as *amicus*. The applicants have sought to declare the respondents' refusal to enact legislation recognising Muslim marriages and divorces, as failing to act in accordance with their constitutional obligations. The matter was partly heard in the High Court: Western Cape division in August and was postponed.

Engagement

The LSSA engages on an ongoing basis with stakeholders and on various committees and forums. We will highlight only a few.

The LSSA has noted with concern the lack of any proper and structured consultation between the profession and the Department of Rural Development and Land Reform regarding the realignment of the Deeds Offices. We will be monitoring developments, but in the meantime attorneys are urged to participate in stakeholder engagements on this issue. In addition, the Electronic Deeds Registration Systems Bill has been published. It is envisaged that e-registration will be phased in, and conveyancers should familiarise themselves with the impact that it will have on practice.

The LSSA is represented on the National Efficiency Enhance-

ment Committee chaired by Chief Justice Mogoeng Mogoeng, and also on its working committee, the National Operations Committee (NOC). Issues that are dealt with include court directives, overcrowding at correctional centres, bail, and infrastructure problems at the courts, court procedure, pre-trial issues and long-outstanding judgments. We urge attorneys to raise problems in their local courts with the Provincial Efficiency Enhancement Committees that feed into the national structures.

The LSSA is seriously concerned at the criticism levelled against the attorneys' profession in the context of medical negligence and Road Accident Fund (RAF) claims. On the former, the LSSA continues to seek a meeting with Health Minister Aaron Motsoaledi to engage with him on any policy being planned; and on the latter, the LSSA meets regularly with the RAF, and met with its management in October 2017.

The LSSA has met with the General Council of the Bar, Advocates for Transformation, the National Forum of Advocates, the National Bar Association of South Africa and some smaller Bars to discuss issues of mutual interest, particularly with regards to the future of the profession. We intend to invite these and other organisations to participate in discussions to form the envisaged unitary professional body.

The specialist committees in the LSSA's Professional Affairs department meet with relevant stakeholders in their specific fields of specialisation, and when necessary, with representatives of government departments. A full report on their activities appears in the 'Specialist committees report' section in this Annual Report.

With input from these committees, the LSSA has commented on the following draft legislation and documents, among others, since we took office:

- Draft Taxation Laws Amendment Bill, 2017
- Sectional Titles Amendment Bill
- Copyright Amendment Bill (1)
- Amendment of Regulations Relating to Maintenance Pursuant to the Maintenance Amendment Act 9 of 2015
- Draft Electronic Deeds Registration Systems Bill
- Property Practitioners Bill (B-2016)
- Various amendments by the Rules Board for Courts of Law relating to the Magistrates' Courts rules, uniform rules and forms.
- Engagement with the Financial Intelligence Centre on proposed amendments to regulations in terms of the Financial Intelligence Centre Act
- Legal Practice Amendment Bill
- Small Claims Court Act and Rules
- Road Accident Benefit Scheme Bill, 2017.

We wish to highlight our comments to the Justice Portfolio

Committee on the Legal Practice Amendment Bill in September 2017, which Bill was promulgated in January 2018 as the Legal Practice Amendment Act 16 of 2017 (LPAA). When we addressed the Portfolio Committee last year, we pointed out that, although the issue of appearance in the Higher Courts was not dealt with in the Bill, the LSSA was of the view that, for completeness sake, the LPA should address the disparity between the position of attorneys and advocates. Section 25(2) of LPA provides that a legal practitioner, whether an advocate or an attorney, has the right to appear in any court or before any board, tribunal or similar institution.

The LSSA noted that the right of attorneys to appear in the High Court, the Supreme Court of Appeal or the Constitutional Court is restricted in the LPA. In terms of s 25(3), attorneys wishing to appear in these courts have to apply to the registrar for a certificate of right of appearance, which will be issued if the attorney

- has been practising for a continuous period of not less than three years (the period may be reduced if the attorney has undergone a trial advocacy training programme) and is in possession of an LLB degree; (s 25(3)(a)); or
- has gained appropriate relevant experience (s 25(3)(b)).

The LSSA noted that, in terms of the Right of Appearance in Courts Act, 1995 (which will be repealed once the LPA becomes fully operational), an attorney is entitled to acquire the right to appear in the higher courts if she or he has been practising as an attorney for a continuous period of at least three years or is in possession of an LLB degree or a foreign degree equivalent to an LLB degree (s 4(1)(a) and (b)).

The LSSA has stressed that, in future, it will be more onerous for many attorneys to acquire a right of appearance certificate than at present, since, instead of years of practice or an LLB degree, the test will now be years of practice and an LLB degree. Conversely, advocates will be entitled to appear in any court without having to meet the requirements set out in s 25(3).

Unfortunately, our proposal was not taken up in changes to the Bill, but we will continue to lobby Parliament to effect the above amendments to the LPA.

The LPAA did, however, make some important amendments in the interest of attorneys. Subsections 33(1) and (3) of the LPA have now been amended to provide that only practising legal practitioners may perform certain acts or render certain services by inserting the word 'practising'. Section 114 of the LPA, which regulates the position of existing advocates, attorneys, conveyancers and notaries and looks after vested interests, has been amended to provide that attorneys who had the right of appearance in the High Court of South Africa, the Supreme Court of Appeal or the Constitutional Court in terms of any law before the commencement of the LPA, will retain that right after the commencement of the LPA.

International engagement

In July 2017 we welcomed lawyers from other African jurisdictions to Durban as we co-hosted the PALU 8th Conference and Triennial General Assembly together with the Pan African Lawyers Union. In August we attended the 18th Annual SADC Lawyers' Association Conference and General Meeting in Gaborone, Botswana.

Our engagement with other African jurisdictions is increasingly important to us and we sent a small delegation to Lagos for the Nigerian Bar Association's AGM in August 2017. We have much to learn from our colleagues in Africa. We also need to support the judiciaries and lawyers in those jurisdictions when their independence is compromised.

As regards our other international engagements, we continued our engagement with the International Bar Association (IBA), Commonwealth Lawyers Association and the BRICS Legal Forum with visits to Hong Kong, China and attendance of the IBA Bar Leaders meeting in Northern Ireland. We attended the IBA conference in Sydney in October and the BRICS Legal Forum in Moscow at the end of November. The LSSA also met with a delegation of the Vice Minister of Justice from China in December 2017.

We will be hosting our colleagues from BRICS countries later this year for the V BRICS Legal Forum which will be held in South Africa on 23 and 24 August 2018.

However, to maximise our relationships in the light of cost constraints, we are in the process of redefining our engagement strategy and reconsidering with whom we wish to engage as against the benefit to the profession and the public.

Communication and De Rebus

During our time in office, in the print and broadcast media, we have

- condemned the scourge of violence against women;
- urged members of the public to have their wills drafted for free by attorneys during National Wills Week;
- welcomed the appointment of Justice Raymond Zondo as Deputy Chief Justice;
- condemned the personal attacks on Judge Bashier Vally and on the judiciary in general;
- urged the Judicial Service Commission to scrutinise judicial candidates for racist tendencies;
- called on Council on Higher Education to consult the legal profession on issues related to the LLB degree and the de-accreditation of certain law faculties to provide the LLB degree; and

- expressed our sadness at the passing of former Co-Chairpersons Judge Jake Moloi in July 2017 and Julian von Klemperer in January 2018.

In December 2017, on the eve of the African National Congress' 54th National Conference, we issued a statement implore the ruling party, its leadership and its structures, to take urgent steps to

- openly support the Judiciary, and respect the courts and their judgments;
- decisively rebuke the Youth League and others who unjustifiably attack and criticise the Judiciary without proper grounds to do so; including personal attacks on judges and unwarranted accusations of overreaching and partiality with ludicrous threats of impeachment;
- restore the status and dignity of the National Prosecuting Authority so that it can serve as an independent and trusted light in the search for truth and justice for all persons in our country;
- level with the people of South Africa as to the true intentions behind state of emergency regulations, a media tribunal and our country's withdrawal from the International Criminal Court;
- openly support and strengthen the Chapter 9 institutions;
- show leadership; take responsibility and restore accountability;
- deal decisively with the state of capture that our country has been mired in and which has affected our economy as well as our standing and credibility in the region, on our continent and internationally, by implementing the remedial action of the Public Protector in the State of Capture report, which had been declared to be binding by the Gauteng High Court;
- ensure that any State representative immediately complies with a court order and only wastes taxpayers' funds on appeals when there are overwhelming legal merits to such an appeal – this should be certified by an independent senior attorney or counsel – to end the days of frivolous appeals; and
- guarantee that the Constitution, Rule of Law and our constitutional democracy are secure.

Practitioners continue to receive regular communication from the LSSA through its electronic newsletter, advisories and regular updates on developments around the LPA.

We urge practitioners to follow the LSSA on Twitter and LinkedIn, LEAD on LinkedIn and Facebook; and *De Rebus* on Twitter and LinkedIn.

We wish to thank all attorneys who participated in the National Wills Week initiative. The number of attorneys drafting free wills grows substantially year on year and attorneys are increasingly publicising the Wills Week through electronic and social media channels. This is an important initiative in terms of which the profession provides tangible, free service

to the community and we receive enormous goodwill for the profession in return.

As regards *De Rebus*, it continues to be the leading communication and educational tool made available to all practising and candidate attorneys in print, online and app format. The circulation figure of the journal is some 24 026, which also includes subscription to individual and overseas subscribers. This has reaffirmed the journal's potential of being used as a continuing professional development (CPD) tool going forward.

2017 saw an increase in interaction across all *De Rebus* digital platforms, The journal's Twitter followers are growing as are the downloads of the *De Rebus* app.

Further developments are covered in the report of the Editorial Committee on page 12 of this Annual Report.

We wish to stress that *De Rebus* remains 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.

LEAD

All the LEAD training programmes have proceeded well this year and a greater number of registrations have been recorded all round. A full report is provided by the Education Committee on page 22 of this Annual Report. It is also gratifying to note that the mentorship programme is making progress. We thank all practitioners who make themselves available as mentors. This is an invaluable service to the profession and the spin-offs for both mentee and mentor are great. We invite senior or experienced attorneys to make themselves available to mentor their colleagues who approach the LSSA and LEAD seeking support and guidance.

A word of thanks

We thank all attorneys who make themselves available to serve on the LSSA committees, to assist with media interviews, those who provide *pro bono* legal services to the public and who serve as Small Claims Courts commissioners. These contributions often receive no accolades, but they are recognised and appreciated.

We also wish to thank the LSSA Council and Manco for their support as well as our firms – Werksmans Attorneys and Cloete & Neveling Inc – for allowing us the space and time to make our contribution to the profession over the past year.

Walid Brown and David Bekker

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
David Bekker ^{*1}	Co-Chairperson	07, 09, 02
Walid Brown [*]	Co-Chairperson	05, 07, 09, 11, 02
Ettienne Barnard [*]	CLS	05, 07, 09, 11, 02
Max Boqwana [*]	Nadel	07, 09, 11, 02
Dave Bennett	LSNP	05, 07, 09, 11, 02
Johan Fouché	LSFS	05, 09, 11, 02
David Geard	CLS	05, 09
Krish Govender ²	Nadel	09, 11, 02
Sbu Gule ³	LSNP	05
Peter Horn	CLS	05, 09, 02
Nolitha Jali	Nadel	07, 11
Rehana Khan Parker ⁴	CLS	11
Nomahlubi Khwinana ²	Nadel	11, 02
Mabaeng Denise Lenyai	BLA	05, 07, 09, 11, 02
Noxolo Maduba	BLA	05, 07, 09, 11, 02
Anthony Millar	LSNP	05, 07, 09, 11
Sam Mkhonto	Nadel	05, 07, 09, 11, 02
Nkosana Francois Mvundlela [*]	BLA	05, 07, 09, 11, 02
Janine Myburgh ⁴	CLS	07, 02
Xolile Ntshulana [*]	Nadel	11, 02
Mvuzo Notyesi [*]	Nadel	05, 07, 09, 11
Lunga Peter	BLA	05, 07, 09, 11, 02
Richard Scott [*]	KZNLS	05, 07, 09, 11, 02
Jan Stemmett	LSNP	05, 07, 09, 11, 02
Jan van Rensburg [*]	LSNP	07, 09, 11, 02
Henri van Rooyen ⁵	LSFS	07

Key:

- 05 – May 2017
- 07 – July 2017
- 09 – September 2017
- 11 – November 2017
- 02 – February 2018
- 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 Bekker was attending other meetings in his capacity as Co-Chairperson in May and November 2017.
2. Mr Govender and Ms Khwinana are alternate members for Nadel.
3. Mr Gule's term ended at the May 2017 meeting.
4. Ms Myburgh and Ms Khan Parker are alternate members for the CLS.
5. Mr Van Rooyen is an alternate member for the LSFS.

^{*} Member of the Management Committee (Manco).

4

REPORT BY MANAGEMENT

As the Senior Management team of the LSSA we wish to record our shock and sadness at the untimely loss of Chief Executive Officer and Director of Legal Education and Development, Nic Swart, on 10 August 2017. We acknowledge his invaluable contribution to the team and to the LSSA, and we continue to miss his quiet wisdom.

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

Operational reports by the LSSA Management appear below.

COMMUNICATION

Communication is central and critical to the relationship between the LSSA and practitioners, and it will become even more so during the transitional period to the new dispensation under the Legal Practice Council which will unfold this year. The LSSA's Communications Department has, and will continue, to keep practitioners informed of developments as the provincial law societies, which often have been the first point of reference for attorneys for many decades, cease to exist.

The LSSA provides regular advisories, electronic newsletters and the *Legalbrief LSSA Weekly* on Friday mornings to practitioners. In January 2018, updated guidelines on the Protection of Personal Information for South African Law Firms as well as Information Security for South African Law Firms were published. These are available in the resource library and practice management toolkit on the LSSA website.

Also on its website, the LSSA has documented what is possibly the most comprehensive history and developments around the Legal Practice Act 28 of 2014. In addition, following every National Forum plenary meeting, the LSSA has is-

sued an advisory to attorneys informing them of decisions made at the meeting. It will continue to chronicle the transition of the profession to the new dispensation.

The LSSA website contains all recent press releases issued by the LSSA and its six constituent members, as well as other news, under the 'Latest News' tag.

Social media provides important communication channels for the LSSA, and practitioners are urged to follow the LSSA and *De Rebus* on Twitter and LinkedIn, and LEAD on LinkedIn and Facebook. As millennials join the profession as practitioners, digital and visual communication must become more prominent. To this end, the LSSA has recently launched a YouTube channel.

The assistance and support of Nomfundo Manyathi-Jele, who has been seconded to the LSSA Communication Department from *De Rebus*, is greatly appreciated, as is the role of the Editor of *De Rebus*, Mapula Sedutla, and the *De Rebus* team, Kathleen Kriel, Kgomotso Ramotsho, Isabel Joubert, Kevin O'Reilly and Shireen Mahomed. *De Rebus* remains the LSSA's showcase communication medium.

Barbara Whittle,
Senior Manager: Communication

DE REBUS

The SA Attorneys' Journal

Editorial Committee: Giusi Harper (Chairperson), Mohamed Randera, Peter Horn, Lutendo Sigogo and Mabaeng Denise Lenyai.

De Rebus, the legal profession's official journal, strives to be the primary and preferred source of information on professional updates, practice development, as well as general legal news for all practitioners. The journal also aims to pro-

vide practitioners with a platform for discussion and sharing of opinions on matters relating to the profession.

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

Circulation

The circulation figures as at December 2017 stood at 24 026, which is made up of 18 847 attorneys, 3 767 candidate attorneys, 224 paying subscribers and 1 188 complimentary recipients, as well as the sale of individual copies.

With regards to the digital circulation, the *De Rebus* website, as at December 2017, had 2 001 subscribers. Once the website is updated, a mailer containing links to articles is sent to a mailing list of 27 415 active subscribers. In 2017, the *De Rebus* team ensured that all articles published on the website were tagged according to their area of law so that the website is ready for its second phase of the overall *De Rebus* digital strategy. The second phase of the digital strategy will include making the website reactive to its users. Those who subscribe to the website will be able to view articles and topics that pertain to their chosen area of specialisation.

The website is currently tagged by Effective Measure, which is a programme provided for by the Audit Bureau of Circulations in order to correctly capture the website's circulation. By December 2017, the *De Rebus* website was ranked fifth in the law, government and politics segment with 32 989 unique browsers.

De Rebus also has a Twitter page, which as at December 2017 had 2 654 followers. The Twitter page is used to attract readers to the website. Articles of a particular issue are highlighted with a link to the article on the website.

Financial information

In 2017 *De Rebus'* advertising sales had a nett income of R 4 334 865 (unaudited figures) generated for both the journal and the classifieds supplement, which is much lower than the budgeted amount of R 6 143 618. The shortfall has been offset by savings in the publishing costs.

The decline in advertising sales can be attributed to the declining demand for print advertising. Because of the current economic situation, organisations are opting to cut their advertising as a form of savings.

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 2017.

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

- *Pro bono* under the Legal Practice Act ;
- equal right to matrimonial property in polygamous customary marriages;
- emoji's and the law;
- vicarious liability;
- pension interest and enforceable orders;
- changes in the National Credit Act and the interpretation of the reinstatement mechanism;
- the challenge of mediation between parties with different world views;
- patent claims;
- business rescue plans; and
- cryptocurrencies

2016 prizewinners

Two practitioners were recognised in 2017 for their contributions to *De Rebus* during 2016. Johannesburg attorney, Dineo Peta won the 2016 LexisNexis Prize for Legal Practitioners for the best article by a practising attorney. Ms Peta won the prize for her article titled 'The effect of the "once empowered always empowered" rule on the mining industry', published in 2016 (Nov) *DR* 32. The article discussed the debate around the 'once empowered always empowered' rule following the publication of the draft Reviewed Broad-Based Black Economic Empowerment Charter for the South African Mining and Minerals Industry on 15 April 2016.

In addition, Cape Town candidate attorney Amy Farish won the 2016 Juta Law Prize for Candidate Attorney for her article titled 'Protection of Investments Act – a balancing Act between policies and investments' published 2016 (May) *DR* 26. In her article Ms Farish discussed matters concerning the Protection Act 22 of 2015. She tackled some questions on whether concerns around the Act were legitimate and if the Act would actually cause any significant difference to the investment climate of South Africa.

The *De Rebus* team members and *De Rebus*' regular contributors are acknowledged for their excellent work during 2017 and for their commitment to producing, arguably, the best legal journal. 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.

Giusi Harper,

Chairperson, Editorial Committee

Mapula Sedutla,

Editor

FINANCE

The financial report covers the period from 1 January to 31 December 2017. The audited financial statements are completed after the publication of the Annual Report, and for completeness are available as a separate annexure.

The finance function of the LSSA is accountable to the LSSA Council and Management Committee (Manco), via the Audit and Risk Committee (ARC).

Audit and Risk Committee

The ARC is responsible for the implementation and review of general finance matters, remuneration and risk management in accordance with the ARC Committee Charter, which embraces the *sui generis* nature of the LSSA and its operations.

A number of specialist operational subcommittees of the ARC exist to assist the ARC. These committees report to ARC, namely.

- Internal Audit Subcommittee (IAS)
- Budget Subcommittee (BS)
- Remuneration Committee (Remco).

The main role of ARC is to assist the LSSA Council in discharging its responsibilities regarding the following:

- risk management;
- internal controls;
- internal financial controls;
- accounting systems and information;
- the effectiveness of the CFO and financial function;
- accounting policies;

- internal and external audit;
- information technology systems;
- protection of assets;
- financial and related reporting; and
- monitor compliance with laws, rules, codes of conduct and standards.

ARC members and meeting attendance

Member	Number of meetings
Ashwin Trikamjee (Chairperson)	5
Jan van Rensburg (Budget Subcommittee Chairperson)	4
Igna Klynsmith (Internal Audit Subcommittee Chairperson)	3
Mohamed Husain (Remuneration Committee Chairperson) - Independent member	2
Vincent Faris (Consultant member - SAICA) and forensic expert - Independent member	3
Peppy Kekana	4
André de Lange (joined in July 2017)	3
Jan Maree	4
Willie Scholtz (ICT governance expert) - Independent member	3
Total numbers of ARC meetings in 2017	5
Total Subcommittee meetings in 2017	9

Significant matter: Uncertainty due to the impact of the LPA

The ARC plays a key role in understanding potential future scenarios. This is further highlighted in the risk assessment and management thereof as detailed later in this report.

Like many professional associations in the non-profit and education sector, organisations are facing greater uncertainty and experiencing more change than ever before. A new approach is required that helps them make sense of the turmoil, explore new income streams, identify new trends and events that are likely to affect them in future, and perhaps, make significant changes to what they do and how they work. This will require business re-engineering which may lead to significant changes.

In embracing the transformational objectives of the Legal Practice Act 28 of 2014 (LPA), the LSSA acknowledges the challenges facing it and the various scenarios that this may bring. Scenario planning is a tool that the LSSA and its governance structures, especially the Transitional Committee, can use to help them imagine and manage the future more

effectively. The scenario identification process highlights the principal drivers of change and associated uncertainties facing organisations and explores how they might play out in the future. The ARC and its subcommittees are fully engaged in the processes of scenario planning as part of risk management activities.

Governance and operational sub-committees of ARC

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

Budget Subcommittee: The Budget Subcommittee (BS) is tasked with reporting to the ARC for analysis, review and approval of the financial and budgetary performance of the LSSA. The committee has an oversight role in setting the parameters and the establishment of the budget by Management. It also has a mid-term budget review process. The committee is responsible to measure the actual financial performance against budget at least biannually.

Remuneration Committee: This committee is headed by an independent member who also has an open invitation to attend ARC meetings (*ex officio*), with the ARC Chairperson and an additional independent member of ARC forming the committee. The mandate of this subcommittee is to

- recommend approval of the financial implementation of the recommendation on annual salary review by the Human Resources Committee to Council /Manco via the ARC having due regard to
 - financial and budgetary sustainability,
 - market trends with similar-sized and non-profit entities, and
 - consistent application for all staff including Senior Management;
- recommend the approval of formal remuneration policies, including consideration of among others, the philosophy and business rationale behind remuneration assessments, the criteria for remuneration setting and the various remuneration components;
 - to approve the implementation date of salary reviews, bonuses, adjustments, where these are not fixed in terms of existing policy; and
 - to approve the requirements of disclosure of remuneration in the Annual Financial Statements.

Risk management

Risk management: Policy

The risk management policy is based on the principles of the international COSO (Committee of Sponsoring Organisations

of the Treadway Commission) Enterprise Risk Management – Integrated Framework. This policy defines the objectives, methodology, process and responsibilities of the various risk management roleplayers in the LSSA. The Risk Management Policy is subject to annual review and any proposed amendments are submitted to the ARC for consideration and recommendation to the Council/Manco for approval.

Council

The Council is ultimately accountable for Risk Management (by ensuring risk management is in place and effectively functioning). It exercises this responsibility by reviewing and approving the comprehensive Risk Management Policy and plan (including regular reports), implemented by Management, under the direct oversight of the ARC and IAS. This incorporates continuous risk identification and assessment, and the embedding of internal controls, risk reduction (mitigation) and insurance strategies.

Risk management: Implementation

The ARC is mandated to monitor the effectiveness of the risk management process and systems of internal control and is supported in this regard by its subcommittee, the IAS.

The LSSA's external auditors -- along with Management and where applicable, external consultants -- are tasked to render combined assurance reports to the ARC.

Ethical leadership, human capital, system processes and oversight functions are the foundation of the LSSA's risk management philosophy to ensure sound corporate reputation and effective governance.

The risk management process includes the alignment of resources to ensure the achievement of strategy, objectives and the business plans.

Risk profiles inherent to existing activities are maintained within the approved risk tolerance levels.

Strategic risk assessment includes the consideration of probable future scenarios utilising 'PESTEL' - Political, Environmental, Social, Technological, Economical and Legislative developments.

Risk management: 2017 overview

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

During the year under review the IAS increased its focus on developing a risk-management culture within the LSSA especially at Council level, and three sessions were held at Council dealing with ICT risk management, risk management and funding, and corporate governance. The ARC held

a risk-assessment interaction with Manco to consider the sustainability risks of the LSSA in terms of the LPA and a risk-assessment tool was developed for this purpose.

The ARC has highlighted and expressed its concern on the risks posed by the proposed three-year transitional role of the LSSA in the following key areas:

- the financial sustainability, especially the funding thereof, and
- the uncertainty of tenure of the LSSA staff.

The IAS, under the oversight role of the ARC, has planned for increased meetings during 2018, having noted that during the transitional period the risks faced by the LSSA will increase as uncertainty increases, and this will pose new and additional risks to the organisation.

Change management

A change-management process under the direction of external consultants has been set up to deal with the transition into the LPA to

- deal with staff morale and uncertainty of tenure;
- deal with changes in the working environment and staff

posts, functions and objectives;

- transition staff into a new business-focused environment and streamline and improve business processes; and.
- ensure the mandate of the LSSA Council is effectively and professionally executed.

ICT risks has been totally revised, as ICT is leveraged to increased performance.

Sustainability and 'going concern principle' of the LSSA

The LPA will have the effect that the constituent members of the LSSA (with reference to the four statutory provincial law societies) will cease to exist during 2018. The LSSA will need to be reconstituted with a new constitution. To deal with these challenges a Transitional Committee has been established to implement this.

Cost containment policy

The ARC has continued with its strict regime of expense containment, despite pressure from increased international engagement, litigation and project activities and related costs.

Attorneys Fidelity Fund (AFF) subvention in R 000s

The subvention by the AFF is in terms of s 46(b) of the Attorneys Act 53 of 1979. This was fixed at 2012 levels until 2017. The LSSA has access to unused AFF project funds from prior years' funding to recover any shortfall in the subsequent year (mainly CPI) in terms of the funding agreement with the AFF.

	LSSA	De Rebus	LEAD	TOTAL
2012 - 2017	R9,669k	R5,656k	R50,293k	R65,618k

- AFF budget allocation for 2017 subvented by AFF prior year unused funds R75 076k
- AFF budget allocation for 2016 subvented by AFF prior year unused funds R70 369k
- AFF actual funding for 2016 is R 63 751k (budget saving of R6.6 million carried over to AFF in 2017).

This report is completed prior to the finalisation of the LSSA year-end to have a final figure, other than to provide an estimate that it will have budget savings due to the cost-containment policy in place for past 7 years.

The LSSA is indebted to the AFF for its continued support of the LSSA (both financial and other) thereby allowing the LSSA to fulfill its mandate to ensure the provision of quality legal education and the maintenance and enhancement of professional standards.

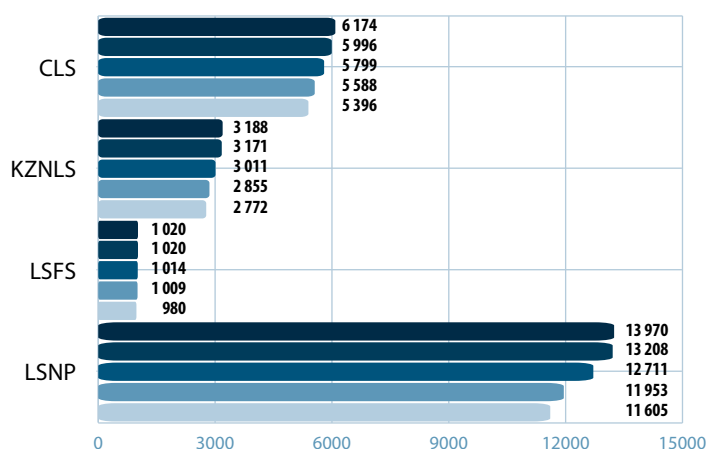
Capitation levies

Levies for 2017 were increased from R380 to R405 (6.6%) per attorney member (VAT excluded).

Growth in membership over the past 3 years:

	2014		2015		2016		2017	
Member numbers	21 405	3%	22 535	5%	23 395	4%	24 352	4%
Levy	R380		R380		R405		R405	
Income received	R8 332k	3%	R8 563k	5%	R9 475k	11%	R9 862k	4%

Capitation: Attorney numbers



	CLS	KZNLS	LSFS	LSNP
2017	6 174	3 188	1 020	13 970
2016	5 996	3 171	1 020	13 208
2015	5 799	3 011	1 014	12 711
2014	5 588	2 855	1 009	11 953
2013	5 396	2 772	980	11 605

Levies for 2017 and 2016 were R405. Provincial law societies do not track attrition; totals are, therefore, net values.

Total payable members for 2017: 24 352 (2016: 23 395).

The role and scope of internal audit within the LSSA

First layer of assurance - Sections (functions) that own and manage risk – operational level

Operational management has ownership, responsibility and accountability for assessing, controlling and mitigating risks directly. This is subject to oversight by the manager of the section. Controls are built into the KPIs of all staff, including the senior manager.

Second layer of assurance - Sections (functions) that oversee risk and compliance

This consists of activities covered by several components of internal governance (compliance, risk management, quality, information technology and other control functions). This layer of assurance monitors and facilitates the implementation of effective risk management practices by operational management and assists the risk owners (Senior Management person responsible for the division) in reporting adequate risk-related information to all the Governance, Risk and Compliance (GRC) structures of the LSSA.

Oversight is the responsibility of the Senior Management person, or School director, with direct reporting to the IAS and the ARC via the Senior Management team, and ultimately to the LSSA Manco and/or Council.

This is a strategic KPI with the responsibility vesting in these senior persons.

Third layer of assurance - Sections (functions) that provide independent assurance

The LSSA does not have an independent Internal Audit (IA) function due to its *sui generis* nature. Oversight and assurance is performed by the IAS with direct line of reporting to the ARC who approves recommendations and submits these to the LSSA Manco and/or Council for implementation.

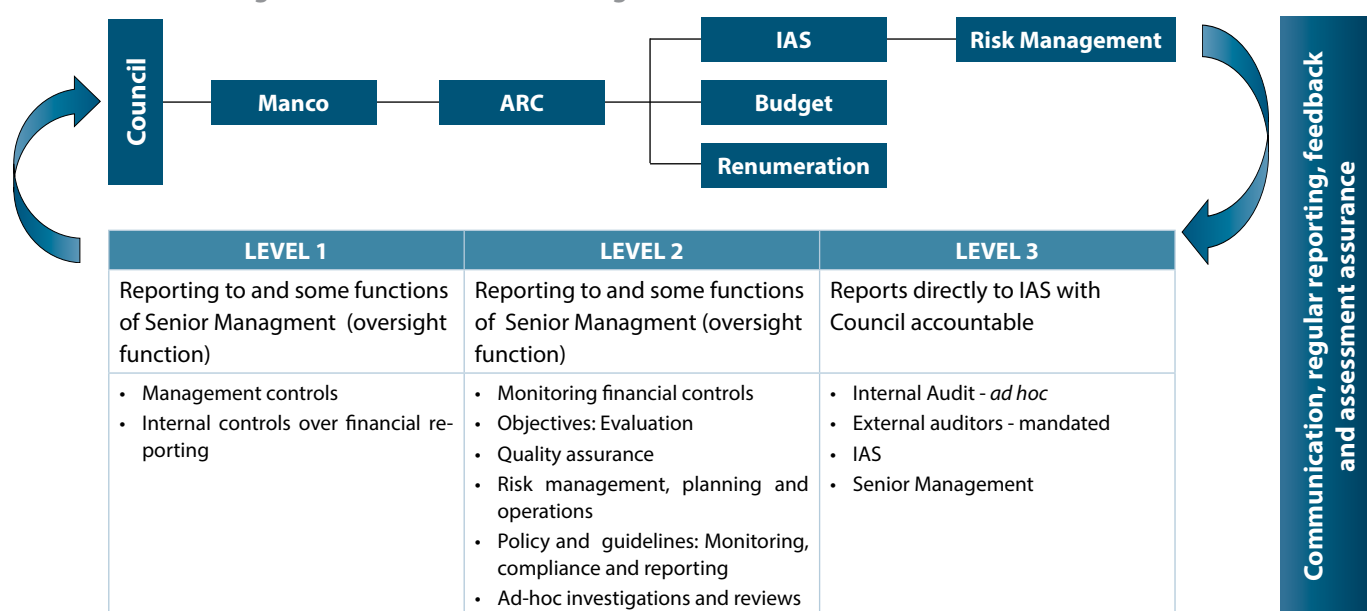
The IAS commissions *ad hoc* IA consultants and the specific instructions to the external auditors through a risk-based approach and specific assessments of the internal control environment as the focus to its audit work. This provides an additional layer of assurance to the LSSA's Council and/or Manco via the ARC.

Senior Management is also responsible to provide additional assurance to the GRC structures of the LSSA.

This assurance will cover how effectively the LSSA assesses and manages its risks and will include assurance on the effectiveness of the first and second layers of assurance. It encompasses all elements of the LSSA's risk-management framework (from risk identification, risk assessment and response, to communication of risk-related information) and all categories of organisational objectives: strategic Manco and/or Council (limited), ethical, operational, reporting risk aversion measures, assessment of aversion measures and compliance.

LSSA Internal Audit: Three layers of defence

Illustrative diagram of the LSSA risk management environment



Ashwin Trikamjee,

Chairperson, Audit and Risk Committee

Anthony Pillay,

Acting Chief Executive Officer

HUMAN RESOURCES

This report covers the period from 1 January to 31 December 2017.

The LSSA has had by far its most challenging year in 2017. As the process of the Legal Practice Act 28 of 2014 (LPA) continues to unfold, the staff of the LSSA has received the positive news that the LSSA will continue for the next three years until 2020 while aspects, including its activities and what the LSSA will change into in the new dispensation, are being finalised. With that said, no guarantees have been given as funding for the three years remains uncertain.

The unfortunate and untimely passing of Nic Swart, the Chief Executive Officer and Director of Legal Education and training (LEAD), in August 2017 further added to the discomfort and low staff morale, as Nic was not just viewed as a leader but also the driver and the mouthpiece of staff through the transition to the new dispensation.

However, there is renewed commitment from the LSSA Management to ensure that business continues as usual and to ensure that the standards and quality of service remain a priority. Management continues with its commitment to prioritised constant, honest and meaningful engagement with staff, to ensure that they are fully informed about the developments, potential impact and the changes that will brought about by the LPA.

Despite the uncertainties around the future of the LSSA and

tenure of employees, the LSSA has seen a lower turnover of staff in 2017 as compared to previous years.

The LSSA, under the direction of Senior Management, rolled out a change management strategy and implementation programme during the latter part of 2017. This will be an assistance programme aimed at assisting employees to deal with and manage the change from the old dispensation to a new era in terms of the LPA, with the target date of late 2018.

The LSSA remains focused in its approach to up-skilling its employees in order for them to remain relevant in their areas of competence, while ensuring that employees understand that it remains their responsibility to remain relevant within the economic space.

Human resources plan for 2018

- The LSSA will continue with the implementation of the change management strategy until the LPA process has been finalised. This process also offers an opportunity to look at operational imperatives and processes that can be maximised and improved in 2018.
- An Employee Wellness Program, currently in place, will speak directly to and provide potential solutions to needs including change management, financial, economic, psychological, social and legal requirements.
- The ongoing empowerment of employees through training and development in their areas of specialisation.

Staff numbers

Consolidated staff numbers					
	Total as at 31/12/2016	Budget	Less terminations and transfers out	Add appointments and transfers in	Total as at 31/12/2017
LSSA	32	33	1	1	32
<i>De Rebus</i>	6	6	0	0	6
LEAD	56	60	4	5	57
Total:	94	99	5	6	95

Permanent employee resignations are replaced with fixed-term contracts due to the impact of the LPA. The IT post is excluded from the budget as this is now part of managed outsourced services.

Staff movement

Appointments

Title	Name	Section	Post	Date	Equity
Ms	Sibongile Komani	School for Legal Practice East London	Night School Administrator	13 March 2017	A/F
Ms	Dorcas Hamido	School for Legal Practice: Pretoria	Night School Administrator	11 January 2016	A/F
Ms	Phionah Luthada	LEAD (SASSETA Projects)	Senior Training Coordinator	8 August 2017	A/F
Ms	Simphiwe Mnisi	Finance	Payroll Administrator	1 August 2017	A/F
Ms	Theresa Harding	School for Legal Practice Pretoria	Night School Administrator	16 October 2017	C/F
Ms	Thabang Dikgomo	School for Legal Practice UNISA Distance	Training Coordinator	26 October 2017	A/F
Mr	Anthony Pillay	LSSA	Acting Chief Executive Officer	1 September 2017	I/M
Mr	Ogilvie Ramoshaba	LEAD	Senior Manager (LEAD)	1 September 2017	A/M

Terminations

Title	Name	Section	Post	Date	Reason for Termination
Ms	Rachael Gaffane	Finance	Payroll Administrator	1 February 2017	Resigned to pursue other interests.
Ms	Parma Govender	School for Legal Practice UNISA Distance	Senior Training Coordinator	10 May 2017	Voluntary retrenchment agreement concluded.
Mr	William Khunou	Support Services	Office Administrator	31 July 2017	Retired
Mr	Nic Swart	LSSA	Chief Executive Officer	10 August 2017	Deceased
Ms	Sisanda Bam	School for Legal Practice Pretoria	Night School Administrator	1 September 2017	Resigned (received a permanent job offer with full benefits)

Vacant positions as at 31 December 2017

- Chief Executive Officer
- Director: Legal Education and Development
- Skills Development Facilitator
- Office Administrator (Support Services)

Training

The LSSA strives to ensure that individuals develop to their full potential. The following is a representation of all training attended by staff members:

Training	Attendance by staff members
Academic integrity	1
Accpac Accounts received and payable	1
Adobe InDesign intermediate	1
Adobe Photoshop	1
Advanced project management	1
Advanced Excel	8
Anger and conflict management	6
Attitude is everything workshop	40
Basic fire fighting	1
Becoming fit for change workshop	45
Business and office administration	2
Business statistics and finance management	1
Certificate in conveyancing and notarial practice	1
Change management imperatives	1
Commit to growing workshop	40
Corporate governance diploma	1
Course in network and engaging effectively	1
Coaching and mentoring training	2
DCC Logistics and supply-chain management	1
Deceased estates	1
Digital marketing	1
Business administration	1
Diploma in Paralegal Studies	1
E-learning training	1
Enterprise architecture and research	1
Erroneous zone workshop	3
Everlytic bulk-mailing campaign	1
Financial wellness workshop	42
Finance for non-finance managers	1
First aid	1

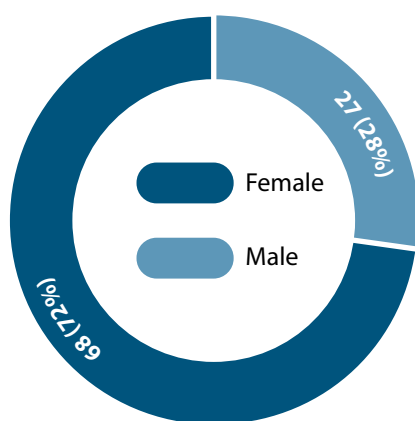
Training	Attendance by staff members
GPC events	1
ICB Cost and management accounting	1
Instructional design online short course	1
Management and leadership	1
Labour law amendments workshop	1
Legal secretary training	2
Managing training and development	3
MBA for office administration	1
Mediation training	1
Monitoring and evaluation	2
Motivation and counselling	6
Office management	4
POPI Act	1
Presentation skills	1
Project management	3
SAGE People VIP	3
Sakai online training system	1
SHE representative	1
Skill development	1
Time management	1
Travel and general management	1
Website development	1
Writing documents for litigation	1
Writing master class	1
Report writing	2
Skills development	1
SMART	1
Social media	1
Time and stress management	1
Typing skills	1
Total cost of training in the LSSA for 2017	R281 314.41

Employment equity

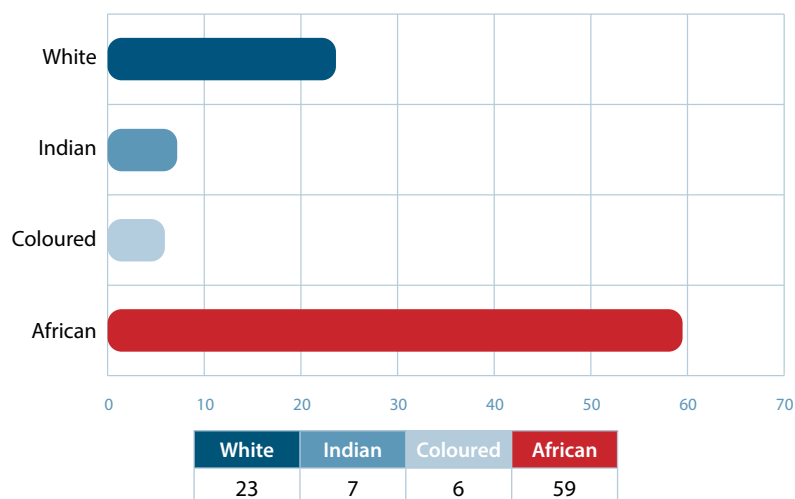
Employment equity report

OCCUPATIONAL LEVEL	Male				Female				Foreign nationals		Total
	African	Coloured	Indian	White	African	Coloured	Indian	White	Male	Female	
Top management	0	0	1	0	0	0	0	0	0	0	1
Senior management	2	0	0	0	1	0	0	2	0	0	5
Professionally qualified and experienced specialists and mid-management	0	1	0	2	5	1	2	3	0	0	14
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents	2	0	0	1	5	0	1	7	2	1	19
Semi-skilled and discretionary decision making	12	0	0	4	25	4	3	4	0	1	53
Unskilled and defined decision making	0	0	0	0	3	0	0	0	0	0	3
Total permanent	16	1	1	7	39	5	6	16	2	2	95
Temporary employees	0	0	0	0	0	0	0	0	0	0	0
Total	16	1	1	7	39	5	6	16	2	2	95

Employee gender profile



Employee race profile



Nkhensane Nthane,
Senior Manager: Human Resources

LEGAL EDUCATION AND DEVELOPMENT

Committee members: Raj Badal (Chairperson), Dave Bennett, Peter Horn, Taunyana Hlapolosa, Jan Maree, FM Mchunu, Ashwin Trikamjee, Zaahira Tiry and Zincedile Tiya

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

- LEAD continued to liaise with relevant stakeholders, including SASSETA, the South African Qualifications Authority (SAQA) and the Quality Council for Trades and Occupations (QCTO).
- LEAD requested SASSETA to develop an occupational qualification for conveyancing.
- More than 11 000 persons enrolled for LEAD programmes in 2017.
- In order to make some of LEAD's training accessible to attorneys in remote areas, LEAD consciously decided to move into the e-learning space. LEAD presented 40 webinars in 2017 as compared to 3 in 2016.
- The School for Legal Practice in Johannesburg conducted a blended learning pilot programme where some of the courses were presented online only.
- The Significant Leadership Programme for Women Lawyers was presented again in 2017 due to demand.
- Students of the School for Legal Practice were involved in social responsibility programmes throughout the country.
- LEAD offered training for institutions such as the Competition Commission, Road Accident Fund, Legal Aid South Africa, South African Local Government Association (SALGA), Military Veterans and Northern Cape Provincial Government (Office of the Premier).
- The Business Rescue course remained popular and to date 1 480 persons have received training.
- There were seven confirmed mentorship 'pairings' and three are in progress. All of these are in Gauteng.
- LEAD was involved in the placement of LLB graduates in law firms as candidate attorneys and graduates from Technical Vocational Education and Training (TVET) colleges as admin assistants; and SASSETA-sponsored training.

Practical vocational training

Three proposals for practical vocational training (PVT) in the Legal Practice Act 28 of 2014 dispensation were presented to the Justice Minister by the National Forum on the Legal Profession:

- a proposal by the National Forum of Advocates;
- a proposal by the General Council of the Bar/Advocates for Transformation, and
- a proposal by the Law Society of South Africa (LSSA).

The Minister will decide on the PVT model for the profession.

Location

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

Finance

Consistent with other years, there has been a saving on the 2017 budget without curtailing delivery of services. Savings are a combination of the cost constraint policy of the LSSA, reduction on the cost of education material and increased efficiencies.

LEAD staff in Pretoria

Director: Nic Swart (until his death on 10 August 2017)

Senior Manager: Ogilvie Ramoshaba

Amukelani Mdluli, Anthony Matimbe, Babalwa Nchekwube, Barbara Makhanda, Bettie Lubbe, Beverly Chueu, Boitumelo Maluleka, Dodo Dubazane, Dianne Angelopulo, Eugenia Sookane, Gail Mason, Grace Mukuru, Jackson Ndlovu, Kate Monama, Kezzy Chauraya, Lolita Pieterse, Maria Mokwape, Martha Baloyi, Merlin September, Molalatladi Modiba, Moses Sikombe, Norman Khudi, Nomsa Sethosa, Ntombi Fakude, Pelcrine Mathibi, Phionah Luthada (from 8 August 2017), Phyllis Mphasha, Selina Ramano, Stephne Pieterse, Tamara Sihlangu, Tasha Roestoff, Tshogofatso Poee and William Khunou (retired on 5 August 2017).

LEAD staff at the School for Legal Practice

Bloemfontein: Willem Spangenberg and Hanlie Bezuidenhout

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

Durban*: Fahreen Kader, Nadira Sewnarain and Ntokozo Buthelezi

East London: Bongji Nkohl, Sue Donovan, Neliswa Dibela and Phumza Dlabati

Johannesburg: Chandika Singh, Titus Mbatha, Connie Mal-

inga, Dorah Dumane and Motsamai Mokoena

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

Pretoria: Ursula Hartzenberg, Ali Haji and Sisanda Bam (until 1 September 2017), and Theresa Harding (from 16 October 2017)

Potchefstroom*: Marlene Steyn and Helanie Jonker

Port Elizabeth*: Lionel Lindoor and Lindsay Zimri

LSSA-UNISA distance learning school: Dilshaad Gani, Dorcas Hamido and Thabang Dikgomo (from 24 October 2017)

*Coordinators at these centres are appointed by universities.

Instructors and presenters involved in LEAD activities: More than 700 practitioners and other experts were involved as subject experts in the activities of LEAD in 2017.

Course for candidate attorneys (25 days): This course was offered at 10 centres throughout the country. Except for three, all courses were offered on university campuses. The course is offered part-time, full-time and in two centres after hours. 2 631 candidate attorneys attended in 2017.

Some law firms are accredited to do their own in-house training for candidate attorneys. The material is obtained from LEAD and the training is monitored by LEAD in terms of quality assurance. Total trainees for 2017 were 261.

School for Legal Practice: (5 months full-time uninterrupted): The School centres are situated in 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. The attendance for the day, night and distance programmes was 1 522.

Conveyancing and notarial training: 600 persons participated in 2017.

Seminars: 2 631 persons attended LEAD seminars in 2017. The following topics were offered:

- Conveyancing: New developments
- Conveyancing: New developments webinar
- Consumer Protection Act
- Lease agreements, evictions and rental recovery
- Medical malpractice litigation
- Pension law
- Digital forensics
- Write an opinion
- Stress: How to handle stress and pressure as a practitioner
- National Credit Act
- Legal debt collection

- Case management
- Legal business outsourcing
- Wills and testamentary trusts
- Engineering and construction contracts
- Marriages of indigenous people of South Africa
- Pitfall and pointers for drafting business contracts
- Labour law - webinar
- Child law
- Land claims
- Cybersecurity: Will the threat kill your firm?
- The legal entrepreneur
- Retirement planning - webinar

Distance education programmes: LEAD offered 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
- Introduction to medical law
- Office administration and client care
- Customary law for attorneys and School students
- Forms of business enterprise for attorneys and School students.

New business development (ACT): A total of 2 003 persons received training in 2017. The following courses were offered:

- Legal support staff training
- Business rescue
- Corporate
- Training to external clients.

Statistical information: LEAD collected information on attorneys, candidate attorneys, law graduates and those attending LEAD training. This information gives an indication of the number of persons studying for and graduating with LLB degrees, what the demographic trends are with regard to graduation, admission to, as well as practice and training in the attorneys' profession. The report includes information on the judiciary and advocates.

Placement information: LEAD maintains a database of persons who are searching for articles. This is made available to firms who are seeking to employ candidate attorneys.

Selling of documentation: LEAD has sold a substantial quantity of its publications in 2017. These publications included practice manuals, seminar material and publications in conveyancing and case management.

Summary of attendance of all LEAD programmes for 2017

	2017	2016
School for Legal Practice	1 522	1 500
Conveyancing and notarial training	600	600
25-day courses for candidate attorneys	2 631	2 282
Diplomas and certificates (distance)	128	156
Practice management training	1 066	941
Seminars	2 486	2 545
Mediation	149	127
	8 582	8 151
Other training		
<i>Irish commercial law</i>	21	0
<i>E-learning</i>	472	1053
<i>Practice development seminars</i>	0	23
<i>International Senior Lawyers Project</i>	0	46
<i>Support staff</i>	523	768
<i>Business rescue</i>	144	196
<i>Corporate</i>	713	288
<i>Student placement</i>	18	24
<i>Other external training</i>	484	248
Total	10 957	10 244

School for Legal Practice

The strategic purpose of the School is effectively to bridge the gap between the theory of law, as taught at universities, and the practice of law in the profession.

The ten centres of the School for Legal Practice contribute to the development of well-balanced, responsible, ethical and accountable candidate attorney with the practical skills, attributes and knowledge required upon entry to the attorneys' profession. A holistic approach is followed to help develop candidate attorneys.

The practical skills include analytical thinking, problem solving, drafting court papers, civil and criminal procedure, forming and presenting legal argument, trial advocacy (presented by the Black Lawyers Association), drafting legal opinions and contracts, drafting wills and administration of deceased estates as well as insolvency procedures, appropriate dispute resolution and last, but not least, ethical attributes.

Other training as part of the holistic programme includes computer literacy, numeracy skills, leadership and business writing.

The training is provided by practising legal practitioners and the attorneys' profession is greatly indebted to these committed instructors.

New developments

These include, among others,

- blended learning (contact classes and online activities of certain learning subjects);
- template and learning objectives of blended learning have been developed and all School directors have been trained on implementation;
- a story-boarding course has been undertaken by some School directors to learn how to create online activities and assignments that are interactive and engaging; and
- the notional hours per subject have been developed and will be piloted to prepare the School for the new dispensation under the Legal Practice Act.

Pro bono

Assistance was provided at law clinics to assist the poor and marginalised at many School centres. This also provided practical experience to students and an introduction to the Legal Practice Act.

Social responsibility and charity

School candidates are taught to accept responsibility for their communities and treat clients, colleagues and opponents with respect and empathy. The projects undertaken are decided at School level taking into account local needs.

Some of the projects included assistance to Nkosi House (Aids home for children); participation in Freedom Day celebration (book donations); participation during Women's Month and breast cancer awareness.

School attendance for 2017

		Male	Female	Black	White
Johannesburg School	238	97	141	199	39
Pretoria School	230	93	137	219	11
East London School	133	72	61	130	3
Polokwane School	187	103	84	186	1
LSSA/Unisa Distance School	272	124	148	208	64
Durban School	200	66	134	192	8
Cape Town School	159	68	91	110	49
Potchefstroom School (Night)	39	19	20	17	22
Bloemfontein School (Night)	38	15	23	29	9
Port Elizabeth School (Night)	26	8	18	23	3
Total	1 522	665	857	1 313	209
Demographics		44%	56%	86%	14%

'Black' includes previously disadvantaged individuals (PDI)

Raj Badal,

Chairperson, Legal Education Committee

Ogilvie Ramoshaba,

Senior Manager, Legal Education and Development

PROFESSIONAL AFFAIRS

The Professional Affairs department organises and supports the activities of the LSSA's specialist committees, *ad hoc* committees and task teams. The LSSA has over thirty standing specialist committees and forty ordinary committee meetings were held during 2017.

The committees have been active in monitoring, reviewing and making submissions on legislation and policy processes, which are set out in more detail in the reports of the respective committee chairpersons in the 'Specialist Committee Reports' section of this Annual Report. This enormous workload cannot be underestimated. The Draft National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance commented that: 'During the first 20 years of democracy more than 1200 laws and amendments aimed at dismantling apartheid and eradicating all forms of discrimination were approved by Parliament.' Committee members have, over the years, been diligent in sifting through and analysing relevant legislation and policies to prepare detailed submissions. Thirty-five submissions were made during 2017, most of which are available on the LSSA's website.

In addition, the committees have also engaged with various of the profession's stakeholders, including: the Acting Chief Master of the High Court, Commission for Conciliation Mediation and Arbitration, Financial Intelligence Centre, Competition Commission, Department of Home Affairs, Department of Justice and Constitutional Development, Estate Agency Affairs Board, Judge President of the Labour Appeal Court, Legal Aid South Africa, Mail & Guardian, Master of the High Court (Pretoria), ProBono.org., Road Accident Fund, Office of the Tax Ombud, Rules Board for Courts of Law, South African Law Reform Commission, and the South African Revenue Service. A total of 30 other stakeholder meetings involving the Professional Affairs department took place during 2017.

The LSSA convened a meeting of the Chairpersons of the Specialist Committees on 20 September 2017, which was attended by twenty-five of the Chairpersons or their Deputy Chairpersons. The meeting was chaired by LSSA Co-Chairperson, Walid Brown, and the purpose of the meeting was, among other things, to deliberate on the future functioning of committees and the composition of their members; the LSSA Protocol for Committees and the evaluation of committee members' participation and attendance.

The Labour Law and Small Claims Courts Committees each prepared a separate information brochure to assist members of the public with understanding, among others, of workplace rights and the Small Claims Courts. These brochures were edited, formatted and translated into Afrikaans, isiXhosa, isiZulu and seSotho with the assistance of our seasoned colleagues in the Communications Department. Both brochures are available on the LSSA's website.

The LSSA also assisted with the preparation of an application for the accreditation of the statutory provincial law societies as professional bodies for the licensing of business rescue practitioners pursuant to s 138 of the Companies Act 71 of 2008. All statutory law societies were accredited by the Companies and Intellectual Properties Commission on 27 September 2017.

The Professional Affairs department was instrumental with the LSSA's participation in the 8th Annual Pan African Lawyers' Union Conference (5-8 July 2017), Tax Indaba 2017 (11-15 September 2017) and the Mail & Guardian's conference entitled Legal Disrupted (29 September 2017).

The LSSA, in collaboration with its constituent members and with the support of the Foundation for Human Rights, undertook a dialogue project during 2017 aimed at investigating relevant models for the implementation of the delivery of *pro bono*/community services. The consultative workshops took place in Bloemfontein, Cape Town, East London, Johannesburg and Pietermaritzburg and were attended by the legal profession and a diverse range of stakeholders.

A special word of appreciation goes to all committee members who voluntarily commit their expert knowledge and service for the benefit of the profession and the public. Also, my sincere gratitude to our colleagues at the provincial law societies and numerous stakeholders for their momentous contributions during 2017.

In his last report as the CEO of the LSSA, the late Nic Swart made the following opening remark: 'Effective leadership will understand that the nurturing of healthy relationships in an organisation is critical for sustainability and growth.' The work highlighted in this report is as a result of the healthy relationships which have been nurtured over the years. It has been a privilege to have served the LSSA under the leadership of Nic.

Thank you also to the Professional Affairs team; Kris Devan (Personal Assistant), Nonhlanhla Chanza (Parliamentary Liaison Officer), Edward Kafesu (Committee Secretary) and Ricardo Wyngaard (Senior Legal Official).

Lizette Burger,

Senior Manager: Professional Affairs

ATTORNEYS DEVELOPMENT FUND

Board of Directors: Nomahlubi Khwinana (Chairperson), Dave Bennett, Luvuyo Godla, Ettiene Horn, Nontuthuzelo Mimie Memka, Vincent Matsepe, Gavin McLachlan, Roland Meyer (resigned) and Julian Lindoor (appointed)

Financial performance

The 2016/2017 financial report contains summary commentary on the key elements of our financial performance largely covering the strategic investment performance, in an effort to streamline content and reduce redundancy.

The full financials are detailed in the financial report in the 2016 Annual Report published on 6 February 2018. The Attorneys Development Fund (ADF) made a total investment of R25 999 720 in 2011 into two separate balanced multi-asset mandate equity portfolios to generate long-term real returns. Below is a summary of the combined investment performance.

Initial investment split:

- Melville Douglas Investment Managers R15 599 832 on 30 November 2011
- ClucasGray Investment Managers R10 399 888 on 2 December 2011.
- Current value (as at 30 September 2017) R45 946 321
- Melville Douglas Investment Managers R29 101 216
- ClucasGray Investment Managers R16 845 105

Return for the period December 2011 to end September 2017:

- Melville Douglas Investment Managers 86% or 11.45% pa compounded
- ClucasGray Investment Managers 62% or 78.75% pa compounded
- Combined return 10.41% pa compounded.

Dividend yield

- Melville Douglas 3.28%
- ClucasGray Investment Managers 2.76%

Operational performance

The ADF's 2016/2017 financial year has been the type that tests our agency in various multiple dimensions. Key aspects of our business such as the fund pool, debt collection and/or loan repayment performed very well in 2016/2017, while the loan and funded beneficiaries responded well under extreme difficult economic conditions that became apparent as the year progressed. It is evident that the ADF has managed to perform admirably against all odds with a 10.41% growth accrued via investments, loan repayment at 3% and funding growth by 6.04%.

Among other achievements, the ADF business strategy was completed, an important step towards realising its intent. Preparations are underway to launch and deploy the strategy in the financial year 2018/19. Operations and financial models are now fundamentally realigned and we are more organised to deliver on our promises and commitments. Below are the ADF's strategic outcomes, each with its matching strategic objectives to take the ADF agency forward.

- Leading edge infrastructure platforms: Establish and maintain law firms' office infrastructure and empowerment platforms, with among others, the 'Business in a Box Initiative'.
- Reputable and influential agency shaping the legal system: Optimise return on investment and grow ADF influence, impact and reputation.
- Transformed and representative legal system: Provide the legal system with leading practice support through robust funding models and grants offered.

Enterprise-wide risk management

The ADF's risk management in all strategic areas reflects its uncompromising approach in mitigating financial, reputational and regulatory risks. It is comforting to report that all of the ADF's top five risks were mitigated, including the emerging risks that were registered as outlined in our operational report for 2016.

Highlights and lowlights

I would also like to highlight the two below:

The completion of the ADF's business strategy was a great achievement.

The delayed Annual General Meeting was concerning.

Conclusion

The Board is pleased with the way the ADF has performed under the economic crisis that is facing the country. We are confident that we will keep on enhancing our performance in realising our intent. We look forward to taking the ADF to the next level.

The ADF thanks the Council of the LSSA, and Tony Pillay in particular, for their support throughout the years. We would not have come this far if it were not for their assistance.

Mackenzie Mukansi,

Chief Executive Officer, Attorneys Development Fund

LEGAL PROVIDENT FUND

Board of Trustees: Andrew Stansfield (Chairperson), David Bekker, Iqbal Gani, Thinus Grobler, Ilan Lax, Anthony Pillay and Zanele Nkosi

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 was first registered in 1967, and has grown to accommodate 4 300 members and 500 participating employers.

The LPF has a board of trustees, the majority of which are appointed by the LSSA. Full details of the trustees and their credentials may be accessed via the LPF website, at www.legalprovidentfund.co.za. The Board is engaging with the LSSA regarding its future composition and the manner in which trustees are to be appointed when the Legal Practice Act 28 of 2014 takes effect in 2018.

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. Audited financial statements were finalised for the year ended 31 March 2017 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 is assessed regularly, with the next assessment scheduled for 2018.

The LPF principal officer provides guidance to the Board in many areas where specialist independent input is required. Her performance in this role is assessed each year, with a very positive outcome on each occasion.

The performance of the Board itself is conducted by way of a self-assessment process, and the main area requiring improvement is more regular communication with members. The structure of a Type B umbrella fund with 500 participating employers poses a challenge to communicating with individual members. Advances in smartphone technology will provide more opportunity to communicate, and this avenue will be pursued in 2018.

A full review of the default investment model was completed towards the end of 2016, and the investment choices available to members were modified in order to improve the matching of the investment strategy to the members' appetite for risk. The investment model remains appropriate to the membership profile, and investment returns in 2017 are aligned with trustee expectations.

The operational requirements of a retirement fund become more complex with each passing year, with a new obligation on the trustee Board to develop a default annuity strategy for members who reach retirement age. It stands to the credit of my fellow trustees, the principal officer and the administrator that the LPF has delivered another year of excellence to its membership.

LPF membership for 2017

Membership	2017 Members	Increase/ (Decrease) Members	2016 Members
Opening	4 134	-14	4 148
Adjustments	127	127	0
Additions	593	17	576
Withdrawals	-403	63	-466
Retirements	-71	-15	-56
Retrenchments	-63	-9	-54
Deaths	-18	-4	-14
Total	4 299	165	4 134

LPF ratios 2017

Ratios	2017 %	Movement %	2016 %
Gross investment income over investments	5.86	(32.41)	8.67
Investment fees over investments	0.52	4.00	0.50
Investment fees over gross investment income	8.86	52.76	5.80
Administration expenses over contributions	0.73	(2.67)	0.75
Retirements	-71	-15	-56
Retrenchments	-63	-9	-54
Deaths	-18	-4	-14

LPF summary fund movement

Account balance	2017 R	Movement %	2016 R
Investments	925 184 632	3.85	890 911 298
Cash at bank	11 616 882	(56.24)	26 545 379
Members individual credits	927 163 752	3.84	892 855 182
Benefits payable	10 782 321	(60.81)	27 514 269
Contributions	90 059 074	7.17	84 034 057
Gross investment income	44 689 367	(27.71)	61 821 933
Investment fees	4 928 402	9.43	4 503 635
Administration expenses	705 728	24.13	568 533
Administration fee (Alexander Forbes)	3 870 921	(4.45)	4 051 172
Benefits	89 494 117	9.78	81 521 887

Andrew Stansfield,

Chairperson, Board of Trustees, Legal Provident Fund

ALTERNATIVE DISPUTE RESOLUTION COMMITTEE

Members: Ebrahim Patelia (Chairperson), Fazel Bulbulia, Daryl Burman, Charles Cohen, Mahomed Essack, Maribe Mamabolo, Letuba Mampuru, Jerome Mthembu, Ugeshnee Naicker, John O' Leary, Ugeeta Pala and Dumisani Sonamzi

The focus of the committee has been largely centred on developing attorneys through training initiatives on the use of and implementation of mediation in a variety of matters, including but not limited to civil, divorce and other matters. We would be unable to access the legal corners of our country without the dedication and contribution of the many trainers who have given up their valuable time to train practitioners on alternative dispute resolution (ADR).

We have over the years received tremendous support for our initiatives from LEAD and the LSSA, in particular the late Nic Swart and Chandika Singh, who have led the way for the introduction of a number of our initiatives; not to mention the many support staff at LEAD who have assisted us. We are grateful for this support.

We were deeply saddened by the untimely passing of Mr Swart. His work ethic, passion and personality were of a quality that we will be hard pressed to replace. We will miss his presence, support and dedication at our meetings. However, we are now challenged to expand the many entry points that Mr Swart created for ADR to blossom within the legal profession. Our thoughts and prayers remain with his family, friends and colleagues.

I also wish to thank my colleagues serving on the committee for their support and guidance during 2017.

Overview of the meetings of 2017

We met on 4 October 2017 and, among other things, reflected on ways to increase awareness of ADR among junior attorneys and to ensure that suitable training programmes are

offered on mediation and arbitration. Junior attorneys are in an ideal position to promote mediation as an alternative to litigation. The committee also agreed that ADR should be included in the training programmes for paralegals. We noted with excitement that LEAD has resolved to include arbitration as part of its training for 2018.

We deliberated on potential interventions to stir the interest and empower young attorneys in this field. LEAD was represented at the meeting and reported that an ADR component was introduced as part of the six-month Practical Legal Training course. This created interest on the part of the candidates to attend subsequent ADR courses presented by LEAD.

The committee identified a number of potential interventions, including introducing a mentorship arrangement for legal professionals in the arbitration field; requesting senior arbitrators to visit law schools to encourage law students to embrace arbitration as a field of law; promoting the inclusion of arbitration as part of judicial training and introducing mediation and arbitration at university level.

We were represented at a meeting of experts convened by the South African Law Reform Commission's (SALRC) ADR Advisory Committee. The meeting took place on 31 October 2017 and the purpose was to discuss whether there is a need to develop generic ADR legislation in South Africa. The ADR Advisory Committee indicated that the meeting would be followed up with a discussion paper on the need to develop draft legislation with a view to testing the public's opinion and, possibly, draft legislation. This will culminate in the publication of a report capturing the SALRC's recommendations which will be presented to the Minister of Justice and Correctional Services.

The meeting covered various aspects of the potential generic legislation, including what should be the underlying objectives of such legislation? To what extent should the mediation process be regulated by legislation? Should legislation introduce mandatory or voluntary-based mediation? Should mandatory mediation, if applicable, apply only to some disputes? What will the role of lawyers be within the mediation process? How will mediators be accredited and regulated?

It is important for the LSSA to provide meaningful input into this process as the introduction of legislation may have a substantial impact on the ADR landscape. Also, other spe-

cialist committees have been involved in parallel processes at the SALRC and it is important that the substantial insights offered at such processes be considered appropriately. The LSSA has already requested input from the various relevant specialist committees on this new development.

Going forward

The committee needs to ensure that the training initiatives continue in 2018 and beyond across all facets within the legal education environment.

It is important to contribute to the professionalisation of qualifications for ADR as it will impact on the training initiatives offered by LEAD. The committee would be well served if it could research and develop papers or recommendations on the needs for ADR to flourish.

In addition, we need to improve our relevance, communication and participation with the Justice Department, the Rules Board for Courts of Law, the SALRC, the other committees of the LSSA and various ADR bodies across the country.

The type of training offered to lawyers must evolve to reflect the needs of the profession. I would suggest that we look at ways to train the profession on the use of mediation in practice, representation/advocacy skills in mediation and arbitration, and in addition, to develop modules on business skills for practitioners who have introduced ADR in their practices.

We need to ensure that the initiatives we have taken to convert practitioners to embracing ADR as a real option of dispute resolution, take firmer root and that the profession is assisted in developing sustainable businesses in this field.

Lastly we need to ensure that we actively implement and support empowerment initiatives within the committee, the profession and in legal education.

Ebrahim Patelia,

Chairperson, Alternative Dispute Resolution Committee

COMPANY MATTERS COMMITTEE

Members: Miranda Feinstein (Chairperson), Priyesh Daya, Johan Fouché, Nolukhanyiso Gcilitshana, Paul Hay, Umesh Jivan, Nano Matlala, Arnold Mohobo, Abigail Reynolds and Peter Veldhuizen

The Company Matters Committee meets on an *ad hoc* basis as and when considered necessary.

We met once during the period under review to consider the proposed submission by the LSSA for accreditation with the Companies Intellectual and Property Commission (CIPC) regarding business rescue practitioners who are members of the constituent members of the LSSA. The submission was considered and approved with some minor amendments. We were also in agreement with the proposal made by the Business Rescue Liaison Committee of the CIPC that business rescue practitioners should be obliged to undertake certain compulsory professional development.

The view was expressed that the Law Society of the Northern Provinces' (LSNP) initiative, which had been in operation for many years, to second attorneys to the Takeover Regulation Panel, should be opened to all practitioners in South Africa. A view was expressed that this committee should endeavour to engage directly with practitioners.

We, together with the LSNP Committee, had made certain proposals for amendment of Practice Note 2 of 2016 to the CIPC some time back. To date there has been no response from the CIPC.

There has been no further movement on the amendments to the Companies Act 71 of 2008 proposed by the Specialist Committee on Company Law (SCCL) to the Department of Trade and Industry, based on the two submissions made by the LSSA to the SCCL during 2015.

Our Chairperson, Miranda Feinstein, together with the Co-Chairpersons of the LSSA, Walid Brown and David Bekker, met with representatives of the Companies Tribunal at the latter's request on 19 October 2017, to hear a presentation regarding the mediation functions which the Companies Tribunal wished to bring to the attention of all practising attorneys through the medium of joint seminars.

Miranda Feinstein,

Chairperson, Company Law Committee

COMPETITION LAW COMMITTEE

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

The committee considered the following matters during the year under review.

As reported in our 2016 report, the Law Society of the Northern Provinces (LSNP) sought to join the LSSA in an applica-

tion (the Section 65 application) that an attorney had lodged against the LSNP at the Competition Tribunal (the Tribunal) in terms of s 65(2) of the Competition Act 89 of 1998 (the Competition Act). The Section 65 application had its origin in an application for striking of the names of the partners of the attorneys' firm in the High Court (North Gauteng) for a contravention of the LSNP rules pertaining to touting, sharing of offices and sharing of fees. In addition, the Competition Commission (the Commission) referred a complaint (the complaint) to the Tribunal against the LSNP for a contravention of s 4 of the Competition Act, which originated from a complaint laid by the attorney against the LSNP. However, before the Tribunal hearing into the Section 65 application and the complaint commenced, the parties had several meetings in an attempt to settle these matters.

We were represented by our committee Chairperson, Paul Coetser. This resulted in the striking-off application and the Section 65 application being settled while discussions in respect of the complaint are still ongoing. However, the Commission and the LSSA are committed to continue to engage with each other to ensure that the uniform Rules of the Attorneys' Profession are in full compliance with the Competition Act.

Certain members from this committee, together with delegates from the LSSA Ethics and Property Law Committees, considered a complaint which a member of the public (the complainant) laid against Standard Bank. The complaint alleges that the service agreement which Standard Bank has with attorneys on its panel of attorneys prohibit those attorneys from taking on matters against Standard Bank. It is alleged that this practice made it impossible for the complainant to find an attorney in his area who was prepared to act on his behalf in instituting a claim against the bank. In discussions it was pointed out that this type of prohibition is not at all uncommon in agreements that corporate clients (especially banks) have with their panel attorneys. The matter is quite complex as it raises not only issues of competition law but also issues of ethics and the advancement of small attorneys' firms, especially conveyancing firms owned by black attorneys. At the request of the Commission, the delegates held a meeting with the Commission to explain the complexities. It is expected that further engagements between us and the Commission will follow in 2018 and the matter can hopefully be resolved amicably.

On 1 December 2017, the Minister of Economic Development issued a Competition Amendment Bill for comment. The Bill is a far-reaching piece of legislation that significantly expands the scope of competition law enforcement and the powers of the competition authorities. The Bill's main objective is to address the high levels of concentration in the South African economy and the lack of full participation in the economy by firms owned and managed by historically disadvantaged persons. It intends to strengthen the powers

and resources of the Commission and the Tribunal to deal with these issues. Concerns have been expressed that certain proposed amendments in the Bill are unclear and may have unintended consequences. It is, therefore, regrettable that only 60 days were provided to give comments on this important piece of legislation, given that a significant amount of this time period was taken up by the annual summer holidays when most law offices are closed. Despite the limited time, we will attempt to engage with the Minister and/or Parliament as the drafting of the Bill progresses during 2018.

Apart from in-person meetings, we interacted further in correspondence and by telephone from time to time as and when required by the circumstances.

Paul Coetser,

Chairperson, Competition Law Committee

CONSTITUTIONAL AFFAIRS AND HUMAN RIGHTS COMMITTEE

Members: Busani Mabunda (Chairperson), Daryl Burman, CP Fourie, Saber Jazbay, Sonja Labuschagne, MacDonald Moroka, Mvuzo Notyesi, Xolile Ntshulana and Shamila Singh

During the year under review the committee met on 12 September 2017, while the committee's involvement in aspects relating to its mandate extended beyond the face-to-face meeting. The committee dealt with a number of important and sometimes contentious issues.

Universal Periodic Reviews (UPR)

In September 2016, the LSSA submitted a shadow report jointly with the International Bar Association's Human Rights Institute (IBAHRI) and the Southern Africa Litigation Centre (SALC) to the United Nations Human Rights Council. The report was prepared for the Universal Periodic Review (UPR) of the Republic of South Africa.

The report, inter alia, dealt with South Africa's national obligation to domesticate international human rights treaties and the role of the legal profession in ensuring access to justice.

During April 2017, the LSSA, the IBAHRI, SALC and Lawyers for Human Rights attended the UPR pre-sessions in Geneva and presented our concerns to a room of diplomats. Jan van Rensburg, Xolile Ntshulana, Lizette Burger and I represented the LSSA, and I presented South Africa's report and recommendations to the UPR Information pre-session.

The delegation also met with UN Special Rapporteurs, the Office of the High Commission for Human Rights, the South African Ambassador to Geneva and the Geneva Bar Association's Human Rights Commission.

The legal profession is an important stakeholder in the state and has a key role to play in society in terms of influencing positively the direction that the country is taking.

Legal practitioners are encouraged to make use of UN systems, particularly in respect of human rights issues.

Further information can be obtained from the LSSA Professional Affairs Department.

The Traditional Courts Bill [B1-2017]

An updated version of the Traditional Courts Bill re-surfaced for public comment during 2017. This version of the Bill represented an improved and amplified version of the previous Bill, including a greater emphasis on the participation and representation of women as both parties and members of such courts.

However, there are still a number of concerns and the LSSA raised these in its submission, which are available for perusal on the LSSA's website. In particular, the submission emphasised the necessity for traditional leaders and any person designated by them to be sufficiently and competently trained to comply with the Constitution, so as to guard against the High Court being saddled with review proceedings.

The Expropriation Bill [B4-2015]

On 17 February 2017 the Expropriation Bill was returned by the President to the National Assembly due to reservations about inadequate public participation. Although the committee recognises the need for enabling legislation to give effect to s 25 of the Constitution, care should be taken not to contravene the provisions of the Constitution.

The committee will make submissions on the Bill at the opportune time.

The Communal Land Tenure Bill, 2017

This Bill requires close scrutiny by the committee and a meeting will be held early in 2018 to deal with it specifically.

The practice of *lobola*

The LSSA's Gender Committee requested our input regarding

the abuses surrounding the traditional practice of *lobola*. The committee will consider this contentious topic in more detail during 2018.

Membership of the committee

The committee welcomes a decision by the Council of the LSSA that it should invite other likeminded organisations to attend meetings and collaborate with them. This will assist the committee greatly in making informed decisions, having regard to other views.

Conclusion

I wish to extend my appreciation to the staff at the LSSA for having assisted the committee with the implementation of its functions..

Busani Mabunda,

Chairperson, Constitutional Affairs and Human Rights Committee

CONTINGENCY FEES COMMITTEE

Members: George van Niekerk (Chairperson), Frank Dorey, Poobie Govindasamy, Howard Maimela, Anthony Millar, Marinkie Putuka, Yandisa Tsipa, Yusuf Wadee and Henry van Rooyen

The Contingency Fees Committee convened twice, in May and December 2017 respectively. We have continued to garner the views of other committees of the LSSA who are concerned with the Contingency Fees Act 66 of 1997, such as the Personal Injury, Magistrates' Courts, Costs and High Court Committees. The committee has also been furnished with comprehensive memoranda by the Cape Law Society and by individual attorneys.

We are in the process of preparing draft rules, pursuant to the provisions of s 6 of the Contingency Fees Act, which enables 'any professional controlling body ... (to) make such rules as (it) may deem necessary in order to give effect to this Act'.

The committee has considered the various practical issues which have arisen, and in respect of which clarity should be provided, such as

- VAT (which is excluded from the capital for purposes of determining the 25% cap on the success fee);
- whether the 25% cap of the success fee includes fees charged by counsel and correspondent attorneys (assum-

ing both counsel and the correspondents also render service on a contingency fee basis);

- whether or not the attorney may lay a claim to the party-and-party costs which may be recovered from the unsuccessful party in addition to the success fee (the prevailing view in the committee is that the party-and-party costs recovery accrues for the benefit of the client);
- whether interest on the capital amount, in the event of the delay in payment by the unsuccessful party, is included in the capital award for purposes of determining the cap of 25% on the success fee (the committee is of the view that it is not); and
- the extent to which collection of debt is regulated by the Contingency Fees Act (it seems to the committee that it should be dealt with separately).

The committee is very alive to the imperative, now expressly legislated for in the Legal Practice Act 28 of 2014, to encourage and enable access to justice. The Contingency Fees Act is one way of achieving this objective. However, it has also proved to be contentious as some attorneys take advantage of the provisions of the Act to overreach their clients or, alternatively, to abuse the provisions of the Act to suit their own pocket. The Act does not relieve an attorney of the obligation to act in the best interest of the client once a mandate has been accepted, and even when the mandate is being negotiated.

An attorney remains an officer of the court and must observe the ethical duties of the profession vis-à-vis her/his clients. A contingency fee arrangement does not nullify those duties.

The committee is encouraged by the fact that the South African Law Reform Commission is considering contingency fee arrangements within the context of the broader imperative to improve access to justice and we look forward to providing input to the Commission.

George van Niekerk,

Chairperson, Contingency Fees Committee

COSTS COMMITTEE

Members: Asif Essa (Chairperson), Xoliswa Bacela, Graham Bellairs, Johan le Roux, Sinawo Makangela, Lufuno Mathobo, Morné Scheepers, Jan van Rensburg and Charles Zietsman

As the Costs Committee is approaching ten years since its appointment by the LSSA's Council during 2008, the full implementation of the Legal Practice Act (the Act) is also approaching at a rapid rate. This means that the implications

of the controversial and impractical s 35 of the Act, entitled Fees in respect of legal services, will imminently have to be confronted by the legal profession.

The committee convened two telephone conferences during 2017, the first one took place on 25 January and the second one on 3 July. The implications of s 35 of the Act was a central feature of the teleconferences.

The LSSA had previously prepared a position paper on s 35 and divergent views were expressed within the LSSA regarding the issue of fees. Generally, the LSSA agreed that s 35, in its current format, is not workable.

In terms of the Act, the South African Law Reform Commission (SALRC) must within two years after commencement of Chapter 2, investigate the issue of costs and make recommendations to the Minister of Justice and Correctional Services. In the meantime, the Rules Board for Courts of Law is to make tariffs in respect of litigious and non-litigious services rendered by legal practitioners. The SALRC has established a committee to commence with the work and committee member, Graham Bellairs, is representing the LSSA on the committee. We congratulate Mr Bellairs on his appointment.

The committee gave consideration to a request by the Rules Board for the LSSA to obtain information on the rates charged by attorneys. We are, however, not persuaded that a survey from attorneys will provide solutions. The key question, at this stage, is how the provisions of s 35 can be implemented.

The committee agreed to engage the Rules Board in this regard. A meeting with the Rules Board has unfortunately not taken place during 2017.

At the second teleconference I emphasised the importance for representatives of the advocates' profession to be invited to attend meetings of the Costs Committee. It is critical to have an updated understanding of the advocates' profession's position on the issue of fees. The committee agreed, going forward, to invite representatives of the advocates' profession to our meetings.

We made the following comments to proposed amendments by the Rules Board, which are available on the website of the LSSA.

- The Harmonisation of the Taxation Process in Magistrates' Courts Rule 33 with Uniform Rule 70 (3B) and (4) and Uniform Rule 70 and Table A of Annexure 2 - dated February 2017;
- Proposed Amendments to Uniform Rule 43, Form 17 and the Repeal of Form 17a - dated July 2017;
- Magistrates' Courts Rule 35 to cater for the discovery and production of documents in electronic form - dated March 2017;

- Magistrates' Courts Rule 63 – filing, preparation and inspection of documents - dated April 2017;
- LSSA Comments to Rules Board on physical address requirement for regional court - dated May 2017; and
- Uniform Rule 43, Form 17 and the Repeal of Form 17a - dated July 2017.

I wish to thank my fellow committee members for their active participation and contributions.

Asif Essa,

Chairperson, Costs Committee

CRIMINAL LAW COMMITTEE

Members: William Booth (Chairperson), Elsje Clark, Llewellyn Curlewis, Johan Kramer, Motsomi Litheko, Avinash Maharaj, Nolundi Nyati, Zincedile Tiya and Amanda Vilakazi

The Criminal Law Committee met on 20 March and on 13 November 2017.

At the meetings we discussed the process of enaging with the Department of Justice and Constitutional Development to arrange lectures, seminars and workshops.

It was felt that there is a major problem with the parole system and conversion of sentences. The composition of parole boards needs to be improved and the committee was of the view that members of these boards do not always have the necessary expertise and legal background to look objectively at the release of offenders back into society.

Similarly, we felt that there should be further engagement with the South African Police Service (SAPS), which should also include having lectures, seminars and workshops. In the past members of the committee met with the SAPS to discuss matters of mutual interest. Representatives from the SAPS have attended meetings of this committee and it was decided that this engagement should continue.

The procedure relating to police bail, as well as the availability of detectives after hours at police stations to process suspects need to be addressed further. Arrested persons are being detained far longer than is necessary because detectives are not available at certain police stations after hours. It was also of concern that there have been reported cases of police arresting suspects when it was unnecessary to do so and when an alternative method of securing a suspect's attendance at court should have been considered.

Admission of guilt fines were discussed and submissions are being made with regard to amendments to the Criminal Procedure Act 51 of 1977. There have been many reported instances where people find out, many years later, that they have paid an admission of guilt fine which is reflected on their criminal record. This could have a detrimental effect when they apply for employment.

Committee members attend the National Efficiency Enhancement Committee meetings chaired by Chief Justice Mogoeng Mogoeng. It is at these meeting that problems that practitioners experience regarding the criminal justice system, police and correctional services, are raised at national level.

At our committee meeting on 20 March, Adv Pieter du Rand, from the Department of Justice and Constitutional Development, explained what was happening with the process of reviewing the criminal justice system. We felt that our members should be included in this project as we could play a meaningful role.

Other important legislation that was discussed included the Cybercrimes and Cyber Security Bill, the Implementation of the Rome Statute of the International Criminal Court Act Repeal Bill, the Draft Prevention and Combatting of Hate Crimes and Hate Speech Bill as well the proposed regulations in terms of the Legal Aid South Africa Act, 2014.

During both meetings, concerns were raised regarding the efficiency of the National Prosecuting Authority (NPA). Agenda items were submitted to the National Director of Public Prosecutions, to be discussed at the meeting held on 13 November 2017. Unfortunately, despite attempts by the committee, no representative from the NPA attended the meeting. We hope that we can meet the NPA early this year.

Finally, I wish to thank my Deputy Chairperson, Llewellyn Curlewis, and other members of the committee as well as the LSSA Professional Affairs Department for their input during the year.

William Booth,

Chairperson, Criminal Law Committee

DECEASED ESTATES, TRUSTS AND PLANNING COMMITTEE

Members: Hussan Goga (Chairperson), Ceris Field, Lutendo Sigogo, Paul Hay, David Bekker, Ngqiqo Sakhela, Marchel Davel, Mervyn Messias, Willie van der Westhuizen, Noxolo Maduba, Karen van Niekerk and Thumeka Dwanya

Significant developments took place during 2017 which are relevant to the committee's mandate and the legal profession, including:

- The exit of the Chief Master, Adv Lester Basson, and appointment of acting Chief Master, Martin Mafojane.
- The introduction of the Chief Master's Directive 2017-02 – dealing with various trust matters.
- Proposed amendment to s 103 of the Administration of Estates Act 66 of 1965.

Committee meeting

We met on 12 April 2017. Representatives from the South African Revenue Service (SARS) and the Master of the High Court attended and participated in the meeting.

Discussion with SARS officials

A circular from SARS dated December 2016 dealing with the new registration system for deceased estates was, among other, discussed. SARS clarified that if there is a tax liability, the executor will be responsible for the tax affairs, submitting returns and paying tax until the period of the approval of the account.

The committee proposed that SARS should issue a circular stating the process and information required for reporting deceased estates with SARS, which can be forwarded to the provincial law societies for information of their members. SARS undertook to consider the proposal.

Discussion with outgoing Chief Master

The outgoing Chief Master, Lester Basson, informed the committee that plans are afoot to broaden the range of persons entitled to attend to the administration of deceased estates. Regulation 910 issued in terms of the Attorneys' Act, prohibits the liquidation or distribution of estates of deceased person other than by an attorney, notary or conveyancer (with a few exceptions). Enabling legislation has been drafted by the Department of Justice and Constitutional Development. He invited the LSSA to attend a stakeholder meeting on 25 April 2017 to discuss the issue.

Meeting with outgoing Chief Master

The LSSA and other stakeholders met with the outgoing Chief Master on 25 April 2017 to discuss the status of Regulation 910 of the Attorneys Act and proposed amendments to s 103 of the Administration of Estates Act. The State Law Advisers also attended the meeting.

We were informed that the Department of Justice and Constitutional Development had taken a policy decision that the spectrum of persons entitled to administer estates had to be increased. The Judicial Matters Amendment Bill, B14 of 2016, contains an amendment to s 103 of the Administration of Estates Act, which will enable the Minister of Justice and Correctional Services to promulgate regulations as to which persons (including juristic persons) will be prohibited from liquidating and distributing deceased estates and what permanent or provisional exemptions there will be.

The LSSA confirmed that it will not pre-empt the acceptability of the proposed enabling provision and reserved its rights to contend (in court if necessary) that Regulation 910 is applicable. The LSSA made submissions to the Parliamentary Portfolio Committee on the Judicial Matters Amendment Bill and will address Parliament at the appropriate time. The submissions can be accessed on the LSSA website.

Meeting with Acting Chief Master

The committee met with the Acting Chief Master, Martin Mafojane, Assistant Master, W Sithole and lecturers from the Justice College, T Rudolph and H Moshidi on 27 July to address a number of matters impacting on the legal profession and the public.

We expressed concern that the LSSA, being a key stakeholder, was not invited to a workshop on trusts hosted by the Master's Office during February 2017. It was agreed that the lines of communication be clarified, in particular, the points of contact. The committee further emphasised that time allocated to prepare comments is an important factor. The parties agreed that ongoing stakeholder engagement is important. The Master's Office expressed its commitment to improving the relationship with the LSSA and the profession as a whole.

The committee raised fundamental concerns regarding Directive 2 of 2017 pertaining to independent trustees for family trusts, which was published by the Chief Master's office flowing from the workshop on trusts. It was agreed that the committee would prepare comments to Directive 2 of 2017, which the Office of the Acting Chief Master would duly consider for potential amendment.

Provincial subcommittees on estate matters

The committee once again noted, with appreciation, the ongoing engagement by the provincial law societies' committees with the relevant Masters' offices.

Chief Master's Directives

The following Chief Master's Directives were issued:

- Chief Master's Directive 2017-01 - To ensure uniformity in respect of the way in which the Guardian's Fund deals with Future Maintenance Funds deposited with the Master.
- Chief Master's Directive 2017-02 – Dealing with various trust matters as from 6 March 2017
- Chief Master's Directive 2017-03 - Increase of Master's Fees as from 1 January 2018

Conclusion

I thank my fellow committee members and the LSSA staff for their invaluable contribution in supporting the committee's mandate.

Hussan Goga,

Chairperson, Deceased Estates, Trust and Planning Committee

E - LAW COMMITTEE

Members: Gavin McLachlan (Chairperson), Brendan Hughes, Lynnette Marais, Ian McLaren, Crystal Maphalla, Wilfred Phalatsi, Sizwe Snail and Memory Sosibo

The committee had two physical meetings as well as some teleconferences during the year.

As before, although video conferencing would be more effective for meetings, connectivity generally and cyber capability is still not sufficient to allow us to dispense with physical meetings. There has been some improvement, but South Africa is still far behind where it should be, largely due to muddled and ineffective governmental policy and actions. We have enormous external connectivity, but expensive and also conflicting internal service providers, and the State does not help by having its own service providers competing to not particular discernible effect.

We have dealt, as usual, with various IT-related questions addressed to the LSSA and *De Rebus* as and when necessary. Cyberlaw awareness and general cyber competency remain very important for lawyers. We are continually involved in encouraging wider competence in the profession and work-

ing wherever possible with LEAD to achieve these aims.

We have also worked closely with the Property Law Committee as the move to online conveyancing should be accelerating this year.

We were involved, together with the Property Law Committee, at the National Economic Development and Labour Council (NEDLAC) for the approval process of the E-Deeds Registration Bill, which should be passed in the upcoming parliamentary session. The Chairperson has been appointed to the Business Unity South Africa (BUSA) legal advisory panel.

We will be involved in the approval process for the successor to the Subdivision of Agricultural Land Act 70 of 1970 and others in future. We should also be involved in the redrafting and probable addition of certain portions of the current Deeds Registries Act 47 of 1937, which will deal with so-called informal tenure that the electronic process will allow to be registered more easily.

Last year we participated in the colloquium with university law deans and others on IT law training in degrees. Syllabi are being revised to ensure a suitable degree of IT law and general awareness is included in law degrees from 2019.

A further issue that does not yet seem to have been dealt with, however, is the question of including more detailed training in technology for lawyers to take account of artificial intelligence, machine learning, blockchain and other developments, which are already totally transforming the way lawyers and many others will work.

With this in mind, LEAD arranged a workshop in Midrand in November 2017 to raise awareness of cyber threats and necessary business realignment, which was originated by the late Nic Swart. This workshop was very successful and there will be a series presented nationally this year. The Chairperson and Deputy Chairperson, Sizwe Snail, co-presented at the workshop with two other presenters, and we will be involved in any further national workshops during the course of the year. We are also working with a group - that includes at least one of the banks - on better digital use for document purposes, including digitally aware and created wills once these are possible in South Africa. At present, they can be accepted by the Master in hard copy form only as the current Electronic Communications and Transactions Act 25 of 2002 still requires that wills be in hard copy only in order to be valid.

We have continued to interact successfully with Government with the assistance of the LSSA's Professional Affairs Manager. Our Deputy Chairperson in particular has been proactively involved in the draft Cyber Crime and Cybersecurity Bill, which we hope will be enacted this year. This should add considerably to the better prosecution and also prevention of cybercrime.

As indicated earlier, we have continued to work successfully with the Property Law Committee on the proposed electronic transformation of the land registry system and other matters. It is a pity, however, that other committees do not always work with us as cyber issues are the foundation of any form of interaction nowadays. We would like the profession to lead a much more widespread move to proper e-government and an appreciable improvement in access to justice which we will continue to be involved in.

We have also continued to be involved with e-discovery developments, and members of the committee, especially Brendan Hughes, have worked with local stakeholders on this fast-developing area, ensuring that the profession's views are heard and that it will be a key participant as the process unfolds.

Sizwe Snail, who is a member of the board of the newly established Information Regulator, and the Chairperson attended the formal announcement of the Information Regulator's Chairperson and her team in Cape Town last year, as well as two very useful workshops on the draft regulations. However, there were disappointingly few legal practitioners present at either occasion. Our profession is still largely unaware of the very great impact the new Act will soon have, and the committee will continue to try and improve awareness. We will also 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: Norman Brauteseth (Chairperson), Zukisani Bobotyana, Hajira Kara, Ilan Lax, Jerome Mthembu, Zoleka Ponoane, Catherine Warburton and Terry Winstanley

I had the privilege of being appointed as Chairperson for the committee during 2017 and I am pleased to present the following report on the committee's activities.

In preparation for the committee meeting scheduled for 24 August 2017, I prepared a memorandum aimed at reviewing the role and functions of the committee, in the light of the changes that are mandated by the Legal Practice Act 28 of 2014 (LPA). The memorandum formed the basis for discussion at the meeting.

I reflected, among other things, that when the committee was formed, it had the enhancement of environmental law in the profession and within the public consciousness, and an educational thrust for members of the profession as its main objectives. In line with the LSSA's broad objectives, we have lobbied for and commented on events and legislative initiatives that have a bearing both on the environment generally and environmental law in particular. The LPA will significantly change the framework under which we all practise, but its implications for the practical operations of the profession will, in my view, be more apparent than real. To the extent that a committee such as this was necessary in the past it will, in my view, be necessary in the future. Thus, the question: will the role of a committee such as ours stay the same, or will it and should it change?

The objects of the Legal Practice Council are, among other things, to determine, maintain and enhance appropriate standards; to promote high standards of legal education and training and compulsory post-qualification professional development; to promote access to the profession; and to uphold and advance the rule of law, the administration of justice and the Constitution. In light of those objectives, the question that arises is whether this committee has an active role to play in those four endeavours.

The demand for environmental law advice and representation is still low. However, the awareness of environmental rights and the willingness of the appropriate authorities to enforce environmental responsibilities is growing. Given the limited exposure that legal graduates have had to environmental law, there seems to be a major opportunity for in-service training, professional development, mentorship and the like. The introduction of compulsory continuous professional development (CPD) is a major opportunity for that, and will provide a source of funding. These are aspects that the committee agreed to consider in the year ahead, and on which to formulate some proposals.

There have been some developments regarding the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) ban on the sale of rhino horn, a matter of interest for the committee since its exploratory meeting with the Department of Environmental Affairs in 2016. The Constitutional Court rejected an appeal to retain a moratorium on the domestic trade in rhino horn, and that will have major consequences.

The committee reiterated the fact that the relationship between the attorneys' profession and the Department was important, and despite the tensions which arise in the criminal prosecution/defence arena, further liaison should be pursued. I undertook to further the relationship, and that is ongoing. It is my aim to seek co-operation in specific areas identified at the committee meeting, including those not related to the rhino trade.

The committee also agreed to investigate the feasibility of adding a topic on environmental law to the agenda of the Southern African Development Community Lawyers' Association's next annual general meeting, and we will seek ways in which to advance environmental law study and practice through mentorship, courses and inter-profession liaison.

I thank the committee for their confidence in appointing me as the Chairperson and am grateful for the time they devote to environmental law development and support, despite their busy practices.

Norman Brauteseth,

Chairperson, Environmental Affairs Committee

ETHICS COMMITTEE

Members: Krish Govender (Chairperson), Dave Bennett, John Christie, Linda Magaxeni, Charlotte Mahlatji, Deirdré Milton, Odwa Nyembezi, Nicole Sauli-Koren, Ed Southey and Butch van Blerk

This year will bring to an end the system of governance of the established legal profession in its different forms over the past centuries. There are legal firms who are almost as old as South African settler history, one of which is over two hundred years old. Many of these firms or businesses, practised law continuously under colonial rule, apartheid domination and now, very happily, under our new democratic order.

The passage of the Legal Practice Act 28 of 2014 (LPA), has ushered in the dawn of a new order, which establishes a single regulatory body that will govern and regulate the entire legal profession in South Africa, including all attorneys and advocates. During 2018, the new Legal Practice Council will be created and tasked with regulating everything about the legal profession, good and bad, which it has inherited over the past centuries. Many things have changed in the profession over this long expanse of time. However, this report will touch briefly on a requirement of legal practice that ought to have endured without much change, namely, ethics.

Ethics as practised by good lawyers ought not to have changed over this long period, as it is a guide or code of conduct that is supposed to transcend race, class and politics. From lawyers on horseback to lawyers in private jets, and maybe, future lawyers on the moon, the meaning of ethics and its day-to-day application, outlives the history of the profession, and must remain the same. However, like all good things, they remain important ideals for some, hard rules for others and, sadly, obstacles for the majority of lawyers. So as we go into this new dispensation, we might ask ourselves: What is good about the profession that we are

taking with us and what is bad that we are leaving behind? There are lots of both, but let us look at a few.

The good aspect is that ethics is receiving greater attention in society, not as a result of any radical transformation of society or our lamentable education system, but as a result of outrageous scandals, massive deceit, grand-scale corruption and looting – all at the expense of the people. The exposé of unethical behaviour of auditors, bankers, businessmen and politicians, aided and abetted by lawyers, without whom they would not have gone that far, has called into question the standards that are being maintained by regulatory bodies and has raised the ire of many in the public and private domain.

The bad consequences, which are greater than any good, is that bad publicity taints even the good ones in any profession.

A positive development though, is that ethics as a law course is receiving more attention and importance than in the past within most law faculties. Credit for this should go to this Ethics Committee and the LSSA who, for nearly a decade, have challenged the law deans to introduce and make the completion of a course or full module on ethics compulsory in order to graduate with a law degree.

When looking at some of the negative aspects that the legal profession takes with it into the new dispensation, questions and debates about ethics will arise. Almost always, the heat generated around these debates is proportionate to the amount of money that a lawyer stands to gain or lose. Ethics is, in the final analysis, an irritant and a barrier to those who seek uncontrolled access to that money. Some of the worrying aspects of legal practice that we are taking forward under the auspices of the LPA, but which might receive the attention of the new LPC, are:

- Advising clients on the estimated costs of a case. Section 35 of the LPA creates more difficulties than providing solutions to what might be a fair estimate of fees that may be given to a client. With respect, subss 35(7) and (8) should be removed from the LPA and consigned to the Rules, but subject to serious changes so as to make them intelligible, fair, reasonable and practical.
- The Contingency Fees Act 66 of 1997 encourages speculative and expensive litigation, especially against Government, and at the same time rewards the lawyers with literally, a 'portion of the body or limb or quantity of blood' of a client, in addition to any costs recovered. Whatever else the rest of the world does, should we do the same?
- Why should the conveyancing fee for a transfer of a house be different if a house is valued at R100 000 or R10 m, if the work required and done is the same? (My apologies to all my conveyancing friends.)

- When two big legal firms merge, why must they hold on to the files which involve disputes being handled by the new merged firm, for parties on the opposite sides? The so called “Chinese Walls” that are artificially created by these firms are designed simply to hang onto the files and provide a lame excuse to bypass the soundest principles of ethics and double their financial rewards. To illustrate the point, it would possibly be beneficial for two doctors in a small town to merge their practices as the inhabitants may also benefit from combined knowledge and more accessibility. However, it would be foolhardy for the only two lawyers in town to combine their practices, for obvious reasons. The big corporate firms have become ‘untouchables’ in true Hollywood style. Will the new LPC take a stance on this?

As we leave the old order, we might reflect on the fact that lawyers are assisting senior politicians to note appeals against decisions of courts where conflicts of interest are more than apparent and are patently clear for all to see, even better than the sight of the naked emperor in that famous fairy tale. This note has been written in January 2018 so when you read this, maybe the lawyers might have withdrawn from these cases or no lawyer is available to argue such a case? As said earlier, it is hardly likely that no lawyer will be available to argue that the earth is flat, if the money is right. So if the money is right, the naked emperor is wearing the finest silk, and that is the decree of the emperor.

Good luck to all the lawyers under the new LPC and let us hope that with a single national regulatory body, ethics will be accorded its correct position in the hierarchy of rules, and become a powerful tool for the LPC to use, to protect the innocent public and the ordinary client from the rapacious lawyer.

Krish Govender,
Chairperson, Ethics Committee

FAMILY LAW COMMITTEE

Members: Susan Abro (Chairperson), Zenobia du Toit, Refilwe Masilo, Deirdré Milton, Nkosana Mvundlela, Ugeshnee Naicker, Ncumisa Nongogo, Nomaswazi Shabangu-Mndawe, Brian Segal and Karin van Eck

A meeting of the committee was convened on 4 December 2017. The minutes reflect the most important issues being dealt with at that meeting, which were

- family law arbitration; and
- the South African Law Reform Commission (SALRC) Alternative

Dispute Resolution Project 94.

It is important to understand that the work of the Family Law Committee continues apace throughout the year, through telephonic meetings and via emails. Members are called on to comment on legislation, as it arises.

Amendment of the Arbitration Act

Members of the LSSA Family Law Committee, in conjunction with the Family Law Arbitration Foundation of South Africa (FLAFSA), submitted proposed amendments for the Arbitration Act 42 of 1965 to the Deputy Minister of Justice and Constitutional Development for the removal of the prohibition against arbitration in domestic matters. The Deputy Minister, John Jeffery, undertook to submit such non-contentious amendments for inclusion in a General Laws Amendment Act. We are still awaiting the outcome of this.

Family law arbitration

The Chairperson and committee member Zenobia du Toit attended a meeting in Johannesburg on 25 October 2017 convened by LEAD regarding arbitration strategy. Various other LSSA committees were represented at the meeting, including the Alternative Dispute Resolution Committee, as were members of the profession who specialise in commercial arbitration.

A national roll-out strategy was agreed for arbitration training, which will take place in 2018.

The intention is also to include *pro bono* services to secure the effective implementation of arbitration.

LEAD will commence with introductory courses to explain what arbitration is about, including family arbitration. This will be followed by training within the more specialised fields of arbitration.

SALRC Alternative Dispute Resolution Project 94

The LSSA attended a mediation experts meeting facilitated by the SALRC on 30 October 2017. The purpose of the meeting was to obtain input from various roleplayers. The SALRC wanted expert input on the need to develop a comprehensive ADR system. There are various aspects of ADR throughout the South African legal system and the SALRC has identified the need to develop generic legislation for the integration of ADR.

Ms Du Toit expressed serious reservations about this process and how it relates to the SALRC's process relating to family law ADR. Extensive comments were made on the SALRC's family

law ADR process. Ms Du Toit was resolute that there should be no conflicting approaches regarding the ADR process.

It was agreed that the committee will liaise with the Chairperson of the SALRC to express its views.

We undertook to attend to various issues and have done so.

Other issues which came to light at the meeting included

- co-operation with the South African Police Service in relation to domestic violence;
- amendments of procedural rules relating to family law matters in the courts; proposals for amendments had been submitted;
- briefing of counsel;
- administration of estates, with specific reference to customary law issues; and
- relationships with international organisations.

All these issues will be considered in 2018.

The LSSA Family Law Committee will continue to deal with any matters that may 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, Maboku Mangena, Perino Pama, Aneesah Patel, Praveen Sham and Dee Takalo

The Financial Intelligence Centre Amendment Act 1 of 2017 (the Amendment Act) was signed into law by the President on 26 April 2017 and gazetted on 2 May 2017 while the Minister of Finance signed and gazetted the coming into operation of its various provisions. The LSSA and the committee engaged extensively with the Financial Intelligence Centre (the FIC) and Parliament's Standing Committee on Finance in the months preceding the finalisation of the Amendment Act.

Arguably, 2 October 2017 represented the most important date for the attorneys' profession, being the date when the provisions introducing a risk-based approach for accountable institutions, came into operation. It marks the introduction of a new compliance chapter for attorneys.

Meeting with the Financial Intelligence Centre and National Treasury

The FIC invited the LSSA and other accountable institutions to engage on a number of issues, including what would be required from the FIC in terms of guidance. The Amendment Act required the publication of the promulgation of new regulations by the Minister of Finance. The meeting accordingly discussed the draft regulations and the proposal to withdraw the exemptions made pursuant to the previous regulations.

The FIC confirmed that a significant part of the erstwhile regulations had to be repealed as those are in conflict with the Amendment Act. Also, it was important to obtain stakeholder input regarding the threshold for single transactions. The FIC's General Guidance Note provides: 'The Act defines a single transaction as a transaction other than a transaction concluded in the course of a business relationship and where the value of the transaction is not less than R5 000 (the amount is to be determined by the Minister in the Regulations). This can be described as occasional or once-off business where there is no expectation on the part of the accountable institution or the customer that the engagements would recur over a period of time. Accountable institutions are not required to carry out the full scope of [customer due diligence] measures in respect of clients conducting single transactions below the value to be set by the Minister of Finance in the MLTFC Regulations.'

The FIC posed the question whether exemptions are still necessary in the context of a risk-based approach. The withdrawal of exemptions reportedly created some anxiety among accountable institutions and the FIC received several reservations regarding the proposed withdrawal of exemptions, especially on Exemption 4: Reliance on primary accountable institutions. The FIC suggested that similar thinking around exemptions can be taken forward under the risk-based approach. Essentially, exemptions can still be taken into account, but the unique circumstances will have to be taken into consideration for a specific context. Accountable institutions will have to apply their minds to their context.

The FIC also offered to consider and review an industry-specific guide from the LSSA and to compare it with their guidelines with the view to having an industry-specific tool for attorneys. The FIC indicated that the development of industry-specific guides will take some time to finalise.

Committee meeting

The committee met on 4 August 2017 to consider, among other things, the draft generic Guidance Note prepared by

the FIC. Given the unique nature of the attorneys' profession, the committee agreed that it will be important to prepare a tailor-made guideline for the profession in collaboration with the FIC.

The committee noted, with concern, the relatively low number of attorneys who have registered on the FIC's goAML platform. This is despite several communications issued by the provincial law societies and the FIC, aimed at encouraging attorneys to register. This poses a significant compliance risk for attorneys.

The LSSA directed a letter to the FIC indicating that many attorneys have found the registration process to be unduly complicated and frustrating, and are requesting a simplified goAML-platform registration process. The FIC has categorically declined the request.

The committee also requested the provincial law societies to continue their communication with attorneys.

Conclusion

Attorneys who have not yet registered on FIC's goAML platform are urged to do so as a matter of priority. Registration as an accountable institution with the FIC and compliance with the provisions of the Financial Intelligence Centre Act 38 of 2001 are indispensable requirements for practising attorneys in South Africa.

I wish to earnestly thank my fellow committee members and the LSSA staff for their committed service during the year under review.

David Bekker,

Chairperson, Financial Intelligence Centre Act Committee

COMMITTEE ON GENDER EQUALITY

Members: Nolwazi Zulu (Chairperson), Llewellyn Curlewis, Amanda Catto, Phinda Duma, Thumeka Dwanya, Lindy Langner, Noxolo Maduba, Annabelle Mphahlele, Janine Myburgh and Zuko Tshutshane

This committee met on 24 October and considered, among other things, the need for women attorneys to be exposed to ongoing training interventions.

The committee previously noted that mentors who assist female practitioners in liquidation matters often request up to 10% of the fees earned by the mentee. This matter has unfortunately remained unresolved. The committee reflected on

the possibility of mentorship being recognised as part of *pro bono*/community service by the profession. Doing so would discourage mentors from demanding fees, as their time would be counted towards *pro bono*/community service. The Department of Justice and Constitutional Development (the Department) had reportedly placed a requirement that, before someone could be appointed as a liquidator, a mentor is required. The Department has, however, not indicated how the relationship between a mentor and mentee would be governed.

The committee observed that, in terms of the Legal Practice Act 28 of 2014, the Minister of Justice and Correctional Services must, in consultation with the Legal Practice Council (LPC), come up with a list of community service specifications. The committee agreed to feed its request for mentorship to be considered as part of the submissions of the LSSA's Community Service Working Group to the National Forum on the Legal Profession or the LPC.

The last LSSA-funded *indaba* for female practitioners took place during 2007. The committee will be putting forward a proposal to the LSSA Council for a similar *indaba* to take place again. Topics will include human trafficking and the abuse of women and children. The committee mandated the Chairperson to prepare a proposal to the Council.

We gave some consideration to the cultural practice of *lobola* and agreed that it has in its current format, for the most part, taken on a different meaning as originally intended. There are many contributing factors and research may provide some answers as to why *lobola* was becoming expensive. The committee will be establishing the views of the LSSA's Constitutional Affairs and Human Rights Committee on this issue.

We noted, with great concern, media reports on alleged sexual assault on candidate attorneys by their principals. The committee agreed that appropriate interventions should be considered, including measures to deal with the perpetrators of such heinous acts; educational interventions for candidate attorneys to inform them of their rights, possibly through LEAD; and potentially inserting a standard clause in the contract of articles to deal with the issue of reporting procedures for unwanted behaviour.

During the year Susan Abro tendered her resignation. Susan has been a longstanding member of the committee and I would like to take this opportunity to thank her for her valued input during her service. She has been an invaluable member.

I thank my fellow committee members and the team at the LSSA for their ongoing support in executing the committee's mandate.

Nolwazi Zulu,

Chairperson, Committee on Gender Equality

HIGH COURT COMMITTEE

Members: Adam Pitman (Chairperson), Anver Bhayat, Graham Bellairs, André Bloem, Asif Essa, CP Fourie, Peter Horn, Umesh Jivan, Niel Joubert, Itiseng Matlapeng, Macdonald Moroka, Dudu Mthimunye-Hluyo, and Zuko Tshutshane

The committee had two meetings this year and André Bloem was appointed as the new Chairperson.

National Efficiency Enhancement Committee

The LSSA continues to receive reports of improvements in the justice delivery system since the establishment of the National and Provincial Efficiency Enhancement Committees. We have been informed that trial and taxation dates are obtained in much shorter timeframes and matters are being streamlined with increased efficacy. The effectiveness does vary from province to province, but the overall feedback is positive.

Rules Board for Courts of Law interaction

Various rules have been amended, in particular Rule 43 costs no longer being limited to a nominal amount.

Adam Pitman and Asif Essa attended the workshop on 3 November 2017 in Johannesburg convened by the Rules Board to discuss upcoming rules with various role players. There was a particularly high turnout from the judiciary, which was very useful and constructive.

Case-flow management rules

Mediation rules and Supreme Court of Appeal rules were discussed. There was deliberation on the proposed amendments to the filing of expert notices and summaries. The LSSA had its viewpoints put across and debated at the meeting.

Items on the committee agenda

The committee continues to have very useful items to discuss and resolve at its meetings. It is apparent that a number of rules are being amended due to our involvement. Some of the various items on our agenda for the year included electronic discovery, mediation in the high courts, tariff for advocates, the Legal Practice Act 28 of 2014, the Debt Collections Amendment Bill and tariffs for after-hours service by sheriffs.

Committee to assist in appointment of acting judges

We continue in our endeavours to support the establishment of standing committees in all the provinces. The efficiency in the various provinces continues to increase thanks largely to the efforts of the Chief Justice.

Conclusion

A special word of appreciation to the LSSA for all the top-notch work that they put into making the functioning of this committee a success.

Adam Pitman,
Chairperson, High Court Committee

IMMIGRATION AND REFUGEE LAW COMMITTEE

Members: Julian Pokroy (Chairperson), Ashraf Essop, Neil Goodway, Boitumelo Maubane, Christopher Manzi, Onesimo Mkumbuzi, Jerome Mthembu, William Kerfoot and Chris Watters (resigned)

During the year under review the committee met on two occasions to pursue the agenda of the committee's mandate. This meant presenting input, wherever possible, to the Department of Home Affairs and wherever else necessary, as well as meeting wherever practically possible with the authorities and other service providers relative to this area of specialist attorneys' practice.

The year under review brought many new challenges and the prediction is that these will continue. During this year the wheels turned into motion with the formulation of the new immigration policy, for the first time since the early 2000s, a process which is very long overdue and for which the LSSA has pushed for a long time.

A colloquium was hosted by the then Minister of Home Affairs, Malusi Gigaba, at which stakeholders were invited to give input. Our committee was represented by our esteemed colleague Chris Watters, who gave us a report on the developments.

The next step in the process was the formulation of the Green Paper on International Migration, at which point all stakeholders were again invited to give input. Following on that, the input was ostensibly processed and the next phase was approached in the form of the White Paper on Inter-

national Migration, where again opportunity was given to stakeholders to comment.

The White Paper has now been approved and the drafting team of the Minister and Director General of Home Affairs are apparently currently busy with drafting of either amendments to the Immigration Act 13 of 2002 or a new Act and new regulations. What this will hold for our members and potential immigration and skilled migrants is left to be seen.

The Refugees Amendment Bill became law during the course of the year under review and input was given in the comment phases by the LSSA. I would like to specifically mention committee member William Kerfoot of the Legal Resources Centre in Cape Town for his valued assistance in this regard.

On the refugee law front, it has been a particularly difficult year, as the Port Elizabeth Refugee Reception Centre and the Cape Town Refugee Reception Centre both remain closed, despite High Court orders for them to re-open. Litigation has resulted in court orders against the Minister and Director General of Home Affairs in this regard, with considerable cost orders against the Ministry and Department of Home Affairs in what is perceived as unnecessarily induced litigation.

It has also been rather disconcerting that in less than three years, we have seen three changes in Ministers of Home Affairs, thereby not giving Ministers sufficient time to settle in before being replaced. This does not bode well for the Department at this time. We also report that until about five years ago, representatives from the LSSA met with the Minister of Home Affairs or Deputy Minister of Home Affairs and the Director General of Home Affairs on a regular and ongoing basis as a courtesy and to interface on issues globally within a South African context. During the last five-year period, however, there has been a perceived reluctance and/or refusal by the Ministry and the Director General's office to even acknowledge receipt of requests for such meetings to interface with them. These meetings were in the past very advantageous both to the Ministry and the profession in order to clarify issues for our members. This preserved reluctance by the Ministry and Director General seems to be indicative of the next part of this report.

The Department of Home Affairs at its regional and district offices is refusing to deal with any 'third parties' in respect of civic affairs matters, such as those relating to citizenship, birth and death registration, as well as determinations of citizenship status, retentions and resumptions of citizenship. This is despite a court order by the Gauteng High Court compelling the Department to indeed interface with legal practitioners. This malaise has also crept into certain of the South African High Commissions, embassies and consular missions overseas and has become an everyday occurrence. This too is a matter of some concern.

There has been what can only be interpreted as a decline

in service delivery within the Department of Home Affairs at all levels, which is resulting in unnecessary delays in the processing of visas. It has been relatively impossible to deal with the Department at most levels on these issues as, save for a few die-hard service-orientated officials within the Department, many do not respond to e-mails, do not answer telephones and it is impossible to make enquiries. It is further impossible to get an appointment at the Department of Home Affairs Head Office to discuss these matters as one has to first make contact with an official, confirm an appointment and then have them identify you at the time of the meeting at the head office in order for you to gain access to the building. The unfortunate reality is that, if there is no response to telephone calls and e-mails, one cannot actually make an appointment.

Attempts to try and resolve this have met with very little success. By way of example, waiver applications in respect of certain of the requirements in the Immigration Act, which used to take weeks to finalise, are now in such a backlog situation that only if you are very lucky can you get one finalised within six months or more.

This has had the unfortunate knock-on effect of a substantial increase in litigation against the Minister and/or Director General of Home Affairs with applications for mandamus and other court orders in order to try and get rights enforced. Many of the court applications have had constitutional implications and involved infringements on the rights of South African citizens, spouses and children who were foreign nationals. In many of these matters punitive costs orders have been made against the Director General and/or against the Minister. This could be avoided if effective reporting and effective responding were indeed in place. It is issues such as these that our committee has tried to address with the Minister or Director General.

During this year under review, there has also been a perceived tightening up in the requirements for various categories of foreigners wishing to come to South Africa, in most cases with exceptional skills or critical skills and/or investors, and this has been seen as a negative. Specifically, one of the issues that has arisen is that wrong decisions are being made on a more regular basis, grounded in the fact that the adjudicating officials simply did not read the papers or simply ignored certain of the documents, submissions and certificates. This is most disconcerting.

During the year under review, Chris Watters, who has been a member of this committee since its inception, resigned from the committee due to work and other commitments. On behalf of our committee and the LSSA we wish to offer him our profound thanks for all of the effort and constructive input he made during his membership of this committee.

We would also like to thank Lizette Burger of the LSSA and Kris Devan, her personal assistant, for all the valuable assistance, both logistical and otherwise that they have given

during the course of the year. We also wish to make mention of the special relationship that our committee had with the late Nic Swart, through whom we presented several workshops and seminars in our area of specialty. Due to his encouragement and assistance in this regard, Nic will be sorely missed.

Julian Pokroy,

Chairperson, Immigration and Refugee Law Committee

INSOLVENCY COMMITTEE

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

The committee met on 19 July 2017 and deliberated on the important issue of dynamic security bonds and previously disadvantaged individual (PDI) appointees. We have, in the past, considered potential ways to assist PDI appointees to acquire security bonds.

We considered a number of potential options and agreed on the following:

Firstly, joint appointments of senior liquidators and PDI appointees had to be encouraged to deal with the problem of security of bonds. Also, it is important to explore ways to introduce less stringent qualification criteria for the appointment of PDIs in this context.

Secondly, the committee agreed that it is important to liaise with bond grantors to ascertain how they could assist in this regard.

Thirdly, it was noted that the Attorneys Fidelity Fund (AFF) provides funding under s 46 of the Attorneys Act 53 of 1979 for the enhancement of professional standards, which includes education. The funds are reportedly allocated to the LSSA, BLA and NADEL. Training could potentially be offered to young PDIs being appointed as liquidators. The committee undertook to compile a list of candidates who would be interested to attend courses in insolvency and to liaise with the AFF to establish the availability of funding for such training.

We also discussed the possibility of approaching the relevant insolvency departments at banking institutions regarding their support for the appointment of PDIs together with whoever trustee/liquidator they will support for appointments. This would enable PDI practitioners to get exposure in this dynamic industry and aspect of the law.

The committee agreed that LEAD should be requested to partner with the provincial law societies in offering introduc-

tory short courses to insolvency practitioners, preferably on Saturdays at a minimal cost to practitioners. A recommendation will also be made for LEAD to engage with the BLA and the Attorneys Development Fund (ADF) in terms of finding efficient and effective ways of offering a high-level course on insolvency without duplicating activities.

The committee agreed to work on a brochure, for publication during 2018, dealing with the effect of insolvency on employment contracts. The brochure can be made available to members of the public and union representatives.

We noted that the Chief Master's Office had introduced a process of examinations for persons wishing to serve as insolvency practitioners. At the time of the meeting, the information on this process was scant and the committee agreed to obtain further information in this regard with a view of determining whether the legal profession will have input in formulating the assessment standards.

The committee has its work laid out for 2018. I thank the members and the team at the Professional Affairs Department of the LSSA for the commitment to the noble objectives of the committee.

Vincent Matsepe,

Chairperson, Insolvency Committee

INTELLECTUAL PROPERTY COMMITTEE

Members: Esmé du Plessis (Chairperson), Johnny Fiandeiro, Mfana Gwala, Ncumisa Nongogo, Paul Ramara, Baitseng Rangata, Jan-Hendrik Senekal, Lesane Sesele, Waheeda Shreef and André van der Merwe

Constitution of the committee

The Committee on Intellectual Property (the IP Committee) was constituted as an LSSA Committee in 1998 in the light of the increasing relevance of intellectual property law also to general practitioners. At that time, there was 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. Also 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 provide for certain minimum levels of protection in their IP laws to make them TRIPS compliant, IP-related issues assumed a more prominent role.

Activities of the committee

The committee is responsible for a specialised but divergent area of law. Legislative changes could therefore apply to different specific areas of law, e.g. the different laws on patents, trade marks, copyright, industrial designs, ambush marketing, anti-counterfeiting measures, etc. Statutory changes could also impact on the structures and procedures for the registration and enforcement of different intellectual property rights. Moreover, intellectual property law is a highly globalised and internationalised area of law, so that international developments and agreements would likewise have a far-reaching impact on national legal regimes on IP.

Work outline for 2017

We agreed to adhere to the following broad work plan:

To monitor developments (legislative changes as well as other developments) on national level in the area of IP law. More specifically we would monitor and, to the extent possible, participate in

- the developments regarding the drafting of a comprehensive policy instrument, to constitute a Policy on Intellectual Property for South Africa, which was being formulated by the Department of Trade and Industry (DTI);
- the revision of the comprehensive Copyright Amendment Bill, 2015 to rectify its many defects, and the submission of a revised Bill to Parliament;
- the proposed amendment of the Trade Marks Act 194 of 1993 in order to implement the Madrid Protocol to which South Africa may accede;
- the implementation of the Intellectual Property Laws Amendment Act 28 of 2013, assented to by the President but not yet put into effect, and its effect on the four IP Acts referred to in that Act;
- the progress with the Bill on the Protection, Promotion and Management of Indigenous Knowledge Systems (IKS), emanating from the Department of Science and Technology;
- 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;

We would also monitor developments on international level in the area of IP, more specifically

- the implementation of the World Intellectual Property Organisation (WIPO) Development Agenda, particularly in countries on the African continent; and
- the further developments arising from the WTO Doha Round of talks and proposals for potential amendments of patent laws, particularly in regard to the access to medi-

cines and the role of patents in that context, and the protection of geographical indications (GIs).

Developments on national level

Proposed amendment of the Trade Marks Act

Early in 2017 the LSSA was approached by an official of the Companies and Intellectual Property Commission (CIPC) with a request for certain information regarding the Trade Marks Act since CIPC was in the process of drafting appropriate amendments of the Trade Marks Act to implement the Madrid Protocol of WIPO.

Committee members prepared documents setting out the requested information:

- Proposed Amendments of the Trade Marks Act: Comments (Esmé du Plessis);
- Comments on the Interpretation of the Trade Marks Act (André van der Merwe).

The documents are available on the LSSA website.

Copyright Amendment Bill

A first Copyright Amendment Bill was published in the *Government Gazette* in 2015. The Bill was a lengthy document containing many novel and some potentially contentious and controversial provisions. In the light of the large number of critical submissions received, a revised Copyright Amendment Bill, 2017 was published in the *Government Gazette* for further public comment. A very limited period for comments was stipulated.

In view of the time constraints, and since three of the members of the committee were also members of the South African Institute of Intellectual Property Law (SAIIPL) Committee tasked with drafting comments, it was resolved that the LSSA would support the SAIIPL submission.

At the public hearings before the Parliamentary Portfolio Committee, Esmé du Plessis presented the case on behalf of the SAIIPL and the LSSA.

The revision and redrafting of the Copyright Bill, 2017 is still a work in progress by a task team appointed by the Portfolio Committee.

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. In the course of 2016, further work on the initial draft National Policy on IP was halted by the Department, and a different unit within DTI was mandated to formulate a National Policy on IP. A first IP Consulta-

tive Framework was published in the *Government Gazette* in 2016 for public comment.

On this basis of the comments received, a revised Draft IP Policy for South Africa (Phase I) was published in August 2017 for public comment. The draft IP Policy was a lengthy document and focussed primarily on patent issues. Again committee members were involved with the drafting of comments on behalf of the SAIPL, and the committee agreed that it would be to the benefit of the LSSA to support the SAIPL comments.

The IP Laws Amendment Bill

As set out fully in our earlier reports, one of the most significant yet controversial developments in recent years was the IP Laws Amendment Act 28 of 2013 (IPLAA), emanating from the DTI. IPLAA amended four IP statutes to introduce provisions for the protection of certain manifestations of Traditional/Indigenous Knowledge. 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).

A set of draft regulations under IPLAA has been published for public comment. The draft regulations dealt mainly with the establishment of a dispute resolution system under the various Acts. We will continue to monitor developments in this regard.

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 IPLAA, namely Indigenous Knowledge Systems (IKS), but envisaged the creation of a recordal system to preserve the IKS. Many submissions were made by interested parties, also by the LSSA.

The Bill was tabled in Parliament and the Portfolio Committee invited interested parties to submit comments. However, the Bill has been withdrawn from the parliamentary agenda. It is expected that it will be resubmitted at a later date.

Developments on international level

Discussions continue to take place within the two most relevant international bodies in the area of intellectual property, namely the WTO and 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:

- The need for an international instrument to harmonise

the protection of Traditional/Indigenous Knowledge in national laws.

- The need for effective international control over 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 instrument has not been implemented yet.
- The need for the people of developing and least-developed countries to have access to affordable medicines has been prioritised, and the potential role in this regard of patent rights in respect of pharmaceutical products is to be assessed.

Meetings of the committee during 2017

A meeting of the committee took place on 6 October 2017.

Future work

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

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

- Copyright Amendment Bill in revised form (to implement recommendations made in numerous public submissions);
- Trade Marks Amendment Bill (to introduce the Madrid Protocol system);
- Performers' Protection Amendment Bill;
- Revised National Policy on IP (to formulate a National IP Policy for South Africa).

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.

Conclusion

The committee records its sincere condolences on the untimely and unexpected passing away of Nic Swart, the CEO of the LSSA.

Esmé du Plessis,

Chairperson, Intellectual Property Committee

JOINT ATTORNEYS' AND ACCOUNTANTS' COMMITTEE (JAAC)

Members: Iqbal Ganie (Chairperson), Robert Burawundi (AFF), Jan de Beer (AFF), Frank Dorey, Asif Essa, Etienne Horn, Peppy Kekana, Clayton Manxiwa, Nkosana Francois Mvundlela and Jan van Rensburg

The first meeting of the Joint Attorneys and Accountants Committee (JAAC) with the accountants and auditors was held on 5 April 2017 and the second was held on 18 October 2017.

The attorney members met immediately prior to the joint meetings where, inter alia, matters raised by the provincial law societies and the agenda of the JAAC were discussed.

The purpose of the committee is to facilitate interaction and cooperation 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 Law Society of South Africa (LSSA), as well as other stakeholders.

A memorandum of understanding (MoU) between SAICA and the LSSA was finalised providing, inter alia, that the JAAC would strive to address auditing, accounting and legislation issues affecting attorneys and their auditors proactively.

The purpose of the MoU is to outline the roles and the responsibilities of each party clearly as they relate to the establishment of the JAAC.

At each meeting, the representatives of each of the provincial law societies indicate any matters affecting the auditing standards in the conduct of auditors so that SAICA and IRBA may take these concerns to their members in order to ensure a proper auditing process in an endeavor to reduce any potential risk to the AFF.

At each meeting, a full report is given to the auditors on progress by the National Forum on the Legal Profession.

A full report is provided to the committee by Jan de Beer of the AFF at each meeting.

A working group has been established consisting of both accounting and attorney members to consider the changes that will come about as a result of the promulgation of the Legal Practice Act 28 of 2014.

The secretariat of SAICA is to draft a discussion paper which includes the uniform rules on the business accounting records, interest on trust investments in terms of ss 78(2)(A) and 78(2)(a) and the implications of non-compliance.

The dates for the next meeting have been proposed as 4 April 2018 and 17 October 2018.

Iqbal Ganie,

Chairperson, Joint Attorneys' and Accountants' Committee

JOINT LSSA/AFF COMMITTEE ON GATS

Members: Esmé du Plessis (Chairperson), Max Boqwana (ex officio LSSA SADCLA Councillor), Iqbal Ganie, Clayton Manxiwa, Motlatsi Molefe (AFF), Silas Nkanunu, Shanaaz Mohamed, Wilfred Phalatsi, Tshepo Shabangu (ex officio LSSA IBA Councillor) and Zincedile Tiya

Constitution of committee

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

Since then the committee has become a joint LSSA/AFF 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, 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 28 of 2014 (LPA) 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 LPA relevant to the prospective practising rights of foreign lawyers, has not formally been delegated to us, the committee responds to specific requests (eg from the LSSA Council) for assistance.

Broad mandate

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

- to make a study of the GATS Agreement of the WTO;
- to determine and monitor the progress by the Department of Trade and Industry (DTI) in preparing for, in formulating a position in regard to, and in presenting such position in the course of the negotiations regarding GATS (insofar as it applies to legal services) in the context of the WTO negotiations;
- to meet with representatives of the DTI and other government departments (such as the Department of Justice and 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, if and when required;
- to study the requests received from other countries for commitments and concessions by South Africa regarding the rendering of cross-border legal services, 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, persons or societies for the recognition of foreign qualifications for purposes of exemption under the Attorneys Act 53 of 1979;
- to report to the LSSA on these matters.

Extended mandate

The LSSA Council considered the issue of cross-border practice rights in the SADC region, and specifically in the context of South Africa's rights and obligations in terms of the GATS Agreement, when Cabinet approved the submission of the SADC Protocol to Parliament for ratification in 2013. On the basis of a decision taken by the LSSA Council, the Committee's mandate was then extended to require it to investigate the feasibility of introducing cross-border practising rights in the SADC region, and to propose an outline of the steps to be taken, the legislative amendments to be effected, and the legal structures to be created in order to achieve this, taking into account the new dispensation under the Legal Practice Bill. Several reports were submitted to the LSSA Council since 2013. The government has formally signed the SADC Protocol on Trade in Services at the 2015 Summit of the SADC Heads of State; we accordingly, as part of our mandate, continued to address this issue.

In addition, as the LPA advanced in its parliamentary process, it became clear that it included several provisions relevant to the granting of practising rights to, and the rendering of legal services by, foreign lawyers. These provisions attracted

several enquiries, including from government departments requesting advice and assistance.

Activities of the committee

Work outline for 2017

We agreed that our broad work plan would be to

- continue to monitor developments regarding the GATS Agreement in so far as they impact on the provision of legal services and are relevant to South Africa;
- continue to monitor and assess the feasibility of introducing cross-border practice rights within the SADC region, and
- await the implementation of the SADC Protocol in regard to the legal services sector, and specifically as regards the cross-border delivery of legal services and thus possibly the granting of cross-border practice rights to lawyers within the SADC region;
- 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, but only if this was expressly required; and
- assist the LSSA/AFF in promoting acceptance and implementation of the elected model in South Africa and in the other SADC countries.

Finally, as progress is made with the implementation of the LPA, we will monitor developments to ensure that the issues relating to 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.

Developments of relevance

As previously reported, very little has happened in recent years on the international front that impacted on the GATS Agreement and legal services. The committee thus agreed to continue to monitor the progress of two matters and to act, eg, by convening a meeting, only if and when required to do so

- the progress with the provision of cross-border legal practice rights within SADC in the context of the signed SADC Protocol; and
- the progress of the LPA and the granting of legal practice rights to foreign lawyers.

In a Cabinet Statement issued in 2015 it was confirmed that the SADC Protocol on Trade in Services had been signed, also by South Africa. A position paper was prepared in January 2017 for the LSSA Council on the possible granting of cross-border practice rights within the SADC region on the basis

of the SADC Protocol. The document identified a number of important considerations to be taken into account, such as the position of the AFF and its potential increased exposure, the need to ensure that the systems of regulatory and disciplinary control would not be eroded, the need for appropriate legislative amendments, etc.

The transitional phase, namely Parts 1 and 2 of Chapter 10 of the Legal Practice Act, 2014, was put into effect as from 1 February 2015. Although the work to be done as part of the implementation of the transitional phase was important, it did not relate to the granting of practice rights to foreign lawyers. Accordingly, there was no need for the committee to monitor the work done by the National Forum as part of the implementation of the transitional phase.

Meetings of the committee during 2017

No meetings of the committee took place during 2017. Since no further developments had taken place in regard to the SADC Protocol, it was decided to await further developments before convening a meeting.

Future work

The committee was primarily established to monitor GATS-related developments in the international arena. Although the WTO negotiations have not shown any developments 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 our full effort in the years ahead, is the matter of the Legal Practice Act. We 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, we will have to address issues of relevance to the mandate of the committee.

Esmé du Plessis,

Chairperson, Joint LSSA/AFF Standing Committee on GATS

LABOUR LAW COMMITTEE

Members: Jerome Mthembu (Chairperson), Llewellyn Curlewis, Adriette Dekker, Peter Hobden, Motseki Morobane, Roy Ramdaw, Melatong Ramushu, Jan Stemmett and Jason Whyte

The committee welcomed Roy Ramdaw as a new member; he has replaced Lloyd Fortuin. The committee had two face-to-face meetings in the year under review.

Business of the committee

Liaison with the Labour Court: A meeting was held with the Judge President of the Labour Court, Judge Basheer Waglay, on 9 September 2017. Judge Waglay confirmed that courts were now operational in Mpumalanga and Polokwane. For the fourth term, the court would be allocated chambers in the Port Elizabeth High Court. He lamented that attorneys have not requested that matters be heard in centres outside of Johannesburg and requested that the LSSA should assist in this regard. He noticed that, although a notice has been published in *De Rebus*, the LSSA should publish a reminder. He indicated that, in the past, attorneys were appointed as acting judges on a pro bono basis during the July and December recesses. They had not been appointed in 2017.

Currently there are no backlogs in Cape Town, Durban and Port Elizabeth, but there is a huge backlog in Johannesburg. The case-management system is still a work in progress and requires funding for further improvement. Staff training is to take place in Polokwane. Judge Waglay confirmed that members of the Rules Board for Labour Courts had not at that stage been appointed. Committee member Jan Stemmett has since been appointed. In respect of complaints against attorneys, he suggested that the LSSA request members to avoid arguing frivolous and inconsequential matters. However, he acknowledged that attorneys are generally courteous towards judges and there are no complaints in this regard. It is important for attorneys to be exposed to ongoing training to equip them for litigation in the Labour Court. He suggested that the LSSA should submit a proposal for training, which will be given due consideration.

Meeting with the director of the CCMA: The committee met with officials at the Commission for Conciliation, Mediation and Arbitration (CCMA), including its Director, Cameron Morajane, on 2 March 2017. Mr Morajane explained that the CCMA is dealing with individuals passing off as attorneys or attorneys who have been struck off the roll. There is a need for the CCMA to have quick access to a verification facility to determine if individuals posing as attorneys are indeed attorneys. The late Nic Swart confirmed that the Legal Practice

Council would, in future, offer a verification system, but for now the law societies are best placed to provide verification and it is important to establish lines of communication to ensure speedy verification. The LSSA provided the CCMA with the details of the relevant officials at the provincial law societies where the status of attorneys can be verified.

Mr Morajane conceded that formal complaints have not been lodged and will pursue this option where appropriate. He undertook to prepare a formal letter to the LSSA listing the complaints of a general nature experienced at the CCMA and at the hearings of bargaining councils. The LSSA would circulate and advisory to caution attorneys to comply with the applicable rules. The Director confirmed that training formed a substantial part of the CCMA's mandate and the CCMA would, therefore, like to explore a potential collaboration with the LSSA.

It was agreed that six-monthly formal meetings be held.

Submission on the CCMA rules: During March 2017 the LSSA submitted comments to the CCMA on the proposed amendments to Rule 25 of the Rules for the Conduct of Proceedings before the CCMA. The proposed Rule 25(6) will, in our view, give CCMA commissioners a wide discretion to allow virtually anybody to represent parties in arbitration proceedings at the CCMA, including lay persons, consultants, paralegals, advice offices, attorneys struck off the roll etc, as long as they do not 'charge a fee or receive a financial benefit', whereas the strict limitation on legal representation is retained.

The proposed amendment was as a result of the declaratory order in which the Labour Court declared that '[u]pon a proper interpretation of Rule 25, read with Rule 35, of the CCMA Rules and the provisions of the Labour Relations Act 66 of 1995, a commissioner has a discretion to authorise any party to CCMA proceedings to be represented by any other person, on good cause shown'.

On request from the CCMA, a further submission was made during September 2017. The LSSA submitted that a proviso be added to the proposed Rule 25(6) to the effect that a proposed representative be a member in good standing of and subject to the oversight and discipline of a professional or statutory body; or a duly authorised paralegal from a community advice office registered in terms of the Non-Profit Organisations Act 71 of 1997.

Training of candidate attorneys in labour law: The Director of LEAD has been advised that the committee noted with concern that there is no labour law component in practical legal training at the School for Legal Practice, and that committee members are prepared to act as instructors and to assist in preparing study material.

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

Communication with the profession: It was agreed that letters continue to be written to *De Rebus* by members for publication under 'Letters to the Editor' to stimulate debate on labour law issues.

Access to justice: The committee prepared a brochure entitled *Your labour law rights - Protect yourself*, aimed at answering the most common questions about the rights which employees have in the workplace and to offer some practical and legal tips when employees are dismissed. The brochure appears on the LSSA's website.

Conferences/panel discussions: Sadly, members of the committee did not attend any conferences during 2017.

Objectives of the committee for 2018: We have agreed that the objectives for 2017 be retained as they are still relevant. The committee further took the position that it has achieved its objectives for 2017.

Conclusion

I am grateful for the commitment and passion displayed by committee members and the LSSA during 2017.

Jerome Mthembu,

Chairperson, Labour Law Committee

LEGAL AID COMMITTEE

Members: Nontuthuzelo Mimie Memka (Chairperson), William Booth, Katherine Gascoigne, Philippa Kruger, Noxolo Maduba, Moshanti Makgale, Makgabhana Majobhi Mokoena, Asanda Pakade, Zincedile Tiya and Jan van Rensburg

The committee met on 20 July 2017 and representatives from Legal Aid South Africa were present, namely Peter Hundermark, Thembele Mtati and T Maladille.

We noted our concern with reference to matters in which Legal Aid SA represented more than one accused in the same matter. It appears that, in some instances, all the accused persons would be represented by the same Justice Centre. Legal Aid SA confirmed that it had obtained a legal opinion, which essentially confirmed that there would not be a con-

flict of interest as long as there was a Chinese Wall providing separate supervision of the legal practitioners and avoiding the sharing of information. Legal Aid SA had, however, resolved to brief judicare practitioners in conflict of interest matters.

We also expressed concerns that some legal practitioners are no longer rendering judicare services to Legal Aid SA because of low tariffs. The representatives from Legal Aid SA confirmed that, as part of their briefing-patterns policy, the institution had spent approximately R100 million and R135 million on judicare during the years 2014 and 2015 respectively.

Also, Legal Aid SA does not make use of the services of legal practitioners who are not registered on Treasury's Central Supplier Database. This means that legal practitioners must be tax compliant. Unfortunately, this has resulted in some attorneys not being eligible for appointment as judicare practitioners.

In the same breath, Legal Aid SA requested the LSSA to encourage attorneys to render *pro bono* services through the institution. We have circulated a letter to the provincial law societies to encourage attorneys to do so. According to Legal Aid SA's newsletter, *Judicare News* Vol 1 October 2017: 'Practitioners are encouraged to approach the Legal Aid SA local office closest to their magisterial district should they wish to be accredited to perform *pro bono* work. Those who volunteer to participate in the pro bono scheme make a critical contribution to our democracy and ensure that our Constitution becomes a living document for all South Africans, especially the most vulnerable in our society.'

Legal Aid SA confirmed that it had issued a new policy for the reimbursement of travel and expense claims, which took effect on 1 April 2017. The new policy is aimed at ensuring that judicare practitioners are not burdened with claims for travel expenses in their accounts. These will automatically be calculated, but it requires legal practitioners to confirm the location of their practices.

At our meeting on 20 July 2017, I stepped down as Chairperson. The new Chairperson is Noxolo Maduba. This is, therefore, my last report and I wish to extend my appreciation for the privilege of having served this committee. I appreciate the support received from my fellow members and colleagues at the LSSA during my tenure as Chairperson.

Nontuthuzelo Mimie Memka,

Chairperson, Legal Aid Committee

LIQUOR MATTERS COMMITTEE

Members: Kobus Burger (Chairperson), Mhlanga Bala, Solly Epstein, Mashudu Kutama, Sandile Dlomo, Barry Kruger and Eugene Kruger

On 30 September 2016, the Department of Trade and Industry (DTI) published the Final National Liquor Policy, 2016. On the same day the DTI also published the Draft Liquor Amendment Bill, 2016; inviting interested persons to submit written comments not later than 30 days from date of publication.

However, since the forwarding of written submissions by various interested persons and organisations, no further feedback has been received concerning the progress of the aforementioned Bill. We are, therefore, unsure what the status of the Bill is.

All but two provincial legislatures of South Africa – the North West and Limpopo – have now adopted their own provincial liquor laws. Therefore, the Liquor Act 27 of 1989 is still applicable in those two provinces.

In the Western Cape the provisions of the Western Cape Liquor Amendment Act, 2015 also came into effect, together with the amended Western Cape Liquor Regulations of 2011, which slightly amended some of the provisions pertaining to the lodgment of new applications and the prescribed procedures and forms.

In the Free State, the Free State Gambling and Liquor Act 6 of 2010 was also amended to accommodate the Tourism Board. Henceforth the Free State Gambling and Liquor Authority will be known as the Free State Gambling, Liquor and Tourism Authority (FSGLTA). The amendments are mostly aesthetic and concerned with the organisational structure of the authority, as well as the accommodation and amalgamation of the Tourism Board into the FSGLTA. They, therefore, do not impact or amend provisions pertaining to the lodgment and procedure of new applications.

Kobus Burger,

Chairperson, Liquor Matters Committee

MAGISTRATE'S COURT COMMITTEE

Members: Graham Bellairs (Chairperson), Vanessa Graham, Niclas Mabuse, Mvuzo Notyesi, Odwa Nyembezi, Bukky Olowookorun, Gerhard Painter, Praveen Sham, Jacques Tarica, Thami Tembe (resigned) and Jan van Rensburg

The committee has met face to face on two occasions this year, on 11 May 2017 and 22 November 2017. We also communicated and discussed matters on a round robin basis by e-mail.

The general business of the committee, as in all years, has been commenting on rule and legislative changes. There has been much to consider given the high output of the Rules Board for Courts of Law. We have also dealt with general queries received from practitioners.

The committee is pleased to report that after lengthy and extensive representations to the Rules Board, the limitation of fees to be found in Magistrates Courts Rule 50(7) and (8) for attorneys and counsel respectively have been done away with. Attorneys and counsel are now free to charge for such matters on a normal attorney-and-own-client basis. The same applies to Uniform Rule 43. These rules relate to applications for interim access and maintenance and the like in divorce matters.

Arising from the *University of Stellenbosch Legal Aid Clinic and Others v Minister of Justice and Correctional Services and Others* (16703/14) [2015 ZAWCHC 99 (8 July 2015)] case, which dealt with the abuse of emoluments attachment orders by a few attorneys, we have been involved in making ongoing representations to the Department of Justice and Constitutional Development regarding the proposed amendment to the Debt Collectors Act 114 of 1998 in terms of which attorneys who conduct collections will have to register themselves and their debt-collecting secretaries with the Debt Collectors Council and pay the fees prescribed under that Act. Furthermore, the attorneys who deal with such collections will also be subject to the disciplinary code and procedures under the Debt Collectors Act and thus be subject to two disciplinary processes, the second being the provincial law society's disciplinary code. Lengthy representations were made by the LSSA to the Justice Department last year and these have now been enhanced by further representations made by the Law Society of the Northern Provinces, which have been considered and supported by this committee.

Proposals for the amendment to the rule regarding service on a chosen *domicilium citandi et executandi* were received

from the Rules Board and were intensely debated by the committee. Some members were of the view that they should remain as they are, and others held the view that the court should have a discretion to determine whether the manner of service on the *domicilium citandi et executandi* would probably have come to the notice of the party to be served and, if dissatisfied therewith, the court could make an order for further service. To this end the rule would have to be amended to require the sheriff to include, in his return, precise and detailed information of the manner and circumstances of the service effected by him/her. The response to the Rules Board conveyed the two different views of the committee on the issue.

The Rules Board's proposals for the harmonisation of the taxation process in the Magistrates' Courts Rules with the Uniform Rules were also considered and commented on. The process provided for in the Uniform Rules requires the notice enclosing the bill to afford the recipient an opportunity to inspect the file of the party in favour of whom the costs order has been made and list his objections thereto before the matter could be enrolled for taxation. In addition, the Rules Board proposes further that the fees for drawing and attending taxations in the Magistrates' Courts Rules should be aligned and calculated at the same percentages as those in the Uniform Rules. Both of these submissions were supported by the committee.

A request from the Rules Board for consideration of a proposed amendment to the rules relating to the set down of exceptions and applications to strike out was received and debated. The proposal was to the effect that such applications were interlocutory in essence and should be set down in the same manner as other interlocutory applications under Rule 55(4)(a). The proposal was supported by the committee.

The committee has also received notification from the Rules Board of its intention to do a complete review of the Small Claims Court Rules. Our members will be applying themselves to the review and submitting comments in due course. Input from the attorneys, especially those who act as commissioners, will be welcome.

This report is a summary of the main issues considered by the committee. As indicated above, certain members' issues and queries were also considered and responded to. Members are invited to communicate with the committee should they have any issues or queries of a general nature.

Graham Bellairs,
Chairperson, Magistrate's Court Committee

PERSONAL INJURY LAW COMMITTEE

Members: Jacqui Sohn (Chairperson), Lindy Langner, Sinawo Makangela, Jan Maree, Azwifaneli Matodzi, Vincent Matsepe, Gert Nel, Matodzi Neluheni, Benock Shabangu and Ignatius Shirilele

The committee did not meet in 2017. A delegation from the LSSA, including members of this committee, met with the Road Accident Fund (RAF) in Pretoria on 17 October 2017.

Road Accident Benefit Scheme (RABS)

As anticipated the 2017 version of the RABS Bill was tabled in Parliament in June 2017. Also, in June 2017 the Department of Transport facilitated a workshop on the tabled Bill and the now withdrawn Road Accident Fund Amendment Act at a meeting of the Parliamentary Portfolio Committee on Transport. This workshop was attended, inter alia, by the Minister of Transport, Joe Maswanganyi, the acting Director General of Transport and RAF officials. The Minister delivered a policy statement in which he made the following remarks:

‘There has been an independent Commission as early as 2002, the Satchwell Commission which recommended how the new system of RABS is going to work. I want to indicate that, Chairperson, there has been a lot of research done to introduce RABS. I do not want to go into details and there has been wide consultation to be where we are today with the stakeholders and the public in general.

I would appeal, Chairperson, that we tighten the process of consultation because, as we speak, there is a group of lawyers who have contributed millions and they have gone public that they are going to litigate the RABS Bill when it is passed by Parliament. There is a predetermined outcome by some lawyers and doctors [I do not have to talk about that this is not a platform; this is a legislative platform] who are vehemently opposed to this Bill. You will see that the day we pass this Bill in Parliament. And they have gone public that they will oppose this Bill. So I would appeal that we tighten the process in the interest of the public. The political party that has deployed me here in Parliament and in the executive and the president would want us to pass this Bill because our political party is pro-poor in its policies. That is what is important.’

On 2 November the Parliamentary Portfolio Committee on Transport called for comment on the 2017 RABS Bill to be submitted by 30 November 2017. The fact that the RABS Bill has now been several years in the making might serve

to induce a sense of complacency. However, it appears that there is now increased pressure on the Parliamentary Portfolio Committee on Transport to conclude its deliberations on the Bill as expeditiously as possible, and it was anticipated that the Bill would appear on its agenda again early in 2018.

The fundamental architecture of RABS remains unchanged from the 2014 version of the Bill. It is assumed that the draft regulations and rules promulgated in 2014 remain unchanged. There have been several changes to peripheral issues in the Bill itself, but the salient features remain: No fault, no general damages, no lump sums, probably provincial hospital tariffs for medical and hospital treatment, maximum loss of earnings or support for those employed of just under R13 800 per month less deemed residual earning capacity (regardless of whether in employment or not) or less widow's earnings, whichever is applicable. If unemployed, loss of earnings is capped at R3 663 per month, regardless of the actual earning capacity lost. All benefits are payable as a monthly pension; income support benefits start at age 18 and end at age 60, family support benefits are paid to a dependant spouse for a maximum of 15 years or until age 60 whichever is the sooner and cease on death. Children are entitled to loss of support to age 18 only. Foreign citizens whose visas or permits might have expired are denied any compensation other than emergency medical care.

The common law right to claim the balance from the wrongdoer is still abolished and all injured parties, regardless of whether they are at fault or not, receive the same benefits.

Children and students who are injured in road traffic accidents before realising their true earning capacity and foreign citizens are, in particular, severely prejudiced, as are those who will require lifelong care and medical treatment consequential to life-altering injuries.

The LSSA continues to keep a close eye on the proceedings and has requested an opportunity to address the Portfolio Committee on the Bill.

The LSSA's submission on the Bill are on the LSSA website at www.LSSA.org.za under the 'Our initiatives' 'Advocacy' 'Comments on legislation' tab.

Road Accident Fund Amendment Bill, 2016

In response to criticism regarding delay in finalising the changes to legislation contemplated in the RABS Bill raised by the Portfolio Committee on Transport at its June 2017 meeting, the Road Accident Fund Amendment Bill was withdrawn and all attention now remains focused on processing the RABS Bill.

Direct claimants

The RAF has persisted with its aggressive campaign to encourage direct claimants. A recent release from the Minister of Transport via the South African Government News Agency calls on injured road accident persons to claim from the RAF direct in order to avoid litigation costs. The Minister also advised that RAF officials are available all over the country and are also strategically placed at hospitals to assist those who may have been involved in accidents.

The LSSA continues to engage with the RAF on this issue.

Engagement with the RAF Executive

The LSSA arranged a meeting with the Executive of the RAF which took place on 17 October 2017 with a follow up meeting on 13 November 2017.

Among the items on the agenda for discussion was cash flow and preferential payments to certain firms. Although cash flow continues to be problematic and is further complicated by the issue of writs, the LSSA was assured that any firm is welcome to approach the RAF in order to participate in a structured payment arrangement. The Plaintiff's Escalations email address is plaintiffescalations2@raf.co.za.

The LSSA further proposed workshops to assist in improving efficiency and aimed at reducing expenditure and costs. Also discussed was the concession of merits in claims of passengers and in other matters, which are clearly non contentious and should be settled and not litigated. In response, the RAF advised that its panel attorneys have been instructed to ensure that settlement of passenger claims, claims of minors, past hospital and medical costs and loss of support should be expedited should there be no dispute. A management directive had been issued to staff to settle the merits of passenger claims to avoid those matters going to court. Where appropriate, staff are to ensure tenders conceding merits are made. A further management directive regarding the use of joint experts where there is no dispute has also been issued following engagement with the judiciary.

The latest financial statements of the RAF reveal revenue of R33.4 billion was received and expenditure of R31.9 billion incurred, leaving a cash flow profit of R1.3 billion. Expenditure is broken down as follows:

R2.1 billion medical costs; R130 million funeral costs, R7.9 billion for legal and other expert costs, R7.6 billion general damages (stated to be mostly paid to persons not seriously injured) and R13.5 billion loss of earnings and support.

As the pre-Amendment Act claims work their way out of the system it is anticipated that the payouts for general dam-

ages will reduce. The report also indicates that open claims are being reduced and, in time, this must reflect in claims expenditure. If legal and related costs can be significantly reduced by putting in place proper measures to ensure matters are not unnecessarily litigated, tenders are made early on in proceedings and more cases are settled before summons is issued, then there is no reason not to believe that the RAF cannot continue to be cash-flow positive indefinitely.

Jacqui Sohn,

Chairperson, Personal Injury Law Committee

PRACTICE DEVELOPMENT COMMITTEE

Members: Praveen Sham (Chairperson), Koos Alberts, David Bekker, Robert Burawundi, Llewellyn Curlewis, Jan de Beer, Thomas Harban, Thulani Kgomo, Motlatsi Molefe, Harshna Munglee and Mirah Ranchod

The Practice Development Committee (PDC) noted again that Legal Education and Development (LEAD) received the highest number of registrations for the practice management training course since the first mandatory course was presented in 2010. Registrations for 2017 stood at 1 066 for the full course, which was more than the 941 registrations received for 2016. Registrations received for individual modules were 80. The trend of LEAD receiving more registrations for the second intake still continued as practitioners wanted to apply for Fidelity Fund certificates (FFCs) to be able to practise the following year. The following four firms have been accredited to provide in-house practice management training (PMT), including for 2018: Webber Wentzel, ENSAfrica, Bowmans and Cliffe Dekker Hofmeyr. Baker McKenzie has also been accredited to provide in-house PMT in 2018.

The PDC presented a memorandum to the Management Committee (Manco) of the Law Society of South Africa (LSSA) expressing concern that not enough information was being made available by the National Forum (NF) on the legal profession about developments, and this resulted in confusion to practitioners as different pieces of information were being received. The PDC also sought answers from Manco about the expectations that Manco had from the committee.

With regard to advocates with a Fidelity Fund certificate, as provided for in ss 34 (2)(a)(ii) and 34 (2)(b)(i) of the Legal Practice Act 28 of 2014 (LPA), the committee agreed that advocates should also be enrolled for PMT.

The PDC continued to give its support for the presentation of practice management (PM) related seminars and

webinars. We are of the view that webinars would be able to reach more practitioners across South Africa, even those who live and/or practise in small towns and rural areas. Mentorship and education were also confirmed as some of the best methods of skills transfer. Currently there are seven mentorship 'pairings' and three are in progress. The committee agreed that there had to be a recruitment drive to attract more mentors as attorneys who recently started practising need mentors to guide them where necessary to develop skills.

The committee confirmed that the Attorneys Development Fund (ADF) plays a critical role with regard to the development of practitioners, and that it was important for the ADF and the committee to meet on an ongoing basis to identify development needs of practitioners, in large cities, small towns and rural areas.

A meeting was scheduled for August 2017 where all stakeholders would have come together to discuss, among other issues, what was meant by practice development and which stakeholder/s should offer it. Due to unforeseen circumstances, the meeting could not go ahead as planned and subsequent attempts to reschedule the meeting were not successful. We will again reschedule this meeting in early 2018.

The committee was reconstituted in 2017 to create greater synergy between the Standing Committee on Legal Education (SCLE) and this committee. The committee was changed to a Development Action Group as a subcommittee of the SCLE. It was also agreed that we would have meetings on the same day as the SCLE.

Praveen Sham,

Chairperson, Practice Development Committee

PRO BONO COMMITTEE

Members: Mohamed Rander (Chairperson), Poobie Govindasamy, Shaun Hangone, Benedict Jordan, Vincent Matsepe, Bongani Mpitso, Mfundiso Mavonya, Ncumisa Nongogo and Liesl Williams

2017 has been an active year for the committee.

Members of this committee met as part of a *Pro Bono/Community Service Steering Committee* (the Steering Committee), which was appointed at a National Stakeholder Engagement session that took place on 18 March 2016. A report on that session is available on the *De Rebus* website.

The LSSA entered into a Memorandum of Understanding with the BLA and NADEL to provide support with the hosting of five provincial consultative workshops with the legal profession, various stakeholders and experts to explore potential models to increase access to justice for vulnerable members of society. The Steering Committee identified a number of stakeholders.

The consultative workshops took place in Bloemfontein, Cape Town, East London, Johannesburg and Pietermaritzburg and were attended by members of the legal profession and a diverse range of stakeholders. Ilan Lax, this committee's former chairperson, was the facilitator.

The consultative workshops are aimed at achieving the following outcomes:

- exploring best-practice models for the provision of *pro bono*/community services by the legal profession;
- engendering potential recommendations for an effective *pro bono*/community services model;
- considering the role of community-based advice offices within *pro bono*/community services; and
- deliberating on the implications for the legal profession of the community service provisions in the Legal Practice Act (LPA).

A concept document on community service and *pro bono* was drafted by the Steering Committee. Rule 25 of the Rules for the Attorneys' Profession (the uniform rules), which deals with the current *pro bono* services provisions, was also considered.

One of the key issues emanating from discussions, was the fact that '*pro bono*' is not explicitly encapsulated under the concept of 'community service' envisaged under the LPA. Some recommended that the LPA should be amended to include *pro bono* services specifically. Judge Taswell Papier briefly addressed participants after the Cape Town workshop and expressed the view that the application of the community-service provision is timeous. He said:

'I remain enormously proud of our legal practitioners and firms who dedicated time and effort in the infancy phase of the [*pro bono*] project.'

A more detailed report was published in the December 2017 edition of *De Rebus* and the consultative workshops also received national coverage in *Business Day* on 2 November 2017 under an article entitled: 'How Legal Practice Act overlooks the spirit of *pro bono* work'. A draft report has been prepared and attorneys have been afforded another opportunity to submit their recommendations and views on s 29 of the LPA.

The next step is to finalise the report while capturing the key recommendations flowing from the consultative process.

The consultative workshops represent an important move towards stakeholder inclusivity as we approach a new dispensation for the South African legal profession. *Pro bono* services have become a central hallmark of the profession and s 35 of the LPA has, while introducing some uncertainty, provided a platform for legal practitioners and stakeholders to reflect and contemplate on their significance under a new dispensation.

A special word of thanks goes to the attorneys' profession and our stakeholders who have participated in our eventful year under review.

Mohamed Randera,

Chairperson, Pro Bono Committee

PROFESSIONAL SOLUTIONS INITIATIVE COMMITTEE

Members: Mahomed Essack, David Geard, Khomotso Matsung, Roland Meyer, Arnold Mohobo, Zanele Nkosi and Kabelo Seabi

During 2017 the LSSA Council appointed a Diversion Committee (as it was initially referred to) for the purposes of introducing a pilot project to assess the feasibility of the introduction of a 'Diversion Programme' for attorneys in order to protect the public and to promote, maintain and restore confidence in the legal profession. The committee should also cultivate professional competency of legal practitioners through appropriate remedial measures.

The Professional Affairs Department is assisting with the coordination of the committee. The committee's inaugural meeting took place on 19 May 2017 and was geared towards considering the strategic questions and coming up with a way forward.

The committee reflected on some of the fundamental aspects underlying diversion and expressed reservation with the term 'diversion' as it may create the impression that it is an attempt to evade accountability. The committee thereafter appointed a small working group to focus on the defining elements and to ensure that a pilot project can commence at the identified provincial law societies, to run over a one-year period.

The working group had its first meeting on 24 July 2017 to address the key operational aspect of the pilot project, including to ensure uniformity. It also prepared a draft policy and guidelines.

The following key aspects emanated from the working group:

- The proposed name for the pilot programme should be Professional Solutions Initiative. This proposal was approved by the LSSA Council.
- The draft guidelines prepared to assist participating provincial law societies should be interpreted as a working document, which will evolve as the pilot project is implemented.
- The working group agreed to invite the heads of the various disciplinary departments at the provincial law societies to participate in meetings to promote uniformity.
- It would be essential to implement, where possible, a uniform approach during the pilot project.

The working group acknowledged that the involvement of senior attorneys, on a voluntary basis, will be important for the successful implementation of the pilot project. This is because senior attorneys may be called upon to assist with mediating and resolving potential matters that fall within the scope of the project.

The Council of the Cape Law Society (CLS) confirmed its participation in the pilot project, which commenced on 1 August 2017 at the CLS. The Council of the Law Society of the Free State (LSFS) approved the concept of 'diversion'. However, the LSFS will not take part in the pilot project at this stage. The Councils of the Kwa-Zulu Natal Law Society and the Law Society of the Northern Provinces were, at the time of writing, still considering their participation in the pilot project, but have authorised the heads of their disciplinary departments to represent them on the working group.

The CLS has thus far referred two matters for consideration under the pilot project. Both matters presented considerations that were not predicted as part of the run-of-the-mill matters and will require further reflection as to how the pilot project can be refined.

The working group has identified the need to develop a pro forma agreement to be presented to attorneys participating in the pilot project. It became evident that it may not be possible to identify remedial measures up front as, in some cases, an amicable solution would be the desired result as opposed to remedial measures. Also, attorneys may be reluctant to agree in advance to potential remedies – especially if it has cost implications. It was recommended that the pro forma agreement should be drafted in wide terms which will not result in attorneys being reluctant to participate. It was also suggested that there is no need for a detailed reporting format at this stage, as it may be developed at a later stage.

Report prepared by the LSSA Professional Affairs Department

PROPERTY LAW COMMITTEE

Members: Dave Bennett (Chairperson), John Christie, Sharon de Lange, Hussan Goga, Anita Gounden, Kanyi Peter, Nicole Sauli-Koren, Anri Smuts and Mpostoli Twala

The year 2017 was another productive year for the committee and we participated in various meetings and developments affecting our mandate.

Committee meeting: 23 March

The committee met on 23 March 2017 and discussed, among other things, the registration and verification requirements for attorneys under the Financial Intelligence Centre Act 38 of 2001 (FICA). The committee requested the LSSA to recommend to provincial law societies to issue further communication encouraging attorneys, where applicable, to register and/or update and verify their details on the goAML system.

The committee also finalised the Conveyancing: Conventional Deeds -- Guideline of Fees via round robin resolution shortly after our first meeting. The guidelines were published shortly thereafter and became effective on 1 May 2017.

Meeting with PEXSA

Representatives from the committee participated in a meeting together with representatives from the E-Law Committee on 11 July 2017 where the Payment Exchange of South Africa (PEXSA) presented its proposal for a payment platform for South African conveyancing practitioners in all conveyancing matters, with a request for the LSSA to be included in a national working group consisting of various role-players in the financial and property sectors. The committee subsequently recommended to the LSSA's Manco that the LSSA should participate in the working group, but strictly on an observer basis, provided that the LSSA representatives on the group would not be able to bind the LSSA to any decisions, and that the LSSA's presence on the working group not be interpreted as endorsement of the PEXSA product, whether directly or indirectly.

Committee meeting: 22 August 2017

At our meeting on 22 August 2017, we were addressed by Heynike Inc and 3%.com Properties, who expressed concern regarding the notice issued by the Estate Agency Affairs Board (EAAB) in terms of which attorneys' employees whose duties consist wholly or primarily of the rendering of estate agency services, as defined, and who consequently are required to hold

a registration certificate issued by the EAAB, are also obliged to comply fully with the educational requirements prescribed by the Standard of Training of Estate Agents Regulations, 2008. The committee requested Heynike Inc to provide them with a legal opinion on the lawfulness of the EAAB's notice. We referred the matter to the LSSA Manco for further attention. The LSSA Manco suggested that a meeting be convened with the EAAB before embarking on any further actions.

Meeting with Estate Agency Affairs Board: 8 November 2017

Members of the committee met with representatives of the EAAB on 8 November 2017. The main purpose of the meeting was to establish the reason for, the background to and the justification for the issuing of a notice dated 30 June 2017 regarding the educational requirements for attorneys' employees whose duties consist wholly or primarily of estate agency work.

The LSSA's understanding was that attorneys were entitled to conduct estate agency work in terms of an agreement reached with the EAAB many years ago. If this agreement had to be amended, an alternative position should be negotiated between the two institutions, and not be changed unilaterally by one of the parties. The EAAB confirmed that attorneys themselves or their candidate attorneys were not required to register with the EAAB or to be issued with a valid EA Fidelity Fund Certificate by the Estate Agents Fidelity Fund (EAFF), as long as the work was carried out in the course of and in the name of and from the premises of such attorney's firm.

The directive now issued by the EAAB, however, related to any person, employed by an attorney to perform the duties of estate agents (other than candidate attorneys or an admitted attorney), whose duties consisted wholly or primarily of the performance of any defined estate agency work, and who would be considered as an estate agent under the attorneys' firm.

The EAAB expressed the view that the requirements under the new directive will be beneficial and relevant, and would be in the interest of the public. They said that employees of attorneys will benefit from such training, and will be able to provide a better service to the profession and their employers. The EAAB representatives conceded that it will be possible for the legal profession to provide the required training itself. The representatives thereafter proposed the idea of a memorandum of understanding to be entered into between the two institutions regarding CPD training. This option will be explored between the two institutions in 2018.

Meeting with the Competition Commission: 20 November 2017

Members of the committee, together with representatives from the Ethics and Competition Law Committees, met with representatives from the Competition Commission on 20 November 2017 to discuss the legal implications of conflict of interest clause provisions normally contained in service level agreements between banks and conveyancers. This matter is still under consideration for a report to the LSSA.

Conclusion

I wish to express my greatest gratitude to the members of the committee who gave so generously of their time and experience to serve the profession, as well as to thank the LSSA staff involved in the work of the committee for their assistance. Without your dedication and hard work, the committee would not be able to be so active.

Dave Bennett,

Chairperson, Property Law Committee

SMALL CLAIMS COURTS COMMITTEE

Members: Crystal Cambanis (Chairperson), Ettienne Barnard, Llewelyn Curlewis, Jerome Levitz, Charmaine Lindsay, Nomachule Oliphant, Mojau Ramathe, Ngqiqo Sakhela, Cuma Siyo and Butch van Blerk

The committee met on 3 May and 17 October 2017.

At our first meeting we agreed, among other things, that the LSSA Council should be requested to authorise necessary capacity to develop an up-to-date database of Small Claims Court commissioners. The Department of Justice and Constitutional Development (Justice Department) shared its database pertaining to Small Claims Courts and commissioners with the LSSA. We are grateful for the updated database received from the Department as the LSSA's Council had, in 2016, expressed the desire to offer appropriate recognition for long-serving commissioners.

Unfortunately, the Department's statistics do not reflect the years of service of commissioners. It is also evident that there is a need to reconcile the information received from the provincial law societies with that of the Department.

The committee again called on the assistance of the provincial law societies to issue a further request for attorneys serving as Small Claims Court commissioners to provide the LSSA with their duration and location of service. We are grateful to our colleagues at the provincial law societies for

their cooperation and the attorneys who have submitted their particulars. Having an accurate database will become increasingly important in order to give recognition to those legal practitioners who have served as commissioners for lengthy periods.

The committee was informed of a concern raised at a case flow management meeting which took place at a Magistrate's Court in Gauteng that, in exceptional instances, presiding officers at Small Claims Courts may cancel sessions at very short notice. This may have cost and other implications for parties who may have travelled long distances to attend such hearings. Provincial law societies were asked to issue circulars requesting commissioners to make advance arrangements, where possible, if unable to preside over matters.

The committee finalised a brochure entitled: *'Small Claims Court: What you need to know'*, which explains the procedures in the Small Claims Courts. In addition, we resolved to go boldly where no other LSSA committee has gone before with the creation of an app which collates various resource materials dealing with Small Claims Courts. In its short time span of existence, the app has already proven to be a popular tool. The committee also explored the possibility of expanding the LSSA's engagement during 2018 with the public through video, capturing a re-enactment of a Small Claims Court hearing.

We met again on 17 October and agreed to request the Justice Department to consider amending its letter of demand made under s 29 of the Small Claims Court Act 61 of 1984 to make specific reference to the reason for the claim and the amount of the claim. Committee members indicated that, in their experience, some claimants often do not reflect the reason or the amount in the letter of demand. This may accordingly not facilitate the potential resolution of the dispute, without knowing the reason or amount of the claim.

On request from the Rules Board for Courts of Law, we submitted comments on the Small Claims Court Act and the Small Claims Court Rules for consideration by the Rules Board. The comments are available on the LSSA website at www.LSSA.org.za under the 'Our initiatives' 'Advocacy' 'Comments on legislation' tab.

In short, we pointed out that the Small Claims Court Act does not offer the parties a right to appeal against the commissioner's decision. Section 46 of the Act makes provision for the proceedings of a Small Claims Court to be taken on review before a provincial or local division on the grounds listed in the Act. This process may, however, be a costly exercise for a matter that falls within the jurisdiction of the Small Claims Court. We recommended the inclusion of a *sui generis* type of appeal process whereby the decision of a commis-

sioner can be taken on appeal to a tribunal consisting of two or three senior commissioners, who will then have the power to upset the decision of the first commissioner and to replace it with a decision of its own, if necessary. The grounds for review are set out in s 46 of the Act and this can potentially remain unchanged. The implication is that litigants, who have approached the Small Claims Court to resolve a dispute, will have a feasible option at their disposal to have a matter reviewed, if the grounds for review are present.

Also, we recommended that the Act be amended specifically to permit personal service of court documents. The Act should make provision for a party to serve any court document upon any person through personal delivery of the document; or leaving the document at the person's ordinary place of residence with any person who is normally resident at that place and appears to be over the age of 18; and filing an affidavit confirming such, to the Clerk of the Court.

I thank my fellow members for their dedication and the confidence displayed in electing me as Chairperson.

Crystal Cambanis,

Chairperson, Small Claims Courts Committee

TAX MATTERS AND EXCHANGE CONTROL COMMITTEE

Members: Robert Gad (Chairperson), Charles Ancer, Iqbal Ganie, Mzawuthethi Kalimashe, Nano Matlala, Hellen Phaleng-Podile and Dirk Terblanche

The committee held a telephone conference in June 2017 to discuss a wide range of topics.

The main actions for the year were as follows:

We were represented at the 2017 Annual Tax Indaba, albeit not as presenters. It is contemplated that tax attorneys would be invited to present at future indabas. We were offered a limited number of free passes to attend, and made use of these.

We reviewed proposed tax legislation of general import and made extensive written submissions in cooperation with other professional bodies. Some of the topics included international tax, trusts and share schemes.

We attended two SARS workshops on the proposed international tax changes. We supported these with written and oral submissions to the Parliamentary Portfolio Committee. We were also represented at the report back sessions. Largely, our submissions found favour. We have improved our profile and

receive more frequent invitations to attend and make submissions on tax law.

More generally, Lizette Burger has a very good relationship with SARS, and she has regular access in order to raise any tax operational issues, such as the challenges being faced by attorneys in tax compliance and in reaction to the Tax Administration Act 28 of 2011.

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

As Chairperson, I would like to thank my Deputy Chairperson, Hellen Phaleng-Podile, and members of the committee for all of their input and efforts during the course of 2017. I would also like to thank Lizette Burger for her efforts as well as those of her personal assistant, Kris Devan, Nonhlanhla Chanza (Parliamentary Liaison Officer), Ricardo Wyngaard (Senior Legal Official) and Edward Kafesu (Committee Secretary).

Robert Gad,

Chairperson, Tax Matters and Exchange Control Committee

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OF SOUTH AFRICA

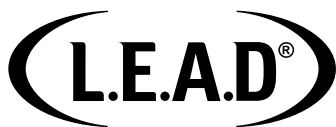
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