



LAW SOCIETY  
OF SOUTH AFRICA

ANNUAL REPORT

2016/2017

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



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**Building** a Better  
Legal Profession  
for All



# LAW SOCIETY OF SOUTH AFRICA

## ANNUAL REPORT April 2016 to March 2017



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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  
P O Box 5217, Johannesburg 2000  
Tel: +27 (11) 403 0802; Fax: +27 (11) 403 0814;  
E-mail: [info@bla.org.za](mailto:info@bla.org.za)  
[www.bla.org.za](http://www.bla.org.za)

### **Cape Law Society**

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

### **KwaZulu-Natal Law Society**

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

### **Law Society of the Free State**

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

### **Law Society of the Northern Provinces**

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

### **National Association of Democratic Lawyers**

3rd Floor, Commerce House, 55 Shortmarket Street,  
Cape Town  
Tel: 078 514 3706;  
E-mail: [fazoe@nadel.co.za](mailto:fazoe@nadel.co.za)  
[www.nadel.co.za](http://www.nadel.co.za)

When we took office as Co-Chairpersons early in April 2016 at the close of the Law Society of South Africa (LSSA) annual general meeting, we undertook to take forward a number of resolutions that were made at that time. Two of these have involved setting up two action groups; one on briefing patterns in the profession and the second on enhancing the role of women in the profession. More on these two initiatives below.

## Legal Practice Act

Much of our time in office has focused on developments around the Legal Practice Act 28 of 2014 (LPA). The National Forum on the Legal Profession (NF) – the transitional body setting in place the new dispensation for the Legal Practice Council (LPC) – has met seven times since it was set up when Chapter 10 of the LPA came into effect in February 2015. The NF has finalised most of its tasks and has recommendations to make to the Minister. However, the negotiations with the provincial law societies regarding the transfer of staff and assets to the LPC as well as various issues around practical vocational training for candidate legal practitioners were still to be finalised at the time of writing this report.

Earlier this year, the NF gazetted the Code of Conduct and rules for legal practitioners in the future dispensation. These will be taken forward by the LPC.

The Minister has granted an extension of time to the NF to finalise outstanding issues and negotiations with the provincial law societies. The timeframes for the implementation of the LPA are now envisaged to be as follows:

By 1 August 2017:

- The NF is to make recommendations to the Minister on all issues relating to the transitional process (s 97(1)(a)).
- Agreements are to be finalised between the NF and law societies with regard to transfers (s 97(2)(a)).
- The NF is to issue rules on training and discipline through publication in the

*Government Gazette* for comment (s 109(2)).

By 1 February 2018: Implementation of ch 2 in terms of s 120(3) of the LPA:

- The Minister must make a proclamation for the establishment of the LPC and provincial councils (PCs).

The Legal Practice Amendment Act published earlier this year makes provision for the LPC and PCs to come into effect without jurisdiction, and for the law societies to continue to regulate the attorneys' profession for six months to ensure a smooth transition and hand-over to the LPC.

- The NF is to make all rules in terms of s 95(1)).
- The Minister is to issue regulations in terms of s 109(1)).

By 1 August 2018: Implementation of the rest of the LPA in terms of s 120(4). All rules and regulations need to be in place.

- The provincial law societies are to be abolished and the regulatory functions of advocates' structures are to be transferred to the LPC.
- The LPC and PCs will commence regulating the legal profession.
- The NF will be wound up after a final meeting with the LPC in terms of s 105(3).



Jan van Rensburg and Mvuzo Notyesi



Developments at the NF are communicated to practitioners regularly by the LSSA in advisories and in *De Rebus*, and are documented in the 'Legal Practice Act' section on the LSSA website at [www.LSSA.org.za](http://www.LSSA.org.za).

Our eight representatives on the NF are doing a sterling job in contributing to the discussions and resolutions. The LSSA set up a task team that meets regularly with our representatives to mandate them and to sensitise them to the thinking of the profession on various developments on the implementation process.

The LSSA is indebted to its representatives, including the Vice Chairperson of the NF, Max Boqwana, who are devoting many hours to ensure that the handover from the current dispensation to the new dispensation for the profession is as controlled and seamless as possible.

## **The post-Legal Practice Act dispensation**

Against the backdrop of the changes to be brought about by the LPA, the LSSA and its six constituent members – the four statutory provincial law societies, the Black Lawyers Association (BLA) and the National Association of Democratic Lawyers (Nadel) – have engaged in discussions on the future of the LSSA. This arises from the fact that, once the four law societies cease to exist, the LSSA will cease to exist in its current form. This leaves the attorneys' profession without a national 'home' to represent its interests and without a unified voice to speak on its behalf, whether this be on burning issues, or on matters that affect the profession and the public directly.

At a special council meeting on 16 March 2017, the principle of the continuation of the LSSA as a transitional body was approved by the four statutory law societies and Nadel. The BLA undertook to revert on this by the time of the council meeting in April 2017.

## **Truth and Justice Award**

One of the highlights of our term so far has been the institution of the Truth and Justice Award by the LSSA Council, and the presentation of the inaugural Award to outgoing Public Protector, Thuli Madonsela at a dinner in Pretoria on 7 September 2016. The 'Truth and Justice Award' recognises consistent and exceptional promotion of and/or work done in terms of the Rule of Law, access to justice, protection and promotion of the Constitution and good governance.

In her address Thuli Madonsela thanked the LSSA for its support of the Office of the Public Protector during her term.

She said: 'You have not been afraid, as the LSSA, to issue statements that we be allowed to pursue our mandate without fear or favour.'

Ms Madonsela added that, of all the awards presented to her, the closest to her heart were the recognition from her peers in the legal field. These included the LSSA's Truth and Justice Award, the Sydney and Felicia Kentridge Award by the General Council of the Bar in 2015, and the South African Women Lawyers Association Award, received at the beginning of her term of office.

Turning to the role of lawyers in protecting and promoting the Constitution and to speak truth to power, Ms Madonsela reiterated her view that legal practitioners advising the state must always shy away from telling their clients what they want to hear and rather tell them what they need to hear. She called on lawyers to provide the kind of counsel they were proud of, adding that this would ensure that they are on the right side of history.

## **Commonwealth Law Conference Rule of Law Award**

As the LSSA, we nominated Adv Madonsela for the Commonwealth Rule of Law Award which is traditionally awarded by the Commonwealth Lawyers' Association (CLA) at its biennial conference. We were delighted to learn that the CLA had, indeed, selected Ms Madonsela as the recipient for this year's award. She accepted the award at the closing ceremony of the 20th Commonwealth Law Conference in Melbourne, Australia, on 24 March 2017. As South Africans, we are proud that this worthy South African lawyer received international recognition from her peers across the Commonwealth for her work in protecting our Constitution and promoting the concept of the Rule of Law to all South Africans.

## **Elections**

As Co-Chairpersons we also had the privilege of being part of the LSSA's election observation initiative. First and foremost, we thank all the attorneys who served as election observers at the local government elections on 3 August this year. They were the eyes and ears of the public and devoted the full day to observing and recording their findings. We launched the election observer mission at a National Press Club function the week before the elections and were also invited by the Chairperson of the Electoral Commission (IEC), Glen Mashinini, to attend the launch of the impressive National Results Operations Centre in Pretoria.

In a press release on 5 August, and with the benefit of initial feedback from our observers, we noted that, on the whole,

the elections had been free and fair. We pointed out that some of our observers had reported some irregularities. Details regarding these were noted fully in our final report published at the end of August. We recognised the degree of management and effective coordination necessary to ensure that elections are run according to legislation, taking into consideration the number of voters and voting stations on Election Day. We commended the IEC on a job well done and recognised the important role it played in protecting and promoting our democracy. The LSSA's report to the IEC is available in the 'Our initiatives' section on the LSSA website.

## Briefing Patterns

At the end of March 2016, the LSSA hosted a Summit on Briefing Patterns in the Legal Profession which was attended by practitioners from the attorneys' and advocates' branches, Justice Department representatives and representatives of state-owned enterprises (SOEs), business and government departments, as well as other consumers of legal services. Those attending the summit were taken briefly through past and present discriminatory practices that are experienced by legal practitioners when it comes to the distribution of work and briefing. The focus of the summit, however, was on finding solutions and devising a monitoring mechanism that will ensure that the identified resolutions are implemented. In preparing for the summit the LSSA sought to collate information on the distribution of legal work from government departments and SOEs as the largest consumers of legal services. Summit attendees drafted resolutions which are now being taken forward by an Action Group on Briefing Patterns, chaired by former LSSA Co-Chairperson, Busani Mabunda, and which includes Thandi Norman SC, Anthea Platt SC, Richard Scott, Mvuzo Notyesi and Dion Masher, as well as Onnica Phahlane from the Justice Department. The Action Group has made good progress at its monthly meetings. The Director-General of the Justice Department, Vusi Madonsela, joined the Action Group meeting held at the end of September 2016, at which a firm working relationship and commitment for cooperation was established. The Action Group has engaged the judiciary on its views and experiences on the issue of briefing and has been in discussions with the SASSETA to discuss initiatives that it can support towards transformation of the profession.

It drafted and finalised a protocol on the procurement of legal services which will be signed by all relevant stakeholders at a special function on 23 June 2017.

## Women in the profession

Another action group set up during our term is that dealing with issues affecting women in the profession. This action

group is chaired by LSSA councillor, Mimie Memka. This Task Team is considering the practicalities relating to employment equity and transformation plans; creating an enabling environment for tracking and monitoring young attorneys; as well as considering a gender charter and gender strategies that can serve as a practical guideline to the profession. It will also consider systems for implementation of these policies.

Again in 2016, the LSSA hosted two sessions of the Significant Leadership training for women lawyers, in Johannesburg and in Durban, which were well received, and two sessions are planned for 2017, in Cape Town and again in Durban.

## Litigation

**SADC Tribunal:** The LSSA is involved in various matters. In 2015 the LSSA launched an application in the High Court: Gauteng Division 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.

Unlike the previous Protocol, the 2014 Protocol deprives citizens in the SADC region – including South Africans – of the right to refer a dispute between citizens and their government to a regional court if they fail to find relief in their own courts. By signing the 2014 Protocol, the President has infringed the right of South African citizens to access justice in terms of our Bill of Rights. As the Protocol now stands, it limits the jurisdiction of the SADC Tribunal to disputes only between member states – and no longer between individual citizens and states – in the SADC region.

The LSSA has been joined in the application by six Zimbabwean farmers, and by the Southern Africa Litigation Centre as *amicus*.

It is expected that this matter will be heard during 2017.

**Proxi Smart Services (Pty) Limited (Proxi Smart):** Proxi Smart has applied to the High Court: Gauteng Division, and subsequently served an application on the LSSA, for an order to the following effect:

*Declaring that the steps in the transfer process identified by Proxi Smart do not contravene the Attorneys Act, the Legal Practice Act, the Deeds Registries Act of the Regulations made under the Deeds Registries Act and that it does also not constitute the performance of conveyancing work reserved to attorneys or 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 LSSA is, therefore, opposing the matter as are the Attorneys Fidelity Fund and the Minister of Justice and Correctional Services, who has also been cited as a party.

**Women's Legal Centre Trust v President and six others:** The LSSA has joined this matter as *amicus*. The applicants seek 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 due to be heard in the High Court: Western Cape division in August/September 2017.

## UN Universal Periodic Review of Human Rights

In 2016, the LSSA submitted a joint shadow report with the International Bar Association's Human Rights Institute (IBAHRI) and the Southern African Litigation Centre to the United Nation's Universal Periodic Review (UPR). The UPR involves a review of the human rights records of all UN member states. It is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. As one of the main features of the Council, the UPR is designed to ensure equal treatment for every country when their human rights situations are assessed. The IBAHRI works with lawyers, law associations and bar associations around the world in submitting a report on human rights relating to the legal profession. As a result, the LSSA was fortunate enough to be invited to a pre-session in Geneva from 3 to 7 April 2017 to present the report, make recommendations and take part in training on the use of UN mechanisms to advance human rights. The LSSA delegation was funded by the IBA.

Issues that were addressed in the shadow report included the ratification of international human rights treaties and other instruments that the country has undertaken to do and their domestication into domestic law, respect for the rule of law and independence of the judiciary, adherence and compliance with international law and human rights treaties.

## Foreign relations

The LSSA hosted a number of foreign visitors this year, including the President and executive members from the Nigerian Bar Association, who met with the LSSA's Management Committee (Manco); the Bar Association of Sri Lanka on a study tour with the American Bar Association's Rule of Law Initiative; the Zimbabwean Council for Legal Education

visited Legal Education and Development (LEAD) for an institutional study visit session; and a ministerial delegation from Vietnam met with LSSA representatives.

As Co-Chairpersons, we represented the LSSA at the International Bar Association (IBA) Bar Leaders' meeting, the SADC Lawyers Association Conference held in Cape Town in August – which we co-hosted with the SADCLA – and the IBA conference in Washington DC, as well as the Pan-African Lawyers Union (PALU) conference in Nairobi. The LSSA became a member of PALU in 2016 and we look forward to co-hosting the PALU conference in Durban in July 2017. In September 2016, Mr Notyesi attended the Third BRICS Legal Forum in New Delhi, India. This is an important forum for the profession and as BRICS countries we must accept, understand and acknowledge that we are obliged to stand together in order to achieve the greatest possible outcome for all, and most importantly, for our people.

Jan van Rensburg represented the LSSA at the 20th Commonwealth Law Conference in Melbourne, Australia in March 2017 together with our representative on the Commonwealth Lawyers Association council, David Bekker. Mr Van Rensburg participated in a panel discussion on 'Winning by Spinning? The Ethics of Litigating Civil Cases in the Media'.

The CEO, Nic Swart, addressed the International Regulators' conference in Washington on the concept of diversion in regulation.

We congratulate our representative on the IBA council, Tshepo Shabangu, who has been invited to join the IBA's Policy Committee. This is the 'think-tank' of the IBA and its Bar Issues Commission, and its main duty is to review all motions going to the IBA council which concern bar associations and law societies. Mr Notyesi attended the IBA annual conference in Washington in September 2016 where he participated in a discussion on cross-border practice in Africa.

At SADC Lawyers Association level, LSSA Councillor Max Bopwana was elected Vice President of the SADCLA and our second council representative is Noxolo Maduba.

We are proud of the positions held by our colleagues in these international bodies and the contribution they make there.

## Voice of the profession

As the LSSA, we continue to engage with stakeholders and to speak out on issues of public relevance. During our term as Co-Chairperson, we have issued press releases on numerous issues, including the withdrawal from the International Criminal Court, the State of Capture Report and the withdrawal of charges against the Finance Minister by the National Director of Public Prosecutions.

We recorded our serious concern at the ongoing protests at our educational institutions and offered the assistance of the profession.

We expressed alarm at developments at the SABC when journalists were prevented from reporting on all newsworthy incidents and called on Parliament to investigate the fitness of the SABC Board. We earlier urged the SABC to obey the ICASA order to withdraw its censorship resolution.

We expressed grave concern at views by President Zuma with regard to the courts and the judiciary and we openly acknowledged and supported Chief Justice Mogoeng Mogoeng and our judiciary for its independence and strong judgments made without fear or favour to anyone or any institution.

All the press releases we have issued during our term can be viewed on the LSSA website at [www.LSSA.org.za](http://www.LSSA.org.za).

## Comments on legislation

The LSSA has made a number of comments on draft legislation during our term, including appearing before parliamentary portfolio committees to make oral submissions on some of the Bills. These are covered in the various reports by the specialist committees further in this annual report and can be accessed on the LSSA website.

## De Rebus and communication

*De Rebus* celebrated its 60th anniversary as the attorneys' journal last year. It has evolved from a simple, photocopied newsletter to our flagship communication and educational tool that is available to all practising and candidate attorneys in print, online and App format, with a circulation of well over 24 000 – see also page 14 of this report.

Besides *De Rebus*, the LSSA continues to communicate news and practice-related information to practitioners through the *Legalbrief LSSA Weekly* every Friday morning – and we thank Juta for the continued cooperation in this initiative – as well as through regular advisories and e-newsletters – see also page 13 of this report.

## Legal education

The LSSA's Legal Education and Development division LEAD strives to provide relevant seminars and workshops on bread-and-butter topics, but also seeks to present innovative, forward-looking workshops such as the one on 'The end of legal practice as we know it', which focused on the disruption

of legal practice by new technologies and the changing demands of consumers.

E-learning showed a hundred percent growth in 2016 significant growth, with 1 053 practitioners having participated in training events online.

Besides the workshops and seminars, to date, 1 388 candidates attended the various centres of the School for Legal Practice and 2 282 attended PLT courses. More information on developments at LEAD appear on page 24 of this Annual Report.

Recently the LSSA entered into a memorandum of understanding with the Human Rights Commission to collaborate on information sharing and human rights advocacy and training. This will provide LEAD with valuable resources and create an opportunity for the LSSA to be more active on human rights-related issues.

## A word of thanks to practitioners

We wish to thank practitioners who continue to serve on the LSSA Council and Manco, as well as on the LSSA's specialist committees. In addition, we thank the thousands of attorneys who drafted free wills for members of the public during National Wills Week from 12 to 16 September 2016, as well as those who serve as commissioners in the Small Claims Court and who continue to do *pro bono* work – whether recognised or unrecognised – in this way promoting access to justice for the poor and indigent members of our communities and enhancing the status of our profession.

**Mvuzo Notyesi and Jan Van Rensburg,**  
*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
Mvuzo Notyesi <sup>*1</sup>	Co-Chairperson	07, 09, 11, 02
Jan van Rensburg <sup>*</sup>	Co-Chairperson	05, 07, 09, 11, 02
Ettienne Barnard <sup>*</sup>	CLS	05, 07, 09, 11, 02
Max Boqwana	Nadel	07, 11, 02
David Bekker <sup>*</sup>	LSFS	05, 07, 09, 11, 02
Dave Bennett	LSNP	05, 07, 09, 11, 02
Walid Brown <sup>2</sup>	BLA	09, 11, 02
Nolukhanyiso Gcilitshana <sup>*</sup>	BLA	05, 07, 09, 11, 02
David Geard	CLS	05, 07, 09, 11
Sbu Gule	LSNP	05, 09, 11, 02
Peter Horn	CLS	02
Nolitha Jali	Nadel	05, 07, 11, 02
Maake Kganyago <sup>3</sup>	Nadel	05
Mabaeng Denise Lenyai <sup>4</sup>	BLA	07, 09, 11, 02
Busani Mabunda <sup>5</sup>	BLA	05
Mimie Memka	BLA	05, 11, 02
Anthony Millar	LSNP	05, 07, 09, 11, 02
Sam Mkhonto	Nadel	05, 07, 09, 11, 02
Nkosana Francois Mvundlela <sup>*6</sup>	BLA	09, 11, 02
Janine Myburgh <sup>7</sup>	CLS	05, 07, 11, 02
Xolile Ntshulana <sup>*8</sup>	Nadel	07, 09, 02
Richard Scott <sup>*</sup>	KZNLS	05, 07, 09, 11, 02
Jan Stemmett	LSNP	05, 07, 09, 11, 02

<sup>\*</sup> Member of the Management Committee (Manco).

#### Key:

- 05 – May 2016
- 07 – July 2016
- 09 – September 2016
- 11 – November 2016
- 02 – February 2017
- 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 Notyesi represented the LSSA at the International Bar Association Bar Leaders Meeting in May 2016.
2. Mr Brown joined the Council in September 2016.
3. Mr Kganyago was an acting judge during the reporting period.
4. Ms Lenyai joined the Council in July 2016.
5. Mr Mabunda left the Council in May 2016.
6. Mr Mvundlela joined the Council in September 2016.
7. Ms Myburgh is the alternate for Mr Horn and Mr Geard from the CLS.
8. Mr Ntshulana was an acting judge during the reporting period.



## RELATIONSHIPS DRIVE US

### This is an LSSA team intent

Effective leadership will understand that the nurturing of healthy relationships in an organisation is critical for sustainability and growth. We, therefore, emphasise the great importance of relationships, both internally and externally, for the LSSA operation.

Every achievement of the LSSA in 2016 in terms of governance, core function and growth depended primarily on the relationships that we have been part of.

Our external relationships have brought significance to the LSSA operations:

- Engagement with the judiciary reinforces our belief in an independent judiciary and our respect for the courts.
- Productive cooperation between our Council and management is not limited to meetings, but is achieved through regular interaction at Man-co and task team level.
- Continuous and constructive engagement takes place regularly with governmental and non-governmental stakeholders, for the benefit of the public and the profession.
- Several hundreds of practitioners are serving on specialist committees, providing LEAD's training, drafting and assessment, and are contributing to *De Rebus*.
- Involvement with international associations provides insight and allows us to present our own values and observations.
- Engagement with others in the profession and government is crucial, to initiate action with regard to briefing patterns, the position of women practitioners and other priority issues.



**Nic Swart**

*Chief Executive Officer*

In 2016 the LSSA's performance in election observation, advocacy, legislation and professional matters has required constructive and lasting relationships.

Relationships must be well managed. They must be established, maintained, strengthened and extended to ensure that the profession continues to benefit from a wealth of diverse insights, shared capacity and innovation. Mutual benefit is essential. We gain from our network, but believe that our counterparts must, at all times, be respected and served well through our actions.

Healthy internal relationships are equally important for ensuring best engagement with our stakeholders. There is indeed little that a committed team cannot achieve, and I am proud to say that the LSSA is driven by such a team.

We celebrate the relationships that have been formed over nineteen years. It is our legacy, as we prepare for transition.

**Nic Swart,**

*Chief Executive Officer*

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

## COMMUNICATION

Communication remains a cornerstone of the LSSA activities as this provides the face and the voice of the profession to the public and to stakeholders. It is vital that the LSSA manages the tone and content of its communication as it – through the Co-Chairpersons – speaks on behalf of all its constituents and of all attorneys. What it says in public, therefore, must support and promote our constitutional democracy and enhance the status and dignity of the profession. The value of the work done by attorneys must also be emphasised.

This is done through public statements which align the profession with the values which it seeks to espouse. During the term of the current Co-Chairpersons, these statements included:

- raising concern that the RAF is short changing road accident victims through hasty direct settlements;
- welcoming the release of the State of Capture report by the Public Protector;
- welcoming the withdrawal of charges against Finance Minister Praveen Gordhan, while expressing grave disappointment that a matter of this magnitude and implications was decided without first obtaining all the necessary information and that the charges were instituted in the first place;
- urging Government to reconsider withdrawing from the International Criminal Court;
- calling for an investigation by Parliament into the fitness for office of SABC Board members;
- offering the services of attorneys as mediators to resolve the education impasse during the Fees Must Fall actions;
- encouraging the public to have wills drafted for free by attorneys during National Wills Week;
- confirming that the local government elections were generally free and fair, but undertaking to report irregularities

noted by the LSSA election observers to the Electoral Commission;

- urging the SABC to obey the ICASA order to withdraw its news censorship resolution;
- expressing shock at the murder of Kenyan human rights lawyer, Willie Kimani;
- expressing alarm at developments at the SABC and urging the SABC board to create an environment in which journalists can report without fear or favour;
- urging Government to ensure a climate for free and fair elections in the run-up to the local government elections;
- urging the Judicial Service Commission to deal with allegations of racism against Judge Mabel Jansen expeditiously and transparently; and
- expressing grave concern at the views expressed by the President on the courts.

The LSSA also congratulated former Public Protector Thuli Madonsela on being awarded the Commonwealth Rule of Law Award which was presented to her at the 20th Commonwealth Law Conference in Melbourne in March this year.

The Co-Chairpersons deal with media enquiries on numerous issues throughout the year.

Of importance, the LSSA has communicated developments relating to the National Forum on the Legal Profession (NF) to practitioners through electronic advisories sent immediately after every NF plenary meeting covering the resolutions taken at the meeting, in its regular newsletters and also by updates in the LSSA News column in *De Rebus*. The LSSA website also has a comprehensive section on the Legal Practice Act which summarises current developments as well as the full history leading up to the Legal Practice Act.

The National Wills Week provides an opportunity for extensive positive coverage for the attorneys' profession as it is publicised extensively in the mainstream as well as the community media. In addition, social media channels promote the free services by attorneys, but also promote the message that attorneys are the preferred service providers for drafting wills. We were pleased to receive the support of the Department of Justice and Constitutional Development for the National Wills Week initiative this year as the Department publicised it on its website and also on the website of the Master of the High Court.

The LSSA's Communication Department was boosted with the secondment of *De Rebus* News Editor Nomfundo Manyathi-Jele to the communication section as Communications Officer. This has provided much-needed, experienced support to both the LSSA and LEAD.

The Communication Department remains responsible for

maintaining and updating the LSSA and LEAD websites, producing electronic advisories and newsletters, sending the *Legalbrief LSSA Weekly* every Friday morning; the corporate branding and marketing collateral for the LSSA and all its departments, information brochures for the public and those made available to attorneys' firms.

In addition, the LSSA Communication Department played a hands-on role in the logistics for the SADC Lawyers Association Conference held in Cape Town in August 2016 and will do so again for the Pan African Lawyers Union conference to be held in Durban in July this year.

**Barbara Whittle,**

*Senior Manager: Communication*

## DE REBUS

### The SA Attorneys' Journal

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

*De Rebus*, the 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 provide practitioners with a platform for discussion and sharing of opinions on matters relating to the profession.

In 2016 *De Rebus* celebrated its 60th year as the attorneys' journal.

The journal plays an important educational role 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

By December 2016, *De Rebus'* circulation was 24 311, which is made up of 18 793 attorneys, 3 430 candidate attorneys, 901 paying subscribers and 1 037 complimentary recipients, as well as the sale of individual copies.

With regards to the digital circulation, the *De Rebus* website, as at December 2016, had 1 027 subscribers. On an average of three times a month, a mailer containing highlights from the website, with links to the highlighted articles, is sent to 14 490 subscribers. In 2016, the *De Rebus* team embarked on a process of uploading archive issues of the journal, so the

website currently contains articles dating back to 2012.

The analytics from the website are used to gauge reader interest in particular topics, with a view to publish similar topics in the journal in the future. Other information from the analytics such as country where the journal is read, browser used to access the website and mobile operating system will assist *De Rebus* for the honing of the digital strategy.

In 2017 the second phase of the digital strategy will be set in motion. This 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 app has gained momentum among the readers of the journal. As at December 2016, the app was downloaded 1 140 times by Android users and 731 times by IOS users. Those who have downloaded the app receive notification once the *De Rebus* website is uploaded as the app is uploaded by an RSS feed from the website.

In 2016 the *De Rebus* Digital (an exact replica of the journal in PDF format, which was housed on a server of a third party) was stopped so as to save costs. Practitioners can now download a full PDF version of the journal from the *De Rebus* website.

*De Rebus* also has a Twitter handle, which as at December 2016 had 1 370 followers. The Twitter handle is used to guide readers to the website. Articles of a particular issue are highlighted with a link to the article on the website.

### Financial information

In 2016 *De Rebus'* advertising sales had a nett income of R4 605 574 (unaudited figures) generated for both the journal and the classifieds supplement. This was much lower than the budgeted amount of R5 824 500.

The decline in advertising sales can be attributed to lack of acquiring new advertisers for the journal and the cutting of advertising spend by advertisers.

As *De Rebus* is provided free of charge to all practising attorneys and candidate attorneys in South Africa, the *De Rebus* staff is mindful of the need to manage the costs incurred in producing the journal each month. *De Rebus* and the classifieds supplement saved approximately R2 176 889 (unaudited figure) on its printing budget. This saving was mainly due to the fact that the journal did not exceed the 64 pages budgeted for, while the classifieds supplement also remained under the budgeted 32 pages.



## Editorial matters

In the period under review, *De Rebus* reported on a number of noteworthy events that affected the profession. This included up-to-date developments in respect of the Legal Practice Act 28 of 2014. In addition, *De Rebus* carried topical reports on a number of landmark judgments that were handed down by the courts in 2016.

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 –

- the law and the rite of passage;
- the Rental Housing Amendment Act;
- human trafficking;
- divorce debt;
- municipalities and debts for rates;
- the Nkata case: the courts interpretation of s 129 of the National Credit Act and the meaning of reinstatement;
- women judges;
- the difference between legal professional privilege and confidentiality;
- the effect of the once empowered always empowered rule on the mining industry; and
- zoning matters: a SPLUMA score-card one year on.

## 2015 prizewinners

Two practitioners were recognised in 2016 for their contributions to *De Rebus* during 2015. Johannesburg attorney, notary and conveyancer, Diana Mabasa, won the 2015 Lexis-Nexis Prize for Legal Practitioners for the best article by a practising attorney published in *De Rebus*. Ms Mabasa won the award for her article titled 'Ukuthwala: Is it culturally relative?' which was the cover feature in the 2015 August issue (2015 (Aug) *DR* 28). The article dealt with the controversial practice of *ukuthwala* and highlighted how *ukuthwala* affects only black women and girls in a negative way. The article also proposed a particular kind of intervention for law and policy reform, which would combine the effects of race and gender discrimination to assist in delivering effective strategies for the security and wellbeing of those historically marginalised as a result of race and gender.

In addition, Krugersdorp attorney, Nokubonga Fakude, won

the 2015 Juta Prize for Candidate Attorneys for her article titled 'Redundant or relevant? The law of unjustified enrichment' published 2015 (Apr) *DR* 36. The article was on the South African law of unjustified enrichment and the action of the unauthorised administrator where Ms Fakude investigated the relevance of the two actions in current South African law. Ms Fakude wrote the article while she was doing her clerkship at Krugersdorp law firm, Mauritz Breytenbach Attorneys.

The *De Rebus* team members are acknowledged for their excellent work during 2016 and for their commitment to producing a top quality journal, as are *De Rebus*' regular contributors. The Editorial Committee members are also recognised for the work they put into *De Rebus*, not only through their attendance at the monthly Editorial Committee meetings, but also for the behind-the-scenes work that goes into producing *De Rebus* each month.

**Mohamed Randera,**

*Chairperson, Editorial Committee*

**Mapula Sedutla,**

*Editor*

## FINANCE

The financial report covers the period from January to December 2016. The audited financial statements (AFS) are completed after the publication of this LSSA annual report and for completeness, are available as a separate annexure.

Sound financial management and good governance practice continues to be implemented to strengthen financial management controls backed by strong financial risk management.

Policies and procedures are reviewed to be in line with market best practice.

## Audit and Risk Committee

The Audit and Risk Committee (ARC) is responsible for the implementation and review of general finance matters, remuneration and risk management in accordance with the ARC Terms of Reference, which embrace the *sui generis* nature of the LSSA and its operations.

A number of specialist operational subcommittees of ARC have been established to assist ARC. These committees report to ARC.

## ARC members and meeting attendance

Member	Number of meetings
Ashwin Trikamjee (Chairperson)	5
Jan van Rensburg (LSSA Co-Chairperson and Budget Subcommittee Chairperson)	4
Igna Klynsmith (Internal Audit Subcommittee Chairperson)	4
Mohamed Husain (Remuneration Committee Chairperson) also acts as independent member with high-level remuneration experience.	3
Vincent Faris (Consultant Member - SAICA). Forensic expert	4
Peppy Kekana	4
Jan Maree (Vice Chairperson)	4
Roland Meyer	3
Willie Scholtz (ICT governance expert)	4
<b>Total numbers of meetings in 2016</b>	<b>5</b>
<b>Total subcommittee meetings in 2016</b>	<b>8</b>

## Governance and operational subcommittees of ARC

### Internal Audit

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

During the year under review the IAS increased its focus on ICT risks in the LSSA.

#### • Risk management

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

The responsibility for risk management vests with the LSSA Council. ARC submits recommendations to the LSSA Council via the LSSA Management Committee (Manco) and other governance and operational committees.

#### • Budgets and financial performance

The Budget Subcommittee is responsible for oversight of the budget preparations in line with the budget policy as approved by ARC. The committee also measures actual performance against budget, and in 2016 implemented a mid-term budget review process.

## Sustainability and 'going concern principle' of the LSSA

The introduction of the Legal Practice Act (LPA) will have the effect that four of the six constituent members of the LSSA (with reference to the four statutory provincial law societies) will cease to exist. It will have the effect that the LSSA as constituted at present will come to an end. This has created new risks and challenges.

In particular, staff retention and motivation has become a risk factor.

The transformation of the current structure was dealt with by the LSSA Council as indicated in the rest of the report.

With the above as background, risk management priorities were identified and attended to.

## Risk management and internal control focus of the 2016 audit

The IAS has identified fraud risks as key focus area of the audit.

Due to the environment of ending operations or uncertainty due to possible transition, the risk of the increased potential of the 'triangle of fraud triggers' - Opportunity, Motivation and Rationalisation of irregular conduct and behavior.

## Risk management priorities

- Risk management of the transition process has become critical and the actions of management in dealing with the process will be important and will require regular reporting to and feedback from ARC and the IAS.
- During 2016 ARC and the IAS facilitated a strategic risk presentation and workshop with the LSSA Council and Manco to deal with key risks to the profession should key activities of the LSSA be interrupted or terminated. The senior risk partner of the LSSA's auditors facilitated a workshop which was attended by the LSSA management team and the LSSA LPA Task Team to deal with strategy to mitigate the above risks. (Refer to the schedule on pg 18.)

In addition to the above, a presentation focusing on ICT risks was made to the LSSA Council, and Management was tasked to ensure that risk mitigation in ICT is integrated into operational management and strategic management processes and practices.

## Cost containment policy

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

The committee chairperson addressed the LSSA Manco on this aspect including the integrity and value of the oversight role of ARC.

ARC has supported the introduction of a retention policy in relation to staff due to the uncertain tenure of employment as a result of the impact of the LPA.

## Attorneys Fidelity Fund (AFF) subvention in R 000s

The subvention by the AFF in terms of s 46(b) of the Attorneys Act, 1979 has been fixed at 2012 level until 2017. The LSSA has access to unused AFF project funds on prior years funding to recover shortfalls (mainly CPI) in terms of the funding agreement with the AFF.

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

- AFF budget allocation for 2016, including prior year unused project funds R75 076k
- Budgeted AFF funding 2015 R73 735k
- Actual 2015 AFF funding utilised R63 751k

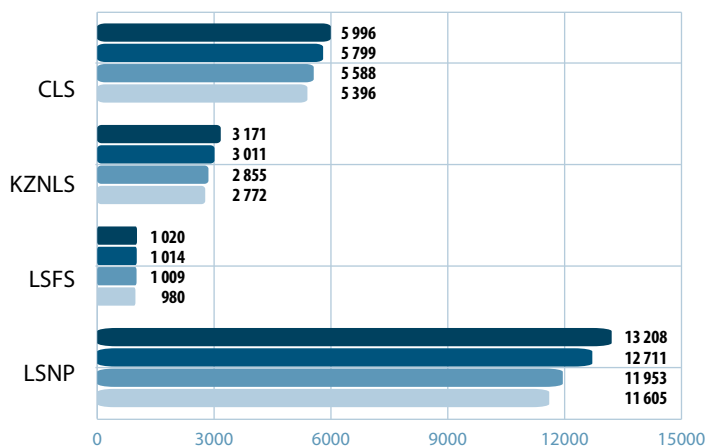
The LSSA acknowledges the AFF for its continued support of the LSSA, both financial and other, thereby allowing the LSSA to fulfill its mandate to ensure the provision of quality legal education and the maintenance and enhancement of professional standards.

## Capitation levies

Levies for 2016 were increased to R405 (2015 - R380) per attorney member (VAT excluded).

	2014	2015	2016
<b>Growth in membership</b>	3%	5%	4%
<b>Levies received</b>	R8 134k	R9 475k	R8 563k

## Capitation: Attorney numbers



	CLS	KZNLS	LSFS	LSNP
<b>2016</b>	5 996	3 171	1 020	13 208
<b>2015</b>	5 799	3 011	1 014	12 711
<b>2014</b>	5 588	2 855	1 009	11 953
<b>2013</b>	5 396	2 772	980	11 605

## Summary of key risks if current activities of LSSA are discontinued or interrupted.

These will impact negatively on the items listed in sections below.

RISK	IMPACT			
	Education	Professional Affairs	Communication	De Rebus
1. Loss of institutional knowledge, relationships, knowledge resources, processes, systems, contact network, experience etc.	<ul style="list-style-type: none"><li>• Course materials</li><li>• Publications</li><li>• Brand loss</li><li>• Recognition by SAQA</li><li>• Network instructors/ drafters</li><li>• E-learning</li><li>• Universities</li><li>• Statutory institutions (CHE, SAQA, DOHT etc)</li><li>• External clients</li></ul>	<ul style="list-style-type: none"><li>• Engagement with State institutions and other public entities eg DoJ&amp;CD; SARS; Office of the Chief Justice; banks; SAICA; FSB; Rules Board; Council for Debt Collectors; Competition Commission; Parliament etc.</li></ul>	<ul style="list-style-type: none"><li>• Loss of brand and intellectual property</li><li>• Promotion of social responsibility services</li><li>• Relationships: Media, profession etc.</li></ul>	<ul style="list-style-type: none"><li>• Brand loss</li><li>• Staff loss - specialised skills</li><li>• Premier communication vehicle</li><li>• Relationships with advertisers; publishers, authors etc.</li><li>• Independent editorial committee</li></ul>
Mitigation plan	By whom	How		Due by
Document key processes, contacts and relationships	Management – department managers	1. Develop template for standard operating procedures (SOPs) per department (include relationships etc).		30 November 2016
	(CEO delegates)	2. Each department to have detailed SOPs populated.		31 March 2017
Communicate and engage with National Forum (NF) regarding the impact on the profession if Professional Affairs, Education and De Rebus are not adequately taken care off, as well as the manner in which to deal with the commitments which the LSSA currently has.	Co-Chairpersons of Council	1. Memorandum to the LSSA National Forum Committee setting out concerns of the LSSA.		30 November 2016
		2. Define process and reporting for NF members to table the concerns to the NF to discuss the functions, including how the functions which LSSA currently takes care of, can be managed in new dispensation.		30 November 2016
Amend applicable clauses of the existing LSSA constitution	CEO and Co-Chairpersons of Council	1. Review the constitution and update the clauses affected by the introduction of the Legal Practice Act.		30 November 2016
RISK	IMPACT			
	Education	Professional Affairs	Communication	De Rebus
2. Attorneys admission examination and candidate attorneys exams, including training courses, articles and access to the profession – if the LSSA ceases to exist, these processes will be impacted.	<p>Mandatory courses</p> <ul style="list-style-type: none"><li>• PLT</li><li>• PMT</li><li>• CPD*</li></ul>	<ul style="list-style-type: none"><li>• Professional competency identification, advice and expertise</li></ul>	<ul style="list-style-type: none"><li>• Reputation of the profession</li></ul>	<ul style="list-style-type: none"><li>• Marketing of professional expertise to profession and wider audience</li></ul>
Mitigation plan	By whom	How		Due by
Communicate and engage with NF via the LSSA NF Committee regarding the impact on the profession if Professional Affairs, Legal Education and De Rebus are not adequately taken care off, as well as the manner in which to deal with the commitments which the LSSA currently has.	Co-Chairpersons of Council	1. Detailed memorandum setting out concerns of the LSSA.		30 November 2016
		2. Ensure next meeting of the LSSA NF Committee to propose how the functions which LSSA currently takes care of can be managed and how and when this will be communicated to the NF plenary/other.		30 November 2016

RISK	IMPACT			
	Education	Professional Affairs	Communication	De Rebus
3. Maintaining standards and competency levels, including enhancement. If the LSSA ceases to exist, these processes will be impacted	<ul style="list-style-type: none"><li>• Learning outcomes</li><li>• Setting, Q&amp;A School assessment</li><li>• Statistical data</li></ul>	<ul style="list-style-type: none"><li>• Diversion strategies</li><li>• Wellness</li><li>• Efficacy - technology</li></ul>	<ul style="list-style-type: none"><li>• Keep profession updated on new developments</li><li>• Disseminate info</li><li>• Fragmentation</li></ul>	<ul style="list-style-type: none"><li>• Rural and sole practitioner access to information</li><li>• CPD opportunity lost</li></ul>
Mitigation plan	By whom	How		Due by
Communicate and engage with all stakeholders (NF engagement has been detailed above via the LSSA NF Committee) regarding the impact on the profession if Professional Affairs, Legal Education and De Rebus are not adequately taken care of, as well as the manner in which to deal with the commitments which the LSSA currently has.  ** Note that Communications is intrinsically linked to these key functions as stakeholder engagement and information sharing is a unique (sui generis) type of communication and when reading De Rebus, Communication is implicitly implied.	Co-Chairpersons of Council	1. Detailed memorandum setting out concerns of the LSSA.  2. Meeting of the LSSA National Forum Committee to propose how the functions which LSSA currently take care of can be managed and how and when this will be communicated to the NF Plenary/other		30 November 2016  30 November 2016
Amend applicable clauses of the existing LSSA constitution	CEO and Co-Chairpersons of Council	1. Review the Constitution and update the clauses affected by the introduction of the Legal Practice Act		30 November 2016
RISK	IMPACT			
	Education	Professional Affairs	Communication	De Rebus
4. Professional and public - Constitutional democracy enhancement imperative. If the LSSA ceases to exist, these processes and ultimately the public interest will be impacted.	<ul style="list-style-type: none"><li>• Training of attorneys and candidate attorneys</li><li>• Ethical value enhancement</li><li>• Social responsibility</li><li>• Visibility</li></ul>	<ul style="list-style-type: none"><li>• Monitoring and reviewing legislation and making input</li><li>• Administration of justice</li><li>• Litigation</li></ul>	<ul style="list-style-type: none"><li>• Educate public and provide information</li><li>• Promote services and expertise of attorneys</li><li>• Point of reference for public</li></ul>	<ul style="list-style-type: none"><li>• Provide vehicle for discourse</li><li>• Promote independence of the profession and judiciary</li><li>• Ensure relevance of discourse</li></ul>
Mitigation plan	By whom	How		Due by
Provide strategic direction and lobby for continuation of these activities in new dispensation, as regulation is not in a vacuum but in the interest of society (public), and is dependent on a strong, independent and organised legal profession.	LSSA Council	1. This mitigation plan will be achieved through implementation of mitigation plan no 2 here-under.		Ongoing (until 31 January 2018)
Communicate and engage with National Forum, via LSSA NF Committee regarding the impact on the profession if Professional Affairs, Legal Education and De Rebus are not adequately taken care off, as well as the manner in which to deal with the commitments which the LSSA currently has.	Co-Chairpersons of Council	1. Detailed memorandum setting out concerns of the LSSA.  2. Ensure next meeting of the LSSA NF Committee to propose how the functions which LSSA currently takes care of can be managed and how and when this will be communicated to the NF plenary/other.		30 November 2016  30 November 2016

RISK	IMPACT			
	Education	Professional Affairs	Communication	De Rebus
5. The profession's participation in key strategic processes linked to the practice of law (profession) and its role in promoting and protecting the independence of the judiciary and of the legal profession, with a view to enhancing constitutional democracy. If the LSSA ceases to exist, these processes and ultimately the public and the profession's interests will be negatively impacted.	<ul style="list-style-type: none"> <li>Engagement with State institutions</li> <li>Joint training initiatives</li> <li>Reviews and research</li> <li>Expert presenters, instructors knowledge pool</li> </ul>	<ul style="list-style-type: none"> <li>Enhancement of legal process, court efficiency, public rights and access, independence of legal profession and judiciary etc</li> <li>Protect small firms</li> </ul>	<ul style="list-style-type: none"> <li>Image of profession</li> <li>Reputation of profession</li> </ul>	<ul style="list-style-type: none"> <li>Promote independent views of legal experts</li> <li>Views of civil society impacting on legal profession</li> </ul>
Mitigation plan	By whom	How		Due by
Provide strategic direction and lobby for continuation of these activities in new dispensation, as regulation is not in a vacuum but in the interest of society (public).	LSSA Council, under direction of the Co-Chairpersons	1. This mitigation plan will be achieved through implementation of mitigation plan no 2 here-under		Ongoing (until 31 January 2018)
Communicate and engage via the LSSA NF Committee with the National Forum regarding the impact on the profession if Professional Affairs, Legal Education and De Rebus are not adequately taken care off, as well as the manner in which to deal with the commitments which the LSSA currently has.	Co-Chairpersons of Council	1. Detailed memorandum setting out concerns of the LSSA 2. Ensure next meeting of the LSSA NF Committee to propose how the functions which LSSA currently take care of can be managed and how and when this will be communicated to the NF plenary/other.		30 November 2016  30 November 2016

#### Ashwin Trikamjee,

*Chairperson, Audit and Remuneration Committee*

#### Anthony Pillay,

*Finance Director*

Efforts have gone into ensuring the sourcing of the most appropriate and market benchmarked change management and implementation strategy in 2017. The budget provision was approved to ensure the rollout of a strategy starting in 2017.

## HUMAN RESOURCES

This report covers the period from 1 January to 31 December 2016.

The LSSA management has prioritised constant, honest and meaningful engagement with employees so as to ensure that employees are fully informed about the developments, impact and changes brought about by the Legal Practice Act (LPA). Despite all the uncertainties around the future of employees, the LSSA has seen a lower turnover of staff in 2016 as compared to previous years.

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

### Human resources plan for 2017

- The LSSA will be rolling out the change management strategy and implementation programme at the beginning 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 target date of 1 February 2018.
- To further strengthen the impact of the Employee Wellness Programme that will speak directly to and provide potential solutions to needs including change management, financial/economic, psychological, social and legal requirements.
- Continued empowerment of all employees through training and development in their areas of specialisation.
- Increased communication and engagement with employees on the new dispensation.

## Staff numbers: 2015

Consolidated staff numbers					
	Total as at 31/12/2015	Budget 2016	Less terminations and transfers out	Add appointments and transfers in	Total as at 31/12/2016
LSSA	31	33	1	2	32
<i>De Rebus</i>	6	6	1	1	6
LEAD	57	60	3	2	56
Total: actual	94	99	5	5	94

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

## Staff movement

### Appointments

Title	Name	Section	Post	Date	Equity
Ms	Soko Mnguni	LEAD Skills Development	Education Liaison Officer	11 January 2016	A/F
Ms	Sisanda Bam	School for Legal Practice: Pretoria	Night School Administrator	11 January 2016	A/F
Mr	Nic Swart	LSSA Notational only as continues as Director: LEAD	Chief Executive Officer	1 April 2016	W/M
Ms	Nomfundo Manyathi-Jele Internal transfer from <i>De Rebus</i>	LSSA Communication	Communications Officer	1 July 2016	A/F
Ms	Kgomotso Ramotsho	<i>De Rebus</i>	News Reporter	24 August 2016	A/F
Ms	Khataza Mboweni	LSSA Finance	Credit Controller	1 October 2016	A/F

### Terminations

Title	Name	Section	Post	Date	Reason for Termination
Ms	Zukiswa Kala	School for Legal Practice: UNISA Distance	Training Coordinator	7 January 2016	Resigned to pursue/ use her LLB studies
Ms	Palesa Maphanga	LSSA Finance	Credit Controller	15 July 2016	Resigned for a better offer
Ms	Ros Elphick	LEAD Marketing	Marketing Coordinator	26 September 2016	Resigned to pursue personal ambitions outside the LSSA
Ms	Leonie Marais	LSSA Communication	Secretary	31 October 2016	Retired
Ms	Soko Mnguni	LEAD Skills Development	Education Liaison Officer	1 December 2016	Resigned to pursue personal ambitions outside the LSSA

### Vacant positions as at 31 December 2016

- Senior Projects Officer
- Digital Marketing Coordinator
- Education Liaison Officer
- UNISA Distance Training Coordinator

## Training

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

Training	Attendance by staff members
Adobe Acrobat Pro	6
Adobe Photoshop	1
Advanced VIP	4
Advanced Payroll Pro	1
Advanced budget training	1
Asset control course	1
Assertiveness training	1
Assessors course	2
Bookkeeping	4
Business writing	1
Catering services course	2
Charging and initiating disciplinary process training	2
Chartered secretary diploma	1
Client care	2
Cobit 5	1
Communication for development	1
Computerised bookkeeping	1
Conflict management	1
Corporate governance diploma	1
Counselling course	2
Credit management	1
Customer relationship management training	1
DCC logistics and supply chain management	1
Effective communication skills	1
E-learning platform development and planning	1
ELMS	6
Emotional intelligence	4
Essential business skills for South African women	2
Excel	3
Executive management programme	1

Training	Attendance by staff members
Facilities management	2
First aid	3
HIV AIDS	5
IMM Diploma	1
Income tax	1
Information management	1
Integrative law	1
ITIL foundation	1
Leadership skills	6
Legal secretary	2
Management of training and development	7
Moderator	1
MS Word	2
MS PowerPoint	1
Monitoring and evaluation	1
Notary	1
Office administration	9
Online and e-learning	1
Photography	1
Professional secretary	1
Project management	10
Public and development management	1
Records management	1
Rennies online booking	1
Report writing	2
Skills development	1
SMART	1
Social media	1
Time and stress management	1
Typing skills	1
<b>Total cost of training in the LSSA for 2016:</b>	<b>R424k</b>

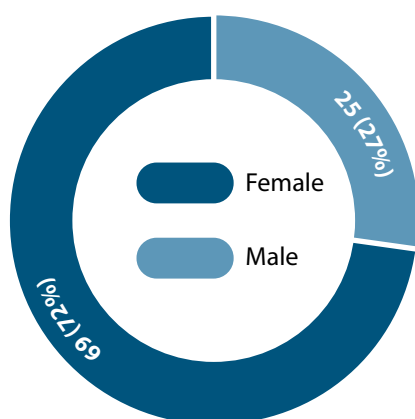


## Employment equity

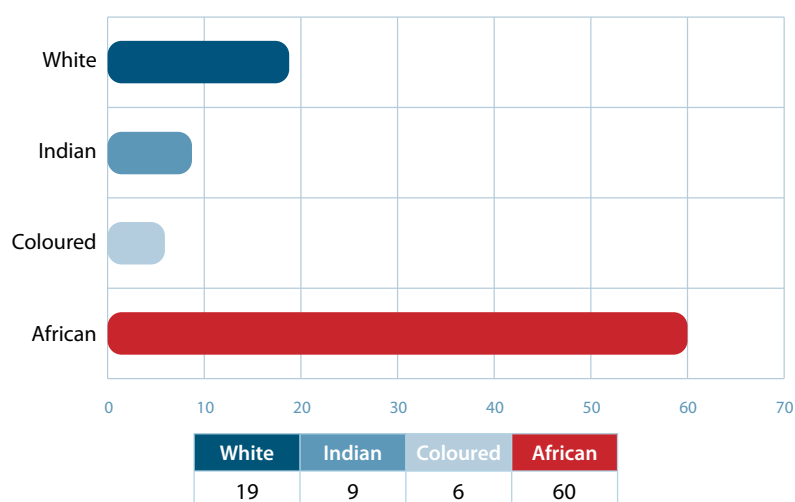
### Employment equity report

OCCUPATIONAL LEVEL	Male				Female				Foreign nationals		Total
	African	Coloured	Indian	White	African	Coloured	Indian	White	Male	Female	
Top Management	0	0	1	1	0	0	0	0	0	0	2
Senior Management	2	0	0	0	1	0	0	2	0	0	5
Professionally qualified and experienced specialists and mid-management	0	2	0	1	5	1	3	3	0	0	15
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	13	0	0	0	25	3	4	4	0	1	50
Unskilled and defined decision making	0	0	0	0	3	0	0	0	0	0	3
Total permanent	17	2	1	3	39	4	8	16	2	2	94
Temporary employees	0	0	0	0	0	0	0	0	0	0	0
<b>Grand total</b>	<b>17</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>39</b>	<b>4</b>	<b>8</b>	<b>16</b>	<b>2</b>	<b>2</b>	<b>94</b>

Employee gender profile



Employee race profile



**Nkhensane Nthane,**  
Senior Manager: Human Resources

## LEGAL EDUCATION AND DEVELOPMENT

**Members of the Standing Committee on Legal Education (SCLE): Raj Badal (Chairperson); Dave Bennett, Taunyana Hlapolosa, Peter Horn, Jan Maree, Abe Mathebula, Bulelwa Ndzondo, Zaahira Tiry and Ashwin Trikamjee**

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

### Special achievements

- LEAD consulted with SASSETA, the Council on Higher Education (CHE), Department of Higher Education and Training (DOHT), the South African Qualifications Authority (SAQA) and Quality Council for Trades and Occupations (QCTO) about its role.
- LEAD published a book on 'Case Management'.
- The LSSA's successful Briefing Pattern Summit and Promotion of Women Practitioners have important implications for LEAD.
- More than 10 000 persons enrolled for LEAD programmes in 2016.
- Major progress has been made with regard to e-learning through the provision of online courses. The first three webinars were offered.
- The LSSA joined a working group of the SA Law Deans Association to consider the proper integration of e-law into the law curriculum.
- Further courses were offered in leadership for women lawyers.
- Practitioners from the United States offered training in commercial law.
- Students of the School for Legal Practice were involved in social responsibility programmes throughout the country.
- LEAD offered training for institutions such as the Department of Rural Development and the Competition Commission.
- To date more than 1 300 persons have received training in business rescue.
- The LSSA was invited by the CHE to participate in the reporting process relating to the review of the LLB.
- LEAD offered training for the local government elections.
- LEAD placed students in law firms during vacations
- Former committee chairperson and long-standing committee member, Abe Mathebula, was appointed to the Bench.

## The new Legal Practice Act dispensation

The SCLE considered submissions to the National Forum on practical vocational training, continuing professional development, assessment and accreditation. The committee conveyed the view that there should be a common model of vocational training for candidate attorneys and pupils. Although the future model should accelerate access to the profession, the committee expressed the need to maintain a high standard of training.

The committee remains concerned about the discomfort among staff about their future going forward. Care should be taken that the profession will not lose institutional and critical capacity.

### 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

It appears that there has been a saving on the 2016 budget without curtailing delivery of services. Savings are the result of an ongoing disciplined spending approach and discounts negotiated in respect of books purchased from publishers.

### Staff

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

#### LEAD staff in Pretoria

**Director:** Nic Swart. **Senior Manager:** Oglivie Ramoshaba. Andries Modiba, Amukelani Mdluli, Anthony Matimbe, Babalwa Nchekwube, Barbara Makhanda, Bettie Lubbe, Beverly Chueu, Boitumelo Maluleka, Dodo Dubazane, Dianne Angelopulo, Euginia Sookane, Gail Mason, Grace Muku, Jackson Ndlovu, Kezzy Chauraya, Lolita Pieterse, Maria Mokwape, Martha Baloyi, Merlin September, Moses Sikombe, Norman Khudi, Nomsa Sethosa, Ntombi Fakude, Pelcrine Mathibi, Phyllis Mphasha, Ria Mahlangu, Ros Elphick (until 31 October 2016), Selina Ramano, Soko Mnguni (until 1 December 2016), Stephne Pieterse, Tamara Sihlangu, Tasha Roestoff, Tshegofatso Poee and William Khunou.

## LEAD staff at Schools 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:** Bongi Nkohl, Sue Donovan, Neliswa Dibela and Phumza Dlabati.

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

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

**Pretoria:** Ursula Hartzenberg, Ali Haji and Sisanda Bam.

**Potchefstroom\*:** Marlene Steyn and Helanie Jonker.

**Port Elizabeth\*:** Lionel Lindoor and Lindsay Zimri.

**LSSA-UNISA distance learning school:** Dilshaad Gani, Parma Govender and Dorcas Hamido.

\*Coordinators at these centres are appointed by universities.

**Instructors and presenters involved in LEAD activities:** More than 700 practitioners and other experts were involved in the activities of LEAD in 2016.

**Course for candidate attorneys (25 days):** This course was offered at 10 centres throughout the country. Except for two, all courses were offered on university campuses. The course is offered part-time, full-time and in two centres after hours. 2 282 candidate attorneys attended in 2016.

**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. 1 388 persons attended the day, night and distance programmes in 2016.

**Conveyancing and notarial training:** 621 persons participated in 2016.

**Seminars:** 2 545 persons attended LEAD seminars in 2016. The following topics were offered:

- BEE simplified for your practice
- Case management
- CCMA update
- Consumer Protection Act
- Conveyancing: New developments

- Compliance and financial due diligence for attorneys
- Debt collection
- Deceased estates
- Engineering and construction contracts
- Enhance your negotiation skills
- Eviction process: Landlord/tenant dispute
- Legal costs
- Marriages and interstate succession of indigenous persons
- Medical malpractice litigation
- National Credit Act
- Significant leadership for senior women lawyers
- The end of legal practice as we know it
- The essence of mediation

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

**E-learning:** The following programmes were offered:

- Legal bookkeeping
- Legal writing
- 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
- Medical law for attorneys and School students
- 220 persons enrolled for webinars

The total e-learning enrollments was 1 053, a 100% increase on 2015.

**New business development (ACT):** A total of 1 214 persons received training in 2016. The following courses were offered:

- Legal support staff training
- Business rescue course
- Commercial contracts
- Training to external clients.

**Statistical information:** LEAD collected information on attorneys, candidate attorneys, law graduates and those attending LEAD training. This information gives a clear indica-

tion of how many persons study for and graduate with LLB degrees, what the demographic trends are with regard to graduation, admission, as well as practice and training in the attorneys' profession. The report also includes information on the judiciary and advocates.

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

**Selling of documentation:** LEAD has sold a substantial quantity of its publications in 2016. These publications included practice manuals, seminar material and publications in constitutional law, conveyancing and case management.

## Social responsibility at School for Legal Practice

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

**Cape Town School:** The 2016(1), 2016 (night) and 2016(2) semester students all actively participated in our LEAD – Making a Difference (MAD) Social Responsibility Programme. The focus for the first term 2016(1) day and night schools continued to centre around development and making a difference to children in South Africa with the theme of 'I adopted from One Child a Year Campaign - Lawyers to commit'. The core project this year was 'Law Leaders for Literacy'. The 2016(1) day and 2016 night schools collected books for the outreach programme in the Western Cape. Our 2016(2) class also adopted the project. The aim was to assist township communities in the Western Cape with reading material, and a large number of books and puzzles were collected and handed over by social committee representatives from all three 2016 school groups at the end of November 2016.

**East London:** The 2016(1) day and night schools collected food to donate to their adopted centre, The Heaven. The Day School also attended a memorial service for the chaplain of the centre who was brutally murdered. The School interacted with community members by providing basic legal knowledge and helping with queries as to how to approach the maintenance court, to apply for interdicts etc. This was helpful as it created awareness about the School to the greater community of the Buffalo City Metro.

**Durban:** Students from the first School of 2016 organised two separate projects for social responsibility. The first was Husky Rescue KZN, which rescues and cares for husky dogs who are abandoned by their owners, or are reared for breeding purposes only. Students assisted the charity by spending a day at the centre cleaning out the living areas and kennels where the huskys were cared for. Students were also given an opportunity to groom some of the dogs and collected dog food, bowls and blankets for the dogs.

The second project was with the Durban Children's Home and Youth Centre which cares for some 82 children between the ages of 1 and 18. The School students held a collection drive for a number of weeks before visiting the centre to donate food and toiletries. Students also held activities with the children.

The second School of 2016 also supported the Durban Children's Home and Youth Centre. The specific need of the centre at the time was for toiletries which were collected in large amounts by the students and donated to the centre. The students held a fun day, interacting with and providing treats to the children.

**Polokwane:** In the first semester, the school students visited the New Horizon Special School and donated knitting equipment and wool. New Horizon is a school for special-needs children. They have 185 learners, 23 of whom are autistic and 162 intellectually impaired. The principal was grateful for the equipment as it was used to make hats and scarves for the learners. The students also played with the learners.

In the second semester, the School partnered with the Church on the Hill in honour of the 67 minutes for Madiba on 18 July 2016. Students visited the Phelang Drop-In Centre which caters for impoverished children that are largely from child-headed households. There are 80 children between the age of 4 and 16. The centre is located in Nobody Ga-Mothiba. The School students donated food and stationery to the centre and played with the children.

**Potchefstroom:** The students of the Potchefstroom School selected the Loula Fourie Primary School as their project. The school is situated some 8km outside Potchefstroom and provides education to 175 learners from the rural surrounding area. The aim of this project was to raise funds and donations (such as food, clothes, toys etc) to assist the school in meeting the basic and educational needs of the underprivileged children. The students spent 21 May 2016 at the school where they distributed donations to learners and teachers; participated in outdoor activities and entertainment with the learners; participated in demonstrations by ER24, the Tlokwe Fire Brigade as well as the SAPS dog unit; held an educational discussion on children's rights; provided learners with meals and toys, and provided the school with a new fax/printing machine.

**Bloemfontein:** The 2016(1) students engaged with Lebone House for a community project. Lebone House was established in May 2000 and opened its doors as a day-care facility for HIV/AIDS infected and affected children. The students made contact with a number of law firms and local businesses for contributions. Generous donations were made to the value of R22 000. Winter school jackets were purchased for all children. The students also spent time at the house on a Saturday morning and assisted in painting two old build-

ings, playing soccer and having lunch with the children.

The 2016(2) students assisted the children at the Iphahamiseng Child and Youth Care Centre with books, stationary, clothes, food and monetary contributions from local firms and businesses. A sports day for the children was also held and guests attended the auction of artwork done by the children to enable the home to raise as much money as possible. The centre is a shelter for 60 boys and girls aged between 2 and 19.

**Johannesburg:** The School collected 864 litres of water in sealed bottles for Operation Hydrate to be sent to drought-stricken areas for the purposes of consumption, farming crops and livestock. The School also collected 126 pairs of socks, as well as R848 to contribute towards the installation of a new geyser at Little Eden, a home that helps people with intellectual disabilities. Although their residents' average age is 25 years, the average intellectual age is that of a one-year old. In addition, the school collected money to buy Children of the Fire 12 canes, 50kg braille paper, tinned food as well as clothing.

**Pretoria:** The School has two social responsibility projects for the day school and for the night school. Day school students visit the church in Sunnyside on Fridays, when they are not on study leave, to serve the less fortunate people staying and sleeping on the streets, tea, juice and bread. They render this community service in the morning and then attend lectures from 09:15. The Pretoria night school students donated toiletries and household cleaning products throughout the semester for Atteridgeville orphanage Kingdom Life Child and Youth Center. The donations were delivered in November 2016 when students also spent time with the children.

**Port Elizabeth:** The School continued its relationship with the Port Elizabeth Children's Home. Under the supervision of Moerida Louis, instructor in wills and estates, the students drafted wills for the staff of the home free of charge. Some of the students held motivational talks for the staff and children. The School responded to the plight of a family by raising funds for surgery for their sick infant.

## Summary of attendance of all LEAD programmes for 2015

	2016	2015
School for Legal Practice	1 388	1 489
Conveyancing and notarial training	621	326
25-day courses for candidate attorneys	2 282	2 109
Diplomas and certificates (distance)	156	254
Practice management training	941	908
Seminars	2 545	3 054
Mediation	127	289
<b>Other training</b>	<b>2 646</b>	<b>2 030</b>
<i>Irish commercial law</i>	<i>0</i>	<i>20</i>
<i>E-learning</i>	<i>1 053</i>	<i>546</i>
<i>Practice development seminars</i>	<i>23</i>	<i>28</i>
<i>International Senior Lawyers Project</i>	<i>46</i>	<i>50</i>
<i>Support staff</i>	<i>768</i>	<i>670</i>
<i>Business rescue</i>	<i>196</i>	<i>207</i>
<i>Student placement</i>	<i>24</i>	<i>34</i>
<i>Other external training</i>	<i>536</i>	<i>475</i>
<b>Total</b>	<b>10 706</b>	<b>12 489</b>

**Raj Badal,**

*Chairperson, Standing Committee on Legal Education*

**Nic Swart,**

*Director of Legal Education and Development*

## PROFESSIONAL AFFAIRS

The Professional Affairs department coordinates and supports the activities of its specialist committees, *ad hoc* committees and task teams. Through its committees, it monitors, reviews and makes submissions on legislation and policy processes. It engages with various stakeholders of the profession and facilitates representation of the profession on external entities.

2016 was again a very active year for the department. We had 29 normal committee meetings, where a range of issues were discussed, as well as 62 meetings and workshops with various stakeholders to deal with specific issues.

Committee members and staff members participated in workshops and conferences and made recommendations regarding, among others, court-annexed mediation, the practice of *ukuthwala*, the National Credit Act, *pro bono*, the Copyright Act, the issue of independent beneficial ownership, family arbitration, business rescue, legal costs, sales in execution, paralegals, etc.

During the year we were involved with two joint projects with the International Bar Association (IBA). The LSSA submitted a joint shadow report with the IBA Human Rights Institute (IBAHRI) and the Southern Africa Litigation Centre to the Universal Periodic Review. The report dealt, inter alia, with South Africa's national obligation in domesticating international human rights treaties, the weakening of the SADC Tribunal and the role of the legal profession in ensuring access to justice.

The other project pertains to the IBA's Anti-Corruption campaign. The IBA is conducting global research on corruption in the judiciary and the legal profession, and investigating the effect thereof. The research will also look into anti-corruption strategies, if any. A joint survey will be sent out, to assist in gaining information for the final report.

We continued to make submissions on various pieces of legislation and policy documents. All the submissions can be accessed on the LSSA website at [www.LSSA.org.za](http://www.LSSA.org.za). Crucial meetings were also convened with the Minister of Rural Development and Land Reform, Gugile Nkwinti, and Deputy Minister of Justice and Constitutional Development, John Jeffery, which are reported on in more detail under the 'Specialist Committee Reports'.

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

This year, three of our longstanding committee chairpersons have retired. We would like to thank Selemeng Mokose (Property Law Committee), Martha Mbhele (Gender Equality Committee) and Johan Gresse (Small Claims Courts Committee) for their leadership and support and wish them well in

their future endeavors. We also convey our sincere gratitude to all our committee members, for their immense contributions and often setting time aside from their demanding practices to prepare critical comments on draft Bills, rules and policies.

Last, but not least, I want to thank the Professional Affairs team, Kris Devan (Personal Assistant), Edward Kafesu (Committee Secretary), Ricardo Wyngaard (Senior Legal Official) and Nonhlanhla Chanza (Parliamentary Liaison Officer).

**Lizette Burger,**

*Senior Manager: Professional Affairs*



## ATTORNEYS DEVELOPMENT FUND

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

The Attorneys Development Fund (ADF) currently has in excess of 64 beneficiaries with 5 of these approved between January and February 2017.

### Bad debts

Bad debts continue to plague the ADF's plans and are being dealt with.

### Projects and proposals

During 2016, the ADF reached out to practitioners that are in the outskirts of major business centers; Empangeni in Northern KwaZulu-Natal and Mthatha in the Eastern Cape were visited to the appreciation of those that attended the sessions. The latter engagement was in partnership with LexisNexis whom one of our directors ascertained assists newly qualified advocates, as the ADF assists attorneys.

Subsequent to this, the director brokered a meeting between the ADF and LexisNexis, the results of which were a partnership that will ensure that an annual event takes place in Mthatha supported by the Law Society Library, Attorneys Insurance Indemnity Fund (AIIF), Attorneys Fidelity Fund (AFF) and the Law Society of South Africa's Legal Education and Development (LEAD) division.

Three projects have been approved for 2017:

- Information sharing sessions in partnership with the Law Society Library, LEAD, AIIF, AFF and ADF on the following dates:
  - 31 March 2017 - Mpumalanga
  - 26 May 2017 - Mthatha
  - August 2017 - Northern KwaZulu-Natal
- Juta grant

- *Legalbrief Today* for 12 months. Grant value R2 258.
- Juta online research material. Grant Value R10 000.
- Print publications. Grant value R5 000.
- Sabinet grant
- Licences to
  - Government Gazettes from 2004 to date;
  - NetLaw product;
  - Sabinet labour product;
  - weekly newsletter; and
  - support, among others.

Practice Management Software service provider has extended a service offering to our beneficiaries, the roll out is in the initial stages. Progress on this project will be reported on throughout the year.

**Etienne Horn,**

*Chairperson, Board of Directors, Attorneys Development Fund*

## LEGAL PROVIDENT FUND

**Board of Trustees: Andrew Stansfield (LSSA) (Chairperson), David Bekker (LSSA), Thinus Grobler (LSSA), Gavin John (LSSA), Ilan Lax (LSSA), Jacques Malan (GCB), ME Phiyega (GCB), Anthony Pillay (LSSA) and Zanele Nkosi (LSSA)**

**Independent trustees: Hannine Drake, Iqbal Ganie, Jolly Mokorosi and Janine Player**

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 is made up of 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 whom are appointed by the LSSA. During 2016 three independent board-appointed trustees were replaced following a rigorous recruitment process, and the new incumbents have proved to be well suited to their positions. Full details of the trustees and their credentials may be accessed via the LPF website, at [www.legalprovidentfund.co.za](http://www.legalprovidentfund.co.za). The Board is considering its future composition, and the manner in which trustees are to be appointed when the Legal Practice Act 28 of 2014 takes effect.

The LPF is regulated by the Financial Services Board (FSB) as a Type B umbrella fund, which means that the fund operates under one set of rules. This simplifies the administration of the fund and promotes cost-effectiveness for members. The FSB conducted a routine inspection towards the end of 2015 and the LPF received a clean bill of health. Audited financial statements were finalised for the year ended 31 March 2016 and were submitted to the FSB on time.

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

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

The performance of the Board itself was conducted by way of a self-assessment process, and the main area requiring improvement is more regular communication with members. Before the era of electronic communication, the structure of a Type B umbrella fund with 500 participating employers posed a challenge to communicating with the membership. The use of smartphone technology is an attractive option for addressing the communications issue, and this will be pursued in 2017.

The default investment model was amended by the trustees during the current year, 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 LPF was, however, not immune to external market forces, and the impact of Nenegate, Brexit and the US presidential election outcome was negative. As a result the investment returns, while above benchmark, have been pedestrian in 2016. The trustees believe that the LPF portfolios are positioned optimally for an improvement in market conditions.

The operational requirements of a retirement fund become more complex with each passing year, and it stands to the credit of my fellow trustees, the principal officer and the

administrator that the LPF has delivered another year of excellence to its membership. A special word of thanks must go to Michael Pinnock, Edwin Letty and Vincent Faris, who retired from the Board in 2016 after many years of dedicated service to members.

**Andrew Stansfield,**

*Chairperson, Board of Trustees, Legal Provident Fund*



## ALTERNATIVE DISPUTE RESOLUTION COMMITTEE

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

The committee met on 14 March and 1 September 2016. The minutes of the committee meetings are available from the Professional Affairs department on request. This report summarises the committee's work for 2016 and provides an update on the areas of development in the alternative dispute resolution (ADR) field.

The committee has primarily focused on the training of the profession in the field of ADR. In addition, the committee has attempted to keep informed, and has influenced and participated in the development of the ADR field.

We await the changes in terms of the Legal Practice Act 28 of 2014 to determine how this committee will operate in future and, if so, what its focus will be.

### Training

The following training programmes have been offered by LEAD with the assistance of the training faculty:

- Civil mediator training;
- Divorce mediator training;
- Workplace mediator training; and
- One-day workshops on the use of mediation by lawyers in collaboration with Conflict Dynamics were held for free in Durban, Cape Town, Johannesburg, Pretoria and Port Elizabeth.

Training in mediation was also offered for the first time in Botswana and broader training initiatives are being offered in other SADC regions.

In 2017 LEAD will offer a comprehensive training programme to support the profession in the use of mediation and to develop the skills of more mediators. Of concern to the com-

mittee is the lack of work for mediators and as such some focus must be provided for generating work for mediators.

The need to develop training in arbitration skills has also been identified and will be pursued.

## Developments in ADR

### Court-annexed mediation

The court-annexed mediation programme has been in place in Gauteng and in the North West for some time. There has been a formal report from the Ministerial Advisory Committee, which we understand has been presented to the Minister of Justice and Correctional Services. It demonstrates a mixed bag of successes and challenges.

We remain concerned at the lack of resources being provided to the project in regard to finances, infrastructure, marketing and training. The committee invited Judge Cassim Sardiwalla, the Chairperson of the Ministerial Advisory Committee, to one of its meetings and engaged positively with him on the project. We look forward to more engagements in the future.

This project is crucial for the formalisation of mediation in the civil justice system. We understand that the project will be phased in in the other provinces in the near future.

Having understood similar mediation programmes that have developed successfully in countries like Uganda, Nigeria and Namibia, to name a few, the mediation project is best driven from the Office of the Chief Justice and under this office's guidance and budget. Judges provide the essential drive for the change required to the dispute resolution systems available at the court. In this vein, the LSSA wrote a formal letter to the Chief Justice.

### Arbitration

An exciting development in the field of arbitration has been the introduction of the International Arbitration Bill. Part of the need to update our international arbitration law is to adopt the United Nations Commission on International Trade Law (UNCITRAL) Model Law as the cornerstone of the international arbitration regime in South Africa. The Model Law was developed to address the wide divergence of ap-

proaches in international arbitration throughout the world and to provide a modern and easily adapted alternative to national regimes. The Model Law defines arbitration as 'international' if the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different states. This definition is used to determine which arbitration matters qualify as 'international' and are, therefore, subject to the Model Law.

To quote from the keynote address of the Deputy Minister of Justice and Constitutional Development, John Jeffery, at the International Arbitration – the Dawn of a New Era in South Africa seminar, held at the Johannesburg Stock Exchange Auditorium, on 14 October 2016:

*'After Cabinet had approved the introduction of the Bill into Parliament, our Department received advice that the UNCITRAL Model Law could be adapted in order [to] accommodate local circumstances. We therefore thought it expedient to adapt certain provisions of the Model Law in order to cater specifically for South African circumstances rather than to incorporate it as is. We are now in the process of going back to Cabinet, with the suggested amendments, for noting and endorsement before proceeding with the introduction of the Bill into Parliament. And we expect that it will be introduced before the end of this year.'*

Some of the proposed amendments include the following:

- The Model Law envisages a State adopting this law to exercise a choice between Options I and Option II in art 7 of the Model Law, regarding the form of an arbitration agreement. It is proposed that Option I be selected because it reflects existing South African law by requiring an arbitration agreement to be in writing.
- Article 9 of the Model Law states the principle that for a court to order interim measures regarding a dispute subject to arbitration is not inconsistent with the arbitration agreement. It does not, however, provide any indication of the scope of the court's powers. It was, therefore, suggested that a paragraph be added with a reference to the article which sets out the scope of these powers.
- Article 10 allows State parties the freedom to determine the number of arbitrators for appointment, failing which the default position in the Model Law is three arbitrators. The proposal that the default position should be one arbitrator is in line with existing South African law and also promotes a less expensive process.
- Article 12 provides for an arbitrator to be challenged where there are 'justifiable doubts' regarding his/her independence and impartiality. There has recently been an increase in the number of challenges being made in international arbitration. A new paragraph is, therefore, proposed which sets out the current South African standard regarding removal of an arbitrator on the basis of bias. The

other ground for removal which is used in some other jurisdictions is 'a real danger of bias' as opposed to 'a reasonable apprehension of bias', the preferred ground in South Africa.

- It is proposed that art 18 be amended to state that each party shall be given a reasonable opportunity, instead of a full opportunity of presenting its case. This is in line with the 2010 UNCITRAL Conciliation Rules and discourages court applications based on minor procedural irregularities. This is also in line with the approach of the Constitutional Court in *Lufuno Mphaphuli & Associates (Pty) Ltd v Andrews and Another* (CCT 97/07) [2009] ZACC 6; 2009 (4) SA 529 (CC) ; 2009 (6) BCLR 527 (CC).
- It is suggested that the term 'seat of the arbitration', which is used in South African practice, be used rather than the term 'place of the arbitration' as used in the UNCITRAL text. The wording has been clarified to distinguish clearly between the juridical seat and the geographic location of a hearing.
- A further amendment gives the tribunal express powers to award interest and costs, unless the parties agree otherwise. It is suggested that the tribunal should have these powers, where the parties fail to make their own arrangements. Few sets of international arbitration rules deal with the question of interest.
- Another interesting development that we may see evolve is the ability to arbitrate some disputes that occur during a divorce.

## Conferences

Members of the committee, on their own initiative, attended various conferences nationally and internationally and presented the case for mediation in South Africa. Mediation in the field of employment law in South Africa has advanced beyond a number of other jurisdictions. South Africa has a lot to offer in respect of these lessons.

## Interventions offered

The conflict at the universities escalated during the course of 2016. The LSSA and its constituent members offered the services of mediators to the conflicting parties. The committee also drafted a formal letter offering assistance. Committee members actively engaged on social media and through media outlets to offer advice on mediation and how it could assist in resolving the conflict.

We hope that members involved in such conflict will utilise the services of professional mediators in the future.

**Ebrahim Patelia,**

*Chairperson, Alternative Dispute Resolution Committee*

## COMPANY MATTERS COMMITTEE

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

The Company Law Committee meets on an *ad hoc* basis as and when circumstances dictate. The committee met once during the period under review. The proposed model for accreditation in future of business rescue practitioners by the professional bodies of which they are members, which had been discussed at the Business Rescue Liaison Committee (on which two members of this committee sit) rather than by the Companies and Intellectual Property Commission (CIPC), was debated. Certain recommendations were made, for instance that the minimum training requirements for attorneys who wish to practise as business rescue practitioners, should be no more onerous than the standard required to be adhered to by all professional bodies issuing licences. This is in order not to disadvantage attorneys wishing to become business rescue practitioners by comparison to members of other professional bodies seeking to be licensed. It was noted that the CIPC intended to produce a code of conduct for accredited professional bodies that would be licensing business rescue practitioners. The committee made certain proposals to the CIPC for the amendment of practice note 2 of 2016.

The committee has been advised by the Specialist Committee on Company Law (SCCL) that it considered the two submissions made to the SCCL during 2015 by the committee. The SCCL decided which of the comments raised by the committee it wished to propose to the Department of Trade and Industry (DTI) for the amendment of the Act, and made certain proposals in that regard.

The committee has not, however, been advised by the SCCL which of its proposals the SCCL decided to put up to the DTI. The SCCL has also advised the committee that it is not able to advise when such proposed amendments (together with others determined by the SCCL) will be proposed in the form of a draft Bill to Parliament.

**Miranda Feinstein,**

*Chairperson, Company Law Committee*

## COMPETITION LAW COMMITTEE

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

The committee met once in person and once by telephone conference. The main topics of discussion at these meetings are briefly summarised below.

The Law Society of the Northern Provinces (LSNP) sought to join the LSSA in an application (the s 65 Application) that an attorney had lodged against the LSNP at the Competition Tribunal in terms of s 65(2) of the Competition Act 89 of 1998 (the Competition Act). The s 65 Application had its origin in an application for striking off 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. On the advice of the committee in 2015, the LSSA decided not to oppose the joinder application.

However, the issue of the joinder application has somewhat been overtaken by events during 2016, in that the Competition Commission (the Commission) resolved to prosecute the LSNP for a contravention of the Competition Act arising from a complaint laid by the attorneys' firm against the LSNP. The complaint alleges that certain rules, rulings and guidelines of the LSNP constitute price fixing among competitors. Ironically, the specific rules were repealed when the new Rules for the Attorneys' Profession took effect in 2016 and the rulings and guidelines in question are no longer enforced.

Significantly, the Commission has not yet made a decision as to whether the abovementioned LSNP rules pertaining to touting, sharing of offices and sharing of fees contravene the Competition Act.

It was then agreed by the parties that the s 65 Application and the Commission complaint should be combined into one hearing. However, before the hearing commenced the LSSA, LSNP and the Commission met in an attempt to settle the complaint and determine the way forward in respect of the new rules. The committee was represented at that meeting by its chairperson. At the time of writing this report, the settlement discussions are still ongoing but, in respect of the new rules, the Commission and the LSSA committed themselves to continue to engage with each other to ensure that the new rules are in compliance with the Competition Act.

The committee considered two matters which relate to complaints laid at the Commission by two members of the

KwaZulu-Natal Law Society (KZNLS) pertaining to the KZNLS's Ruling 3(4). The members claimed that, in some form, the ruling was a contravention of the Competition Act. The KZNLS approached the LSSA for guidance. KZNLS Ruling 3(4) reads:

*'If a client hands a matter to an attorney (second attorney) and if the second attorney knows that another attorney (first attorney) has previously acted in the same matter for the same client, or if such fact subsequently comes to the knowledge of the second attorney, the second attorney must cease acting for that client in respect of that matter until the account of the first attorney has been paid or secured to the reasonable satisfaction of the first attorney.'*

After debating the matter, the committee came to the view that there did not appear to be a good rationale for the ruling and, since the new professional rules had already replaced the old rules, it would perhaps be better for the KZNLS to withdraw the ruling.

The committee also considered the possible challenges against the new professional rules which it was rumoured may be brought by a new service provider in the property transfer industry, namely Proxi Smart Services (Pty) Ltd. However, since the challenges were not made as yet, it was decided to hold over any advice and decisions for the time being.

Members of the committee 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, Saber Jazbay, Sonya Labuschagne, Dario Milo, Macdonald Moroka, Xolile Ntshulana, Mvuzo Notyesi and Shamila Singh**

During the year under review the committee met face-to-face on 24 February and 31 August 2016.

### Constitutional review

The committee agreed that constitutional review shall remain a standing item on its agenda. This is because s 45(1) (c) of South Africa's Constitution requires a joint committee

(the Constitutional Review Committee) to review the Constitution annually. Pursuant to this, members of the public are invited to make written submissions on specific sections that they are of the opinion should be reviewed.

## Legislative developments

Important legislative and policy developments took place on the constitutional front during 2016, including the following:

The Expropriation Bill was adopted by the National Assembly and referred to the President for assent and signature, who in turn requested the Speaker of the National Assembly to advise him on the process followed by Parliament after he received petitions from various organisations listing a number of procedural defects.

The draft National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and related Intolerance was published for public comment. It is envisaged that further legislation may emanate pursuant to the plan, which will require closer scrutiny by the committee.

The Draft Prevention and Combating of Hate Crimes and Hate Speech Bill, 2016 was published by the Department of Justice and Constitutional Development for public comment. The Bill provides, among other things, for the offences of hate crimes and hate speech and for the prosecution of persons committing such offences. The initial date for comment has been extended and this Bill will no doubt require careful scrutiny by the LSSA and its relevant specialist committees.

## United Nations Human Rights Council

The LSSA, in collaboration with the International Bar Association's Human Rights Institute (IBAHRI) and the Southern Africa Litigation Centre, submitted a joint shadow report to the UN Human Rights Council on human rights related issues. The submission was prepared for the Universal Periodic Review (UPR) of the Republic of South Africa.

Issues that were raised and recommendations made include –

- the failure of the government to ratify international treaties as undertaken under the last UPR cycle. Steps should be taken to ratify all outstanding human rights treaties and domesticate them into law to ensure that they are implemented;
- the low number of women in decision-making positions in law firms and the sparsity of lawyers in rural areas and townships are of concern. The positive developments in terms of the Legal Practice Act 28 of 2014 with regard to

making legal services more accessible to the public and to make the legal profession more representative were recognised;

- respect for the rule of law and the independence of the judiciary to promote and protect the right of access to justice and the right to an effective remedy were encouraged. The weakening of the SADC Tribunal is of major concern and it was recommended that the government should refrain from ratifying the revised SADC Tribunal Protocol, which violates the right to access to justice; and
- as far as the attacks against foreigners in 2015 are concerned, it was recommended that a clear message be sent by the government that xenophobic attacks will not be tolerated and that perpetrators have to be brought to justice in a trial meeting international human rights standards.

## Human Rights Day: 21 March 2017

The committee agreed to explore and identify potential initiatives or recommendations in celebration of Human Rights Day on 21 March 2017 in order to highlight human rights with the object of engendering respect for; promoting adherence to and supporting and underpinning the Constitution, in particular the Bill of Rights and generally, to do all such things and take all such steps as may be appropriate and necessary to achieve those objects.

This will be explored in collaboration with other relevant specialist committees.

## Prison Clinic Programme with Legal Aid SA

The committee considered Legal Aid SA's Prison Clinic Programme, which involves legal clinics that are arranged at correctional facilities, aimed at providing advice to detainees and sentenced prisoners. Legal Aid SA expressed their willingness to collaborate with the LSSA to allow for joint workshops and consultations. The committee agreed that the LSSA should participate and provincial law societies were requested to participate in this programme. The LSSA's Legal Aid Committee will drive the project.

## Conclusion

I am grateful to my fellow committee members for the constructive and dynamic manner in which they have served the LSSA through the work of the committee. I also 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, Peppy Kekana, Howard Maimela, Anthony Millar, Marinkie Putuka, Yandisa Tsipa, Henri van Rooyen and Yusuf Wadee**

The Contingency Fees Committee had two meetings during the year, in February and May.

The committee was expanded to include representatives from the Personal Injury, Magistrate's Court, Costs, and High Court Committees, in order to work towards a common view on behalf of the entire profession.

The committee suggested it would be useful to obtain clarity from the courts concerning the interpretation of the Contingency Fees Act 66 of 1997, particularly given some conflicting decisions in the various divisions of the High Court. The Law Society of the Northern Provinces approached Deputy Judge President Phineas Mojapelo, having identified an appropriate matter, namely *Masango v RAF*, which was set down for hearing in the South Gauteng High Court on 22 June 2016. (see *Masango and Another v Road Accident Fund and Others* (2012/21359) [2016] ZAGPJHC 227; 2016 (6) SA 508 (GJ) (31 August 2016)).

Counsel was briefed to argue.

The committee was pleased that the court confirmed the view adopted by the committee in regard to a number of issues:

- The court held that VAT is indeed included in the prescribed cap of 25%. The court warned statutory law societies to reign in errant attorneys who abuse the Act to over-reach their clients. The court condemned

*'the ever increasing rampant and persistent attempt by legal practitioners (especially attorneys) to provide for and recover more than the legitimate and legalised success fee,'*

and observed that 'the practice . . . is widespread, especially in personal injury claims . . . is not legal and needs to be weeded out.'

The court urged the provincial law societies to introduce rules for their members as contemplated in s 6 of the Act.

- The court confirmed that an attorney is not entitled to retain the party-and-party costs contribution recovered from the losing party.
- The court confirmed that so-called 'common law' contingency fee agreements are invalid, and that any contingency fee arrangement between an attorney and client must comply with the strictures of the Act.



- The court rejected a provision in the particular contingency fee agreement which was the subject of the suit in question. The impugned agreement posited an alternative fee agreement in the event that the main agreement was found to be invalid. The substitute agreement provided for a fee of R2 000 per hour regardless of whether the work was performed by an attorney or any other staff member. The court reiterated the principle that professional fees of attorneys have to be assessed against the standard of reasonableness.
- The court declined to decide whether counsel's fees are included in the 25% cap, as the issue did not arise in the particular matter. The committee has previously expressed the view that all legal practitioners' fees are included in the 25% cap.
- The court remarked in passing that a contingency fee agreement is concerned with fees charged by attorneys for litigious work.
- The court observed, finally, that an uptake of 100% (double the normal fee) 'is more than sufficient incentive to the legal practitioner to pursue litigation on a contingency basis'.

The committee is heartened by the certainty which the judgment has provided.

The committee will consider whether the Act should be augmented with the promulgation of rules by the law societies.

**George van Niekerk,**

*Chairperson, Contingency Fees Committee*

## COSTS COMMITTEE

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

Although the committee has not met physically during 2016, its members have contributed to a number of developments on costs-related matters, including the following:

- The payment of witness fees in civil and criminal matters, including experts: This is governed under different regulations. The Department of Justice and Constitutional Development requested comments from the LSSA after the regulations had not been revised in seven years. The members of the Costs Committee, upon reflection, supported the views expressed by others that, since CPI has been used to increase the witness fees, the Department's proposals are supported.

- Furthermore, the LSSA has received a request for comments from the Rules Board for Courts of Law on whether (1) the pre-enrolment process envisaged in Uniform Rule 70(3B) should be introduced into the taxation process in the Magistrates' Courts; and (2) the percentages permitted for drawing a bill of costs and attending taxation in the Supreme Court of Appeal, High Court and Magistrates' Courts should be harmonised. These proposals were under consideration by the committee at the date of preparing this report.

Graham Bellairs, a member of this Committee and Chairperson of the LSSA's Magistrates' Courts Committee, together with Jacqui Sohn, the Chairperson of the LSSA's Personal Injury Committee and Dudu Mthimunya-Hluyo, a member of the LSSA's High Court Matters Committee, attended the Legal Costs Indaba convened by Legally Accurate Costs Consultants on 7 October 2016. Judge Bertelsmann presented the opening address which was followed by a question and answer session with Anthony Millar, President of the Law Society of the Northern Provinces.

The Legal Practice Act 28 of 2014 is scheduled to be fully operational by February 2018. This necessitates engagement with various stakeholders to consider appropriate interventions required for the regulation and implementation of fees for legal services pursuant to the Legal Practice Act.

I wish to thank my fellow committee members for having served the committee diligently and for their continuing engagement with the activities of the committee.

**Asif Essa,**

*Chairperson, Costs Committee*

## CRIMINAL LAW COMMITTEE

**Members: William Booth (Chairperson), Elsje Clarke, Llewelyn Curlewis, Johan Kramer, Motsomi Litheko, Avinash Maharajh, Nolundi Nyati, Zincedile Tiya and Amanda Vilakazi**

It is unfortunate that the Criminal Law Committee could meet only on one occasion during the course of 2016. As is often the case, logistical problems prevented more regular meetings. At the last meeting of the committee it was decided that at least two meetings will take place during 2017.

Some of the important matters that were discussed by the committee at its meeting on 21 November 2016 included further engagement with the South African Police Service

(SAPS) relating to lectures, seminars and workshops. Brigadier Francois van Graan, on behalf of the SAPS, attended the meeting and his input was welcomed.

An issue which has attracted a great deal of concern is admission of guilt fines. In many instances detainees are not advised of their rights at all. Many arrested persons are under the impression that when they pay an admission of guilt fine at a police station it equates to bail, only to find out later that they in fact have a conviction for a particular offence. This creates a serious problem when the person wishes to travel or obtain employment. There have been a number of High Court decisions, particularly from the Western Cape, dealing with admission of guilt fines, where the correct procedure has been laid down for the SAPS to follow. (see *S v Tong* 2013 (1) SACR 346 (WC) and *S v Houtzamer* [2015] ZAWCHC 25).

The present situation is far from satisfactory and the committee has undertaken to meet with the Deputy Minister of Justice and Constitutional Development regarding this aspect. It is felt that, for certain offences, even if one pays an admission of guilt fine, it should not attract a conviction. This would require legislative change, hence the meeting with the Deputy Minister is regarded as of paramount importance. The committee also discussed written notices to appear in court, the so-called J534 form, and suggested changes to its format.

The manner in which suspects are apprehended for misdemeanours is worrying. In such instances, suspects should be released on a written notice to appear in court instead of being detained. The type of cases where the SAPS may release a suspect on bail or issue a warning notice for her/him to appear in court must be reconsidered.

The review of the Criminal Justice System was diverted to the next committee meeting, since the item could not be ventilated fully at the meeting because a representative from the Department of Justice and Constitutional Development was not able to attend.

It was again decided that the committee should consider engaging a consultant with regard to the preparation of submissions when new legislation is submitted to the LSSA for comment. In many instances, new legislation comprises involved aspects and it is felt that a consultant would have more time to make comments, submit these to the committee and then the committee can endorse the comments for further submission to the law-makers.

The Chairperson, William Booth, attended the National Efficiency Enhancement Committee (NEEC) meeting in April 2016, chaired by Chief Justice Mogoeng Mogoeng. It is anticipated that the LSSA will again have a presence at this meeting this year. At provincial level, members attend various Provincial Efficiency Enhancement Committee meetings to put forward proposals on behalf of legal practitioners, more

specifically for access to justice and improving the functioning of our criminal courts.

The International Criminal Court Act Repeal Bill was also discussed and it was felt that instruction should be obtained from the various constituents to consider engaging government regarding the decision to withdraw from the International Criminal Court.

Concerns regarding the efficiency of the National Prosecuting Authority (NPA) in light of the Gordhan 'debacle' were also raised. The LSSA Co-Chairpersons had issued a media statement recording legal practitioners' concerns about the manner in which the National Director of Public Prosecutions, Shaun Abrahams, had dealt with the potential prosecution of Minister Gordhan. It was, however, felt that there should be further engagement with the relevant role players about the manner in which the NPA has dealt with cases in general.

There has been a great deal of criticism by judges with regard to the conduct of senior members of the NPA resulting in two of its deputy directors being struck off the roll and subsequently suspended.

The committee felt strongly that there has to be more transparency in the manner in which the National Director of Public Prosecutions is appointed. A process similar to that followed with the appointment of the new Public Protector is suggested.

**William Booth,**

*Chairperson, Criminal Law Committee*

## DECEASED ESTATES, TRUSTS AND PLANNING COMMITTEE

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

The Deceased Estates, Trusts and Planning Committee met on 21 September 2016 to deal with a full agenda. Invitations were extended to the Chief Master of the High Court and the Department of Home Affairs to deal with a number of critical matters of mutual interest to the legal profession and the public.

## Meeting with Department of Home Affairs

The committee met with Agnes Molefe of the Department's Drafting (Legal Services) section. It was agreed that regular meetings between the committee and the Department would be of advantage to the LSSA, the Department and stakeholders. The committee raised, among others, the following issues with the Department:

- **Death certificates:** The committee requested the Department to appoint a dedicated official for the attorneys' profession to attend to amendments of death certificates. Ms Molefe confirmed that the Department was in the process of reorganisation and undertook to request the Department to appoint a dedicated official for this purpose.
- **Recognition of Customary Marriages Act 120 of 1998:** The Committee noted significant improvements as a result of the Recognition of Customary Marriages Act, but observed that s 4 of the Act stated that spouses of a customary marriage had a duty to ensure that their marriage was registered. Section 4(9) stated that failure to register a customary law marriage did not affect the validity of that marriage. Accordingly, the Department may not know if a person is married or not and depends on a person's disclosure regarding her/his marital status. Ms Molefe confirmed that the Department is considering potential amendments to the Act and conceded that there could be a need for the Department to conduct campaigns to inform persons about the importance of registering their marriages. She undertook to explore this subject, in collaboration with the LSSA, and to consider potential amendments to the Act and/or regulations.

## Liaison with the Chief Master

Regrettably, the Chief Master, Lester Basson, was not able to attend the meeting as he was ill. The committee had identified a number of matters to address with the Chief Master, including access to information on trusts, appointment of an independent outsider trustee, acknowledgement of receipt of documents by the Master's office, life rights in retirement villages and estate duty implications and channels of communication with the Masters' offices. The key issues meant for discussion at the meeting were reduced to writing and communicated to the Chief Master.

## Second Interim Report on Estate Duty

The Davis Tax Committee (DTC) published the second and final version of its Report on Estate Duty (the Report) for the Minister of Finance on 24 August 2016. This committee, together with the Tax and Exchange Control Committee, made substantial comments to the First Interim Report. The Report

recommends, among other aspects, that the primary abatement should be increased from R3.5 million to R15 million for all taxpayers, irrespective of marital status; the estate duty rate be increased from 20% to 25% of the dutiable value of an estate exceeding R30 million. Regrettably, the DTC disagreed with the LSSA's contention that estate duty amounts to a form of double taxation when combined with the Capital Gains Tax effects on death.

The LSSA recommended that the South African legal system should move away from the concept of treating death as a taxation event. The DTC avers that estate duty and donations tax are wealth taxes and ignored the LSSA's recommendation that more in-depth research be conducted in this regard. The report also recommends that '[d]onors and beneficiaries of all vested trust arrangements should be subject to stricter disclosure requirements and enforcement measures'.

The committee will reflect and prepare a commentary on the report which will be directed to the appropriate forum.

## Provincial committees on estate matters

It was evident that there has been increased engagement with the various Master's offices at provincial and regional level through liaison committees of the provincial law societies. The LSSA requested the law societies to replicate such liaison committees in regions where this may not yet be in operation.

## Chief Master's Directives

**Chief Master Directive 7 of 2014:** The committee corresponded with the Office of the Chief Master regarding the contents of Directive 7 of 2014, which relate to suffixes for the identification of offices of the Master of the High Court. The committee observed that it appeared that the suffix 'V' stands for the former Venda which is meant to represent Thohoyandou. The committee expressed the view that the inclusion of the prefix 'V' for Venda is retrogressive and reflected a past arrangement and requested that matters of this nature be dealt with appropriate sensitivity. The Chief Master noted these contents.

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

1 of 2016: Appointments in terms of the PDI/BEE list of insolvency practitioners.

2 of 2016: Deceased estates: Dealing with estate duty matters by the Master and SARS.

3 of 2016: Deceased estates: Dealing with an executor's application for discharge.

4 of 2016: Postage and petties.



## Conclusion

I wish to express my profound gratitude to the members of the committee and colleagues and staff at the LSSA for their selfless dedication to the mandate of the committee.

**Hussan Goga,**

*Chairperson, Deceased Estates, Trust and Planning Committee*

## E - LAW COMMITTEE

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

The committee had physical meetings as well as some telephone conferences during the year. Although video conferencing would be more effective for meetings, cyber capability and connectivity generally are still not sufficient to allow us to dispense with physical meetings.

The committee dealt with various IT-related questions addressed to the LSSA and *De Rebus* as and when necessary. Cyber law awareness and general cyber competency are very important for lawyers, and the committee is continually involved in encouraging wider competence in the profession and working wherever possible with the Legal Education and Development (LEAD) Department of the LSSA to achieve these aims. We have also worked closely with the LSSA Property Law Committee as the move to online conveyancing finally started to gather momentum and will be accelerating next year.

Committee members participated in the colloquium regarding IT law training in degrees. The colloquium was arranged by LEAD and very effectively coordinated by Sylvia Papadopoulos. Participants included the universities' law deans. It was successful and should see a suitable degree of IT law and general awareness being included in law degrees in the near future. A further issue still to be tackled, however, is the question of including training in technology for lawyers to take account of artificial intelligence, machine learning and other developments which will totally transform the way lawyers work in the near future.

We have continued to interact usefully with Government and, as a result of the comments provided last year on the Cyber Crimes Draft Bill, the Chairperson and Deputy Chairperson of the committee were included in the group that met on various occasions during 2016 with the Deputy Minister of Justice and Constitutional Development to finalise the draft Bill. There was a lot of debate and an interesting

series of interactions, which saw many of our ideas being implemented. We did not succeed, however, to have the Bill separated into two Bills, with the cyber-crime aspect separated from the cyber-security aspect, which remains a concern. The draft Bill was published for comment recently and is, we believe, somewhat improved on the original version.

Sizwe Snail, the LSSA's representative on the National Cyber Security Advisory Panel, is very involved in cyber-crime fighting initiatives in this country and elsewhere and, together with the Chairperson, is currently working with the Council of Europe and others on a cyber-crime training initiative for lawyers. It will be disseminated through LEAD and should also allow the profession to share such training with the State, using LEAD's resources.

We have worked successfully with the Property Law Committee on the proposed electronic transformation of the land registry system. Again, as a result of comments made jointly on the original, rather lengthy e-Deeds Registries Bill, we had several mutually congenial meetings with the Chief Registrar of Deeds, Senior State Legal Advisers and others, which resulted in a somewhat simpler revised Bill. It is intended to be the foundation for proper trials of online conveyancing processes, which the profession will be very involved in.

The process was coordinated by the LSSA's Professional Affairs Manager and culminated in a meeting with the Minister of Rural Development and Land Reform, who accepted our proposals. The draft Bill was also approved by Cabinet. We hope that it will lead to 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 had various discussions with Department of Justice and Constitutional Development and State Information Technology Agency (SITA) officials on the digitisation of lower and higher courts, though things are still moving slowly and we are well behind countries such as Brazil in e-filing and e-litigation.

The committee has been involved with e-discovery developments and members of the committee, especially Brendan Hughes, have worked with local stakeholders on this fast-developing area, ensuring the profession's views are heard and that it will be a key participant as the process unfolds. Our comments have been submitted to the Rules Board for Courts of Law and will undoubtedly help shape future amendments in this regard.

We will be doing a limited trial of electronic interaction with the Master of the High Court in early 2017, involving advanced electronic signatures, and have State Law Adviser approval of the proposed process. It is enthusiastically supported by the Chief Master, who has been working hard for some time on putting the Master's Office on a sustainable and effective e-government platform, with noticeable results.

Our Deputy Chairperson of the committee, Sizwe Snail, has been appointed as a member of the Board of the newly established Information Commissioner, as well as to the Films and Publications Appeals Board. It is gratifying to see the profession recognised this way and various local lawyers will also be proactively engaged in the process of training lawyers on protection of privacy and spreading the general awareness.

The committee will continue in its efforts to improve the cyber confidence and competence of all legal practitioners and assist in educating colleagues and help protect them and their clients from cyber criminals

**Gavin McLachlan,**  
*Chairperson, E-Law Committee*

## ENVIRONMENTAL AFFAIRS COMMITTEE

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

The committee was able to meet only once this year, on 30 August 2016. At this annual meeting Norman Brauteseth was elected as the new chairperson of the committee and Catherine Warburton as the deputy chairperson. Hajira Kara was welcomed as a new member of the committee.

At the meeting, it was noted that unfortunately the Department of Environmental Affairs had not yet responded to the Committee's offer of assistance with its initiatives to combat rhino poaching and it was resolved that the LSSA would follow up with the Department for a second time, since a number of members had expressed an interest in assisting, where required.

Practitioner Rudi Aucamp assisted the committee and the LSSA by attending the SADC Lawyers Association conference and annual general meeting on its behalf from 17 to 19 August 2016 and presented on biodiversity crimes. He is thanked for his valuable contribution to the committee and the SADCLA conference.

The deputy chairperson will provide feedback to the committee at the next meeting on the 17th Conference of the Parties on the Convention on the International Trade in Endangered Species (CITES), which she attended from 24 September 2016 to 5 October 2016 and where important decisions were made on rhino and other endangered species.

Key statutory developments in environmental legislation and case law were discussed and circulated to committee members.

**Catherine Warburton,**  
*Deputy Chairperson, Environmental Affairs Committee*

## ETHICS COMMITTEE

**Members: Krish Govender (Chairperson), Dave Bennett, John Christie, Johan Fourie, Linda Magaxeni, Charlotte Mahlatji, Deirdré Milton, Odwa Nyembezi, Ed Southey and Butch van Blerk**

The committee met on 8 March 2016 to deal with a number of ethics-related matters.

An article dated 18 February 2016 appeared on the Ghost-Digest platform, which intimated that there was reportedly a practice at the Pretoria Deeds Office in terms of which conveyancers paid examiners to remove notes. The implication was that conveyancers were bribing examiners to overlook legal queries. The matter was referred to the committee for consideration as such practice had the potential of compromising the accuracy and correctness of land records and registration, with negative consequences for the national interest.

Inquiries were made to the Chief Registrar of Deeds regarding the article. It was confirmed that a forensic fraud risk management action plan was in place to combat malpractice. The transcript of minutes of such a meeting held with the relevant clerks had been leaked as it was not meant for publication. The committee considered the matter and referred it with recommendations to the LSSA's Manco for appropriate action.

Manco agreed that GhostDigest has a wide coverage among conveyancers and that the law societies should take stern action against those guilty of any misconduct. LSSA representatives also met with the Chief Registrar of Deeds on 8 April 2016 and affirmed that the LSSA will not tolerate any corrupt or improper conduct by a conveyancer. The Deeds Office was encouraged to take all necessary steps to deal with these matters in terms of the law. Misconduct by conveyancers should also be reported to the law societies.

The LSSA's Labour Law Committee raised concern regarding the manner in which attorneys are conducting themselves at the CCMA and bargaining councils. Rule 25 of the Rules for the Conduct of Proceedings before the CCMA excludes legal representation at CCMA conciliation proceedings. Legal representation may be allowed by the commissioner in arbitration proceedings, subject to certain conditions. Some legal

as employees of their clients and not as legal representatives, with the dubious intention to circumvent Rule 25. This type of conduct is unethical and unprofessional and will attract the severest sanction by any law society.

The committee confirmed that this matter has been dealt with in the past by the Labour Law Committee, which resulted in a Code of Conduct that was put in place and had to be enforced in respect of all practitioners who appear before the CCMA. The committee requested the Labour Law Committee to do whatever is necessary to stop this practice.

The South African legal profession is on the cusp of a new regulatory dispensation which is geared towards the profession's transformation and restructuring in line with constitutional imperatives. Transformation includes and extends to a change in mindset towards a more just and honest manner of practice, putting the public first before self. Legal practitioners are, by and large, failing to embrace this philosophy, and have fallen prey to the all-pervasive culture of exhibitionism, greed and excessive consumerism. We have to remind ourselves constantly that legal practitioners play a central role in supporting the rule of law and promoting human rights to advance socio-economic rights of the downtrodden workers, the poor and the unemployed. There are also vast numbers of legal practitioners who profiteer from doing the opposite by advancing the class interests and capital of the so-called 'one percent'.

The committee's role becomes increasingly difficult during these times of ever-growing inequality, poverty and unemployment, despite the best offerings of a world-beating Constitution. Ethics has become an irritant tick that often gets into the skin of the monster trampling all in its path. We can only hope that the relatively small band of legal practitioners who adhere to the best traditions of integrity and ethical conduct in legal practice will grow in numbers and protect the weak and the vulnerable from the powerful and well connected. A ray of hope on the horizon is the proposed changes to the law curriculum to introduce ethics into the law degree as compulsory modules and into subject matter. Credit for this must go to the LSSA for exerting firm pressure over the years on the law faculties to introduce ethics into their teaching programmes.

While this will not be any kind of a silver bullet to solve the problems of greed and unprofessional conduct, it will serve to remind many law students to shift their dreams a little away from their dream yachts, palatial homes and fast cars with handsome companions in tow, and focus on being successful lawyers without quick fixes, but through sheer good old-fashioned hard work.

**Krish Govender,**  
*Chairperson, Ethics Committee*

## FAMILY LAW COMMITTEE

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

The Chairperson and committee member Zenobia du Toit attended the annual general meeting of the LSSA in Johannesburg in April 2016 and presented a session on 'Arbitration in family law and the history of campaigns in respect of family law'.

The response was extremely positive and the LSSA's LEAD department expressed an interest in being involved with the development of family law arbitration in South Africa.

The Chairperson and members of the committee participated in the South African Law Reform Commission Workshop dealing with Family Dispute Resolution: Care and Contact with Children (Issue Paper 31) in Johannesburg in April 2016. Zenobia du Toit, committee member; Sandra van Staden, Cape Law Society's Family Law Committee; Beverley Clarke, Gauteng Family Law Association; Craig Schneider, Family Mediators Association of the Cape, and Charles Cohen of the LSSA's Alternative Dispute Resolution Committee, also participated.

A joint meeting of the Family Law and Gender Committees was convened on 6 May 2016. The minutes reflect the issues which are dealt with by the members of these committees, on a regular basis.

It is important to understand that the work of the Family Law Committee continues apace throughout the year. Members are called upon to comment on legislation as it arises. Apart from that, members attend various workshops convened by the Department of Justice and Constitutional Development, the Department of Social Development, the South African Law Reform Commission and the Rules Board for Courts of Law.

### Family law arbitration

The issue of family law arbitration has become extremely important in the field of family law in South Africa. Members of the committee were involved in preparing draft Rules for Family Law Arbitration, which have been circulated to the relevant LSSA committees.

The Chairperson of the committee, Susan Abro, attended the Family Lawyers Conference in Cape Town in March and co-chaired with William Longrigg (UK), who addressed financial matters on divorce in England and Wales and in certain jurisdictions. Ms Abro reported on arbitration in family law in South Africa.

The Chairperson attended the International Centre for Family Law, Policy and Practice - Culture, Dispute Resolution and the Modern Family Conference at King's College, London, in July 2016 and presented a paper on arbitration in South Africa. Committee member Zenobia du Toit also attended the conference and presented a paper on relocation in South Africa.

The Chairperson and committee; committee member Zenobia du Toit; Sandra van Staden from the Cape Law Society's Family Law Committee; Beverly Clarke from the Gauteng Family Law Association and Alfred Hona from the Cape Law Society, met with the Deputy Minister of Justice and Constitutional Development, John Jeffery, in October 2016 regarding arbitration in family law. The meeting was arranged by Pat Moodley, Director of Legal Administration of the Kwa-Zulu-Natal Regional Office of the Department of Justice and Constitutional Development.

The Chairperson is the LSSA's representative on the Task Team for the Children's Court Rules of the Rules Board for Courts of Law and attended meetings in October 2016 in Johannesburg. Committee member Nomaswazi Shabangu-Mndawe is the alternate on the task team.

In the report on the activities of the Family Law Committee during 2015/16, the LSSA Family Law Committee undertook to attend to various issues. It has done so.

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

**Susan Abro,**

*Chairperson, Family Law Committee*

## FINANCIAL INTELLIGENCE CENTRE ACT COMMITTEE

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

Committee members participated in several meetings, including two meetings with the Financial Intelligence Centre (FIC) and National Treasury (Treasury), a verbal presentation to Parliament's Standing Portfolio Committee on Finance and a working meeting to prepare comments on the *Issue Paper on Guidance Required to Implement the Financial Intelligence Centre Amendment Act, 2016*.

### Supplementary Comments on Financial Intelligence Centre Bill

The year under review has been very active as the committee continued its pursuit to ensure that the provisions of the Financial Intelligence Centre Bill of 2015 (the Bill) are practicable for the attorneys' profession and preserve legal professional privilege. On 8 January 2016 the committee had, due to the extremely short deadline for comment, already prepared supplementary comments to the second version of the Bill.

### First meeting with the FIC and Treasury

The committee met with representatives from the FIC and Treasury on 19 January 2016. The committee confirmed that the LSSA is committed to ensuring that practitioners give effect to what is intended, provided that the law must be practical for legal practitioners. It proposed that there was a need to have similar discussions on a regular basis even before legal developments commence formally. The committee proposed that specific rules should be developed for attorneys. The parties agreed to set up a sub-committee to deal with matters emanating from the Bill, including guidelines, and to plot a way forward.

### Presentation to Parliament's Standing Portfolio Committee on Finance

The meeting with the FIC and Treasury laid a positive foundation for the LSSA's verbal submission to Parliament's Standing Portfolio Committee on Finance on 2 February 2016. The LSSA was well received. It emphasised the uniqueness and nature of the attorneys' profession and the realities of compliance for the sole practitioner. The LSSA also received mention by Treasury and the FIC, both acknowledging the unique circumstances of an attorney's practice, with Treasury remarking that a rule-based rather than a risk-based approach would better suit the smaller firms.

### Second meeting with the FIC and Treasury

A follow-up meeting took place with the FIC and Treasury on 8 February 2016 at Treasury's offices to discuss the way in which to engage the profession on implementation. It was confirmed that the parties would seek practical solutions for implementation. The profession should, pending finalisation of the Bill, start preparing a 'road map' of potential guidelines for the profession and identifying key areas of risk.

### Issue Paper on Guidance required to implement the FIC Amendment Act 2016

The FIC, in consultation with Treasury, the South African Reserve Bank and the Financial Services Board, published an issue paper on guidance required to implement the FIC

Amendment Act, 2016 during August 2016. The purpose of the issue paper was to elicit comments on aspects where accountable institutions will require guidance when the provisions of the Bill take effect.

The committee convened a working session on 15 September 2016 to prepare comments on the issue paper. The LSSA highlighted that there are a total number of 12 373 firms operating in South Africa, comprising mostly smaller law firms of which the vast majority are sole practitioners. Smaller law firms and sole practitioners will, therefore, require substantial guidance to comply with the provisions of the Bill.

### Conclusion

The committee has been instrumental in presenting the legal profession's unique requirements to key role-players involved with the formulation of the Bill. This is, however, only the beginning of a new journey for the profession, given that the Bill, once in operation, will require implementation. All submissions are available on the LSSA's website and attorneys are encouraged to peruse such submissions.

In conclusion, I extend my heartfelt appreciation to my fellow committee members and colleagues at the LSSA for their commitment displayed while executing the committee's mandate.

**David Bekker,**

*Chairperson, Financial Intelligence Centre Act Committee*

## COMMITTEE ON GENDER EQUALITY

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

This committee participated in a joint meeting with the Family Law Committee on 6 May 2016 to deal with a full agenda affecting both committees. The meeting was chaired by Susan Abro, the Chairperson of the Family Law Committee.

It became apparent that there are overlapping issues for the committees to deal with, which should actuate at least one annual joint meeting. This will require some coordination between the chairpersons of the two committees, as well as commitment from all committee members.

The committee has agreed, among other things, that

- the LSSA should request the SADC Lawyers Association to make provision for LGBTI as an agenda item at their annual general meeting and conference;
- the idea of a Women's Lawyers Indaba must be resuscitated;
- the LSSA should circulate recent developments on the Traditional Courts Bill and ensure that verbal representations are made when a call is made for submissions;
- the LSSA should request representation on the relevant committee appointed by the Department of Justice and Constitutional Development on the Hate Speech and Hate Crimes Bill; and
- the LSSA should develop productive relationships with other legal institutions operating in this field.

We congratulate Susan Abro, a member of this committee and Chairperson of the Family Law Committee, on her appointment as the LSSA's representative on the Task Team of the Rules Board for Courts of Law for the Children's Court Rules, and Nomaswazi Shabangu-Mdawe, also a member of the Family Law Committee, who was appointed as her alternate on the task team.

We also congratulate Martha Mbhele, the previous chairperson of the committee, on her appointment to the Bench.

I thank my fellow committee members for their commitment to the work of the committee and for the confidence displayed in me by appointing me as chairperson of this indispensable committee.

**Nolwazi Zulu,**

*Chairperson, Committee on Gender Equality*

## HIGH COURT COMMITTEE

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

A joint meeting was convened with the Magistrates' Courts Committee on 7 June 2016.

### National Efficiency Enhancement Committee

The LSSA has received reports of remarkable improvements in the justice delivery system since the establishment of the National and Provincial Efficiency Enhancement Com-



mittees. Our committee has been informed that trial dates are obtained in much shorter timeframes and matters are being streamlined with increased efficacy. On the committee's recommendation, the LSSA expressed appreciation to the Chief Justice and the National and Provincial Efficiency Enhancement Committees for the increased effectiveness of the judicial system, which will cultivate public confidence and promote access to justice.

### **Amendments to the Rules and Forms of the High and Magistrates' Courts pertaining to execution against immovable property**

The joint meeting focused largely on formulating comments to the proposed amendments of the Rules and Forms pertaining to execution against immovable property in both the High and Magistrates' Courts. This is not a new development as the LSSA, together with other stakeholders, had previously provided feedback to the Rules Board for Courts of Law on this topic. The committees expressed support for the increased uniformity that will result between the Rules of the High and Magistrates' Courts through the proposed amendments, but considered some of the proposed rules as overly prescriptive, which will have a negative impact on the execution of immovable property. The full submission is available on the website of the LSSA.

### **Dialogue on sales in execution**

Subsequent to having made written submissions, the Rules Board invited the LSSA to attend a dialogue on the Rules of Sales in Execution of Immovable Property in the High Court and the Magistrates' Courts on 5 August 2016. A number of delegates from the judiciary, legislative development, Office of the Chief State Law Adviser, Justice College, state attorneys, Rules Board, attorneys' profession, advocates' profession, sheriffs' profession, auctioneering profession, banking industry, National Treasury, National Credit Regulator, Legal Aid South Africa, Chapter 9 institutions and NGOs, were represented. A number of LSSA delegates, including members of this committee, attended the dialogue.

Delegates were expected to contribute to the final drafting of the relevant rules, conditions of sale and forms. It was acknowledged that creditors have rights, but this must be balanced with the interests of debtors. Delegates deliberated on various pertinent issues relating to the proposed rules, including judicial oversight, setting of a reserved price, payments of deposits by purchasers, access to property, notice to certain entities and who should appoint of the conveyancer.

The Rules Board undertook to listen to the input from delegates and then formulate a submission to the Minister of

Justice and Correctional Services. A further opportunity for input will be provided when the matter goes to Parliament.

### **Committee to assist in appointment of acting judges**

The High Court Committee continues in its 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.

A special word of appreciation to Lizette Burger and her team for all the top-notch work that they put into making the functioning of the High Court Committee a success.

**Adam Pitman,**

*Chairperson, High Court Committee*

## **IMMIGRATION AND REFUGEE LAW COMMITTEE**

**Members: Julian Pokroy (Chairperson), Ashraf Essop, Neil Goodway, William Kerfoot, Christopher Manzini, Boitumelo Maubane, O Mkhumbuzi, Jerome Mthembu and Chris Watters**

The year under review has been a challenging one for attorneys specialising in immigration, nationality and refugee law.

Impending policy changes, formal and 'informal' changes of attitudes in the adjudication of applications, closures of refugee reception centres and impending legislative and regulatory changes, both in the fields of immigration and refugee law, have been in the pipeline.

At the beginning of 2016, representatives of the committee met at the LSSA with senior officials from the South African Institute of Chartered Accountants (SAICA) and were to have also met simultaneously with officials from the Independent Regulatory Board for Auditors (IRBA).

A very constructive discussion took place with SAICA regarding issues surrounding 'trainee accountants' who have been receiving letters from SAICA on which to base their critical skills work visas and which the Department of Home Affairs was wrongfully accepting as fulfilling the requirement of having to be registered with a professional body for the profession.

It was abundantly clear that the trainee accountant certainly was not an 'auditor' and did not qualify for registration as a chartered accountant at that time, yet the Department of Home Affairs was accepting the SAICA letter in the category of 'external auditor', and many critical skills visas were issued in that category.

This all acted to the prejudice of those *bona fide* trainee accountants who realised that they did not qualify as they were not 'external auditors' as defined and therefore did not qualify for critical skills visas. The problem was exacerbated by the fact that these aforementioned *bona fide* trainee accountants who were not claiming critical skills, then had their applications in the general work visa category refused.

A constructive and proactive discussion took place in the meeting, as a direct result of which IRBA immediately stopped issuing the 'professional' certification and SAICA soon did the same.

This rectified and righted a wrong.

Discussions also took place during the year under review with the South African Qualifications Authority (SAQA) regarding a summary introduction of a new payment method for evaluations. Cheques and cash payments were no longer allowed and only a debit card option was allowed.

After constructive discussions this too has now been remedied.

Another issue which arose during the year and which appears to now have been resolved through interfacing by correspondence with the Director General's office and the Director of Ports of Entry, related to anomalies in the interpretation by the immigration officials at our ports of entry regarding dual nationality.

The crux of the matter is that a South African who took up citizenship of another country post the coming into operation of the South African Citizenship Act 88 of 1995 and who failed to apply for retention of their South African citizenship status and, therefore, technically could not comply with the requirement in the subsequent amendment to the Citizenship Act. This requires South African citizens at all relevant times to enter and leave South Africa on their South African passports.

A determination of status would have to be done, which would confirm that a South African-born person who has lost his/her South African citizenship status, other than by way of renunciation, would have retained the right to permanent residence in South Africa and would, therefore, be entitled to return and exit from the country as a permanent resident.

After discussions with the Chief Director of Immigration at OR Tambo International Airport this problem seems to have been clarified.

An issue which has arisen consistently over the past years has been the question of representation. In the Civic Affairs sections at the Department of Home Affairs countrywide, and indeed at certain embassies, there is a perceived reluctance to deal with attorneys representing foreign national applicants in the case of visas and civic affairs issues in the case of South African citizens or permanent residents, and many of the officials are simply refusing to deal with an attorney representative. This permeates also through to any form of 'third party' representation.

Despite a court ruling in the Gauteng High Court ordering the Director General of Home Affairs to allow applicants access with their attorneys, it appears that most of the offices countrywide are still refusing.

This is a matter which will have to be dealt with going forward.

The Deputy Chairperson of our Committee, Chris Watters, represented the LSSA in deliberations of the Interim Ministerial Committees regarding making recommendations on policy changes.

During the year under review, the Cape Town and Port Elizabeth offices of the Department's Refugee Reception Centres were closed and, despite court orders compelling their reopening, it appears that this has still not happened.

Numerous discussions also took place during the course of the year with the Department of Labour and Department of Trade and Industry regarding their perceived reluctance to communicate any queries or any letters of recommendation regarding individual applicants where reporting by those departments were necessary. I am pleased to report that the Department of Trade and Industry did give an ear and now appears to be adhering to the principles of the *audi alteram partem* rule and proper administration of administrative justice.

The same cannot be said for the Department of Labour.

During the year under review, various of our committee members have either appeared on television, and interviewed in the media (both broadcast and print) and have acquitted themselves well.

The *Green Paper on International Migration* was published during the course of the year under review and comment was called for from all stakeholders, to which the committee made input.

The process is continuing at the time of writing this report, and it is anticipated that the *Green Paper on International Migration* will be published some time during the course of the next few months.

At the last meeting of the committee, Chris Watters tendered his resignation and despite requests for him to reconsider, he

indicated that he is not able to continue serving on the committee but would be quite happy to give input from time to time. I would like to take this opportunity to thank Chris for his valued input and sagely advice during his service on the committee. He has been an invaluable committee member.

During the course of this year one of our committee members, Suleman Lockhat, passed away after a long illness and we offer our condolences to the Lockhat family. Solly was a valuable member of this committee since its inception.

I wish to take this opportunity to thank the committee members for their valued input during the course of the year under review and to the Directorate and Professional Affairs Manager, Lizette Burger and also Kris Devan for their valued input.

**Julian Pokroy,**

*Chairperson, Immigration and Refugee Law Committee*

## INSOLVENCY COMMITTEE

**Members: Vincent Matsepe (Chairperson), Sally Buitendag, Mpozana Ledwaba, Reshoketsoe Malefo, O Mkumbuzi, Ebi Moolla, Peter Whelan and Constant Wilsnach**

The long-awaited judgment by the Supreme Court of Appeal, which has significant implications for the insolvency profession, was published during December 2016. The SCA found the policy issued by the Minister of Justice and Correctional Services pursuant to s 158(2) of the Insolvency Act 24 of 1936 to be unconstitutional.

The policy is aimed at regulating the appointment of insolvency practitioners, mainly as provisional trustees and liquidators. It was common cause that the purpose of the policy was to 'promote consistency, fairness, transparency and the achievement of equality for insolvency practitioners previously disadvantaged by unfair discrimination'.

Clauses 6 and 7 of the policy in essence introduced an appointment procedure of insolvency practitioners by the Master of the High Court according to a specific sequence and ratio from four pre-defined categories, based on race and gender, determined by the Minister's policy. The policy introduced a discretionary appointment process that did not take into account the desires of the creditors.

The respondents objected to the rigid and mechanical appointment process, arguing that it would 'do more harm than good, because some of the previously disadvantaged insolvency practitioners will not be allocated the same amount of work'.

The SCA held that remedial measures must operate in a progressive manner to assist those who are deprived of the

opportunity to practise in the insolvency profession. Such measures must not unjustifiably infringe upon the human dignity of those affected by them by being 'arbitrary, capricious or display naked preference'. The SCA considered the implementation of a quota system 'or one so rigid as to be substantially indistinguishable from a quota' as unjustifiable.

The SCA concluded that the policy was arbitrary, capricious, inflexible, rigid and offered no room for discretion. The SCA lamented the fact that the policy was seemingly formulated without appropriate information available. The SCA confirmed that the Constitution prohibits preferential treatment and numerical goals.

It is not clear, at the stage when this report was finalised, whether the Minister intends to approach the Constitutional Court. If not, the Minister should prepare a new policy within the margins laid down by the SCA. Whichever route, the insolvency profession unfortunately remains for the most part in limbo pending the finalisation of the policy.

**Vincent Matsepe,**

*Chairperson, Insolvency Committee*

## INTELLECTUAL PROPERTY COMMITTEE

**Members: Esmé du Plessis (Chairperson), Johnny Fiandeiro, Mfana Gwala, Ncumisa Nongogo, Paul Ramara, Baitse Rangata, Waheeda Shreef, Jan-Hendrik Senekal, Lesane Sesele 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 light of the increasing relevance of intellectual property (IP) 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, 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.

### Broad mandate

The committee conducts its work in accordance with the broad mandate given to it, namely to



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

The committee members also raised the lack of awareness, on the side of the public, in regard to the importance and potential value of IP as an important aspect to be addressed, and agreed to operate on the basis of an extended mandate to cover this aspect.

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

Since any input from the side of the committee would only be required in response to specific developments (legislative or otherwise) in the field of intellectual property, the committee agreed that meetings would only be convened if and when any such significant development occurred.

## Work outline for 2016

The committee agreed at its last meeting of 2015 to adhere to the following broad work plan for 2016:

- To monitor developments (legislative changes as well as other developments) on national level in the area of IP law. More specifically the committee would monitor and, to the extent possible, participate in –
  - the development and finalisation of the comprehensive policy instrument, i.e. the National Policy on Intellectual Property for South Africa, which was being formulated by the Department of Trade and Industry (DTI);
  - the revision of the comprehensive Copyright Amendment Bill, 2015 to rectify its many defects, and its sub-

mission to Parliament;

- the proposed amendment of the Trade Marks Act, 1993 in order to implement the Madrid Protocol to which South Africa may accede;
- the proposed amendment of the Designs Act, 1993 in order to implement The Hague Agreement to which South Africa may accede;
- the implementation of the Intellectual Property Laws Amendment Act 28 of 2013, 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 LSSA, on items of interest dealt with at conferences and seminars on intellectual property.
- To monitor developments on international level in the area of IP, more specifically –
  - the implementation of the World Intellectual Property Organisation (WIPO) Development Agenda, particularly in countries on the African continent; and
  - the further developments in the WTO Doha Round of talks and proposals for potential amendments of patent laws, particularly in regard to the access to medicines and the role of patents in that context, and the protection of geographical indications (GIs).

## Developments on national level

### National policy on IP

The DTI has been engaged for some years in the process of compiling a comprehensive instrument to constitute a National Policy on IP for South Africa. A Draft National Policy on IP was published in the *Government Gazette* 36816 of 4 September 2013 for public comment. Only 30 days were allowed for comments, yet more than 150 written submissions were made, comprising more than 2000 pages. All of these had to be considered by the DTI, and it was understood that the initial draft policy was being revised, amplified and reformatted.

It was also understood that a revised version of the IP policy had been prepared; however, this was not made available to the public.

In the course of 2016, further work on the existing draft National Policy on IP was halted by the DTI, and a different unit within the DTI was mandated to formulate a National Policy on IP. An IP Consultative Framework was published in *Government Gazette* 40262 of 9 September 2016 for public comment.

## Copyright Amendment Bill

The Copyright Amendment Bill was published in the *Government Gazette* of 27 July 2015 and was circulated to the committee members for comment. The Bill was a lengthy document containing many novel and some potentially contentious and controversial provisions. A limited time period was stipulated for comments to be submitted.

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

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

It was expected that a revised Copyright Amendment Bill would be published for further public comment; however, this did not happen.

## The IP Laws Amendment Bill

One of the most significant and controversial developments in recent years was the IP Laws Amendment Bill proposed by the DTI, which sought to amend four IP statutes to introduce provisions for the protection of certain manifestations of traditional/indigenous knowledge (TK).

The IP Laws Amendment Bill was controversial from the start: There was no agreement among IP lawyers on the approach of the Bill, ie to protect TK by way of IP laws. The members of the committee also did not agree. After a prolonged parliamentary process, the Bill was eventually passed by Parliament, assented to by the President and published in GG 37148 of 10 December 2013 as the IP Laws Amendment Act 28 of 2013 (IPLA Act). However, this Act has not yet been implemented, mainly because the necessary regulations had to be drafted (to fit in with the existing regulations issued under the four IP statutes concerned), and a national management framework system had to be established.

It is understood that a set of draft regulations under the IPLA Act has been prepared and will be made available within the near future for public comment. The committee will continue to monitor developments in this regard.

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

This Bill, which emanated from the Department of Science and Technology, covered subject matter similar to the IPLA

Act, 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.

It was expected that a revised Bill would be published for comment. However, the Bill was tabled in Parliament and the Portfolio Committee invited interested parties to submit comments.

## 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 the 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. These discussions are of particular relevance in the context of the South African legislation recently passed and the legislation currently still pending (see above).
- The issue of effective international control over, and the effectiveness of the legal bodies responsible for the seizure and detention of counterfeit and/or infringing goods, including generic medicines, at ports of importation. A proposal has been made by a group of countries for an Anti-Counterfeiting Trade Agreement (ACTA) to be concluded; this proposed instrument has not been implemented yet.

## Future work

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

- Trade Marks Amendment Bill (to introduce the Madrid Protocol system);
- Designs Amendment Bill (to introduce The Hague Agreement system);
- Copyright Amendment Bill in revised form (to implement recommendations made in numerous public submissions);
- Performers' Protection Amendment Bill;
- Revised IP Consultative Framework document (to formulate a National IP Policy).

**Esmé du Plessis,**

*Chairperson, Intellectual Property Committee*

## JOINT ATTORNEYS' AND ACCOUNTANTS' COMMITTEE

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

The first joint meeting with the accountants and auditors was held on 4 May 2016 and the second on 18 October 2016.

The attorney members met immediately prior to the joint meeting where, inter alia, matters raised by the provincial law societies and the agenda of the Joint Attorneys and Accountants Committee (JAAC) were discussed.

The purpose of the joint committee is to facilitate interaction and cooperation between the South African Institute of Chartered Accountants (SAICA), the Independent Regulatory 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 prepared and it will be finalised at the next meeting. It provides, inter alia, that the JAAC would strive to address auditing, accounting and legislation issues affecting attorneys and their auditors proactively.

It further provides that the LSSA is a professional membership organisation of legal professionals in South Africa and has agreed to partner with SAICA in forming the JAAC.

The purpose of the MOU clearly outlines the roles and responsibilities of each party as they relate to the establishment of the JAAC.

Its objectives include

1. to consider matters of joint interest to attorneys and accountants and to inform their respective governing bodies of the views expressed on these matters;
2. to build a good professional relationship and maintain communication with the respective governing bodies;
3. continually to review and monitor legislation and rules affecting the audit of attorneys' trust and business accounts with a view to improving and updating guidance for SAICA members;
4. proactively to create awareness among SAICA members and attorneys of developments affecting them;
5. to facilitate a process to keep SAICA members and attorneys informed of the work of the committee and other

issues/information by timeously publishing relevant information in *Techtalk*, *De Rebus*, *Accountancy SA*, seminars, workshops and other communication media; and

6. to take cognisance of matters affecting compliance with law society rules, the Attorneys Act and any other relevant legislation.

A full report was given to the committee on 4 May 2016, after the fifth meeting of the National Forum on the Legal Profession. The committee was again updated in a meeting on 18 October 2016.

The directorate is in the process of obtaining pricing of the fees payable in respect of attorneys' trust account audits and will communicate this to the committee as soon as it has been finalised.

The Law Society of Namibia, as was usually the case, will continue to be invited to the meetings through their duly authorised representative.

Finally, the uniform Rules of the Attorneys' Profession, implemented in all the jurisdictions, came into effect on 1 March 2016.

**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, Silas Nkanunu, Wilfred Phalatsi, Tshupo Shabangu (ex officio LSSA IBA Councillor) and Zinedine Tiya**

In view of the extended mandate given to the committee, some of the members were specifically designated by the LSSA Council to serve on the committee in view of their association with the SADC Lawyers' Association (SADCLA) and the International Bar Association (IBA).

As indicated below, the committee has been constituted as a joint LSSA/AFF Committee, so that the AFF is specifically represented.

Since the meetings often involve issues related to foreign legal qualifications, the LSSA *ad hoc* Committee on Foreign Qualifications is also represented on the GATS Committee.

## Constitution of the committee

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

Since then, the committee has become a joint LSSA/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 coming into operation of the Legal Practice Act 28 of 2014, and its provisions for practice rights to be granted to foreign lawyers, the requests for advice and guidance have increased in number and in diversity of source.

## Broad mandate

The committee 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 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 legal services, and the offers of commit-

ments made to South Africa by other countries in the area of legal services;

- with the ad hoc Committee on Foreign Qualifications, to consider requests from foreign governments and/or persons or societies for the recognition of foreign qualifications for purposes of exemption under the Attorneys Act 53 of 1979; and
- to report to the LSSA on these matters.

## Extended mandate

The LSSA Council considered the issue of cross-border practice rights in the SADC region, and specifically in the context of South Africa's rights and obligations in terms of the GATS Agreement. On the basis of a decision taken by the LSSA Council, the committee's mandate was extended to require it to investigate the feasibility of introducing cross-border practising rights in the SADC region, and to propose an outline of the steps to be taken, the legislative amendments to be effected, and the legal structures to be created in order to achieve this, taking into account the new dispensation under the Legal Practice Act. Several reports were submitted to the LSSA Council. Since the government has signed the SADC Protocol on Trade in Services at the 2015 Summit of the SADC Heads of State, the committee, as part of its mandate, addressed this issue at its last meeting for 2015.

In addition, as the Legal Practice Act 28 of 2014 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. The Legal Practice Act has since been enacted and Chapter 10 (the transitional phase) has been implemented as from 1 February 2015. Once the transitional phase has been concluded and the other provisions of the Act are implemented, the issue of the recognition of foreign lawyers will have to be addressed again.

## Activities of the committee

### Work outline for 2016

The GATS Committee submitted the following outline for 2015, and agreed that this broad work plan would apply also for 2016:

- to continue to monitor developments in the WTO negotiations in so far as they impact on the provision of legal services and are relevant to South Africa;
- to continue to monitor and assess the feasibility of introducing cross-border practice rights within the SADC region, and

- to 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;
- to develop in more detail the structuring of an assessment and recognition model to be used in the context of recognising legal qualifications and granting cross-border practice rights, but only if this was expressly required; and
- to 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 Legal Practice Act, the committee 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

Very little has happened in recent years on the international WTO front which impacted on the GATS Agreement and legal services. The committee thus agreed to continue to monitor the progress of two matters and to act, e.g. by convening a meeting, only if and when required to do so:

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

Although the work to be done as part of the implementation of the transitional phase of the Legal Practice Act 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 on the Legal Profession as part of the implementation of the transitional phase.

In a Cabinet statement issued in August 2015 it was confirmed that the SADC Protocol on Trade in Services had been signed, also by South Africa. In view of the importance of this development to the legal profession and the mandate of the committee, this matter was first raised at the meeting of the committee in October 2015, and again at the meeting of 22 January 2016.

As decided at the October 2015 meeting, a discussion document was prepared by the chairperson on the possible granting of cross-border practice rights within the SADC region on the basis of the SADC Protocol. The discussion 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.

## Meetings of the committee during 2016

The committee met on 22 January 2016 and it was decided that, since no further developments had taken place in regard to the SADC Protocol, to await further developments before convening a follow-up meeting.

## Future work

The committee was primarily established to monitor GATS-related developments in the international arena. Although the WTO negotiations have faltered in recent years, the GATS Committee will continue to monitor the developments. The committee will also take note of discussions in regard to GATS within the IBA.

The matter which has now become the primary item on the agenda and which will require the full effort of the committee in the year(s) ahead, is the matter of the Legal Practice Act. The committee will have to analyse and assess the provisions regarding practising rights to be granted to foreign lawyers, to determine what the effect would be of the recognition of foreign qualifications and the access to local practice for foreign practitioners, and other aspects impacting on these matters, such as Fidelity Fund cover and professional insurance. It will be necessary to analyse the manner in which these issues will be dealt with under the Act.

Finally, as progress is made with the implementation of the SADC Protocol and with the liberalisation of cross-border practising rights for lawyers within the SADC region, the committee will 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 had one face-to-face meeting and one telephone conference during 2016.

### Liaison with the Labour Court

A meeting was held with Judge Pule Tlaetsi, the Deputy Judge President of the Labour Court and Mr CT Phophi, the Registrar of the Labour Appeal Court, on 6 April 2016. Among the issues discussed were the streamlining of the administration of the court, backlog of cases, Labour Court hearings in other courts and continuous engagement between the profession and the Labour Courts.

The committee planned to meet with the Judge President of the Labour Court early in 2017.

**Meeting with the director of the CCMA:** The committee met with the new Commission for Conciliation, Mediation and Arbitration (CCMA) Director, Cameron Morajane, on 8 August 2016. He was pleased to meet the committee, although it appeared that his predecessor had not filled him in on previous meetings with the committee. The following issues were discussed, among others:

- The committee undertook to consider ways in which people approaching the CCMA could be assisted with filling in forms.
- The director raised concern about the conduct of certain practitioners appearing in CCMA proceedings and the committee undertook to assist the CCMA to ensure that attorneys conduct themselves appropriately and in accordance with the CCMA rules.
- The director undertook to invite the LSSA to the forthcoming CCMA Annual Conference and Indaba.

**Labour Relations Act:** Since the amendments to s 198 of the Labour Relations Act 66 of 1995, there have been no further major developments.

**Objectives of the committee for 2016:** The committee agreed that the objectives for the previous year be retained as they were still relevant. The committee further took the position that it had achieved its objectives for 2016.

**Rule 25 of the CCMA rules:** The committee noted with concern how some practitioners circumvent r 25 of the CCMA rules. Practitioners have been requested to desist from such practice.

**Access to justice:** The committee noted that there was a need to prepare a brochure on labour law. The brochure was prepared and the Department of Justice and Constitutional Development will be requested to utilise it during the Access to Justice Week.

**Panel discussion:** The committee agreed that the profession should partner with relevant bodies with a view to raise the profile of the profession. The 19th SASLAW Conference was identified, but the programme was unfortunately finalised for 2016. SASLAW will be hosting its 20th Conference in 2017 and undertook to contact the LSSA at the end of 2016 about the possibility of including a panel discussion in that programme.

**Communication with the profession:** It was agreed that a letter/s be written to *De Rebus* for publication under 'Letters to the Editor' to stimulate debate on labour law issues.

The committee noted with sadness the resignation of Lloyd Fortuin, who had served on the committee for many years, and wished him well in his future endeavours.

**Jerome Mthembu,**

*Chairperson, Labour Law Committee*

## LEGAL AID COMMITTEE

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

During 2015, Legal Aid South Africa and the LSSA agreed that a joint project be implemented to coordinate visits to prisons by legal practitioners to bring awareness to prisoners of their rights and to look at the living conditions in prisons. The project kicked off in 2016. The idea was that each Justice Centre will conduct two legal clinics per year, which amounts to some 128 clinics.

The committee decided to cooperate on the basis that the provincial law societies be requested to participate in the programme and encourage their members to participate by issuing a call to local circles and legal practitioners to avail themselves for the prison visits. The law societies will also liaise with the relevant Justice Centre executives to ensure the effective coordination of prison visits by their members. Female legal practitioners should be encouraged to visit prisons where women detainees are located. The law societies were also requested to recognise visits pursuant to this programme as *pro bono* service.

The idea of the prison visit project was also relayed to the South African University Law Clinics Association. Participation by law clinics will give exposure to attorneys and candidate attorneys at the law clinic as to what takes place when clients go to prisons.

The committee will soon be meeting with Legal Aid South Africa to discuss matters of mutual interest, including feedback on the project.

The intention is also to invite representatives of the Judicial Inspectorate for Correctional Services to attend the next meeting of the committee.

It needs to be mentioned that the LSSA had conducted a prison visit project some years back, but the exercise had come to an end because there was a feeling among practitioners that nothing was being done after they had submitted reports and recommendations to the Department of Correctional Services. We hope that this new joint initiative will bear fruit.

In December 2016 we attended the Legal Aid South Africa Provincial Stakeholder Forum, where they reported on their performance for the year.

Finally, we want to congratulate committee member Abe Mathebula on his appointment to the Bench and attorney Nkosana Francois Mvundlela on his appointment as a board member of the new board of Legal Aid South Africa.

**Mimie Memka,**

*Chairperson, Legal Aid Committee*

## LIQUOR MATTERS COMMITTEE

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

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. The deadline for comments was extended a number of times, with the final deadline being 15 December 2016.

The committee prepared comprehensive comments which were submitted on 14 November 2016 and can be accessed on the LSSA website ([www.LSSA.org.za](http://www.LSSA.org.za)).

It is clear that the DTI is determined to have the Draft Liquor Amendment Bill pushed through as soon as possible, as very little time was given for comments. It was also clear from the manner in which the public hearings were held that the DTI was not really interested in remedying the problems in the liquor industry.

On 20 May 2015 the DTI published the National Liquor Policy Review, a discussion document for public consultation and invited comments. It is clear from the Final National Liquor Policy that very little attention was paid to the comments made by role players and stakeholders – including comments made by the LSSA. Important issues that were raised by stakeholders and role players were not addressed and have now been included in the Draft Liquor Amendment Bill without addressing the problems raised in this regard. If the contents of paragraph 1.6.6 of the National Liquor Policy Review Document is compared with the contents of paragraph 1.6.8 of the Final Liquor Policy and s 7 of the Draft Amendment Bill, it is clear that very little or no attention was given to comments by role players.

It appears to serve no purpose to comment if the DTI or Parliament do not take into consideration the comments that they receive. If they did indeed take into consideration the comments raised, they would have realised the severe implications should the Bill become law.

As far as the Draft Liquor Amendment Bill is concerned, it seems that the government wants to increase its control over the retail sale of liquor in South Africa, despite a Constitutional Court decision that recognises that it is a provincial competency. The Draft Liquor Amendment Bill also raises issues of age for the purchase and consumption of liquor, restrictions on locations where businesses selling liquor may operate and proposed restrictions on the advertising of liquor. It also addresses issues of broad-based black economic empowerment.

A National Liquor Regulator is established and its functions are to monitor and oversee the liquor trade in the Republic, the activities of the provincial liquor boards and municipalities and report to the Minister annually, which functions however can only be exercised with reference to limitations envisaged in the Constitutional Court decision.

A few new offences have been added, with the most controversial probably being the provisions of s 34A of the Bill. A manufacturer or distributor who distributes (sic) liquor to a retailer who does not have a liquor licence shall be jointly and severally liable for (a) any harm or unlawful conduct caused wholly or partly as a consequence of the supply of liquor to the unlicensed retailer; (b) death of, or injury to any natural person; or (c) any loss of or physical damage to any property, irrespective of whether it is moveable or immovable. Subsection (2) makes no sense at all. It reads 'the



manufacturer or distributor who distributes liquor to an unlicensed (sic) contemplated in subsection (1) above irrespective of whether the harm resulted from negligence on the part of the manufacturer or distributor as the case may be (sic)'.

It was the intention of the LSSA Liquor Law Committee to meet early in 2017 to discuss whether it will assist to arrange a consultation with Minister Rob Davies with regard to the contents of the Draft Liquor Amendment Bill and also to provide him with possible solutions, as it is clear that should government proceed with the intended Draft Liquor Amendment Bill, the liquor industry will be seriously affected.

The LSSA has repeated its offer to engage the decision makers regarding input relating to the drafting of liquor legislation applicable in South Africa with the view that such a legislation be drafted clearly and precisely in accordance with the Constitution and that it provides adequate protection and control relating to the regulation of liquor as a harmful substance.

**Kobus Burger,**

*Chairperson, Liquor Matters Committee*

## MAGISTRATE'S COURT COMMITTEE

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

The Magistrate's Court Committee met twice in the year under review, namely in June and November 2016, and its members attended a joint committee meeting with the High Court Committee in June 2016.

It was a busy year due to the prolific output of the Rules Board for Courts of Law, which seeks role players' comment on all proposed rule and tariff amendments. The committee also considered and commented on proposed amendments to legislation that had, what the committee perceived to be ominous consequences for the attorneys' profession and the public in the field of debt recovery.

This report cannot cover in detail all of the issues considered and commented on, but the important legislation and rule changes are covered below.

As a consequence of the decision in 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)], the Courts of Law Amendment Bill [B-2016] introduced far-reaching changes to deal with the abuse of emoluments attachment orders prevailing over the past years. Whereas the committee recognised and supports in principle the amendments proposed, particularly the requirement of judicial oversight when emoluments attachment orders are granted, the committee did perceive certain problems with some of the remedies envisaged in the amendments, and a five-page submission was made by the committee to the Department of Justice and Constitutional Development.

The Bill purports to introduce rules of court by incorporating them in legislation. The proposed draft is also overly prescriptive, particularly in the way in which it provides for what information is to be placed before court for consideration before such orders are granted. Thereby the judicial oversight to be exercised by magistrates is fettered. The capping of emoluments attachment orders at a proposed 25% was also criticised by the committee as, in certain instances that cap may be too onerous, and in others (where the cap was easily affordable by debtors who could afford to pay more to their creditors) this would result in an injustice to judgment creditors. In addition to making written submissions to the Department, the committee's chairperson attended the Parliamentary Portfolio Committee meeting and made representations to it in relation to the committee's concerns. The oral representation was supplemented by further written representations.

The Rules Board has been busy harmonising the Uniform and Magistrates' Courts Rules including, and in particular, the Rules of Court relating to the sale in execution of immovable property. The Board has not only harmonised these rules, but has also introduced rules for the exercise of judicial oversight when it comes to the selling in execution of residential property. The Board referred these proposed rules to the LSSA for consideration by its High and Magistrate's Court Committees, which held a joint meeting in June for this purpose. A submission was formulated and sent to the Rules Board, which was followed up by attendance by committee members at a meeting of stakeholders convened by the Board later in the year to debate the proposed rules further.

The committee received and considered the Debt Collectors Amendment Bill, which also has far-reaching consequences for the attorneys' profession and the public. Not only did the committee consider the Bill at some length, but a special meeting with the Committee's Chairperson and the current Co-Chairperson of the LSSA, Jan van Rensburg, was convened with members of the Professional Affairs Department of the LSSA to consider a response. The result of this meeting was the formulation of an eleven-page representation to the Justice Department, highlighting the pitfalls of the proposed legislation. This submission is available on the LSSA website.

The challenges identified and dealt with in these submissions include the following: The Bill introduces requirements for attorneys who do debt collection to register as debt collectors in terms of the Debt Collectors Act 114 of 1998, as a result of which attorneys will be subject to regulation and discipline by the Council for Debt Collectors. This is in addition to their being subject to the disciplinary procedures in the rules promulgated under the Legal Practice Act 28 of 2014 governing the attorneys' profession.

The concept of debt collection is not defined anywhere in the existing or proposed legislation and it is, therefore, difficult for anyone to determine whether ordinary litigation, dealing with claims for payment of money, constitutes a debt collection and, therefore, whether all or some attorneys will be obliged to register.

The Bill introduces and empowers certain inspectors appointed by the Council for Debt Collectors to enter any business premises of an attorney or legal practice without prior notice or a search warrant and require the attorney to produce documents in relation to the investigation. Not only is the effect of the proposal draconian, but it is also in conflict with the common law principle of legal privilege.

The Bill also provides for the Rules Board to meet with the Council for Debt Collectors in order to align the tariffs of attorneys who conduct collections with those prescribed for debt collectors.

The issues raised in this report are ongoing and will continue to be the subject of discussion and consideration by the committee in the forthcoming year.

The committee continues to deal with queries and issues raised by members of the profession as well.

**Graham Bellairs,**

*Chairperson, Magistrate's Court Committee*

## PERSONAL INJURY LAW COMMITTEE

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

The committee met on two occasions in 2016 and also participated in two meetings of the LSSA Contingency Fees Committee.

### Road Accident Fund payments

Of particular concern during the course of the year has been ongoing delayed and sporadic payment by the Road Accident Fund (RAF) of both capital and costs. According to the financial statements, revenue for the last financial year (ending 31 March 2016) was R33.2 billion while expenditure amounted to R34.2 billion, which was a significant increase over the previous financial year (R29.7 billion). As at the end of 2016, according to the Finance Department, the RAF owed around 5 843 service providers and claimants R9.2 billion and average claims settled per month amount to R2.587 billion.

The current insufficiency in cash flow to meet current liabilities arises as a result of underfunding as well as the elimination of some of the historical backlog and an increase in the average settlement figure per claim. This is further exacerbated by the disruption to the administrative system and payment planning schedule caused by the issue of writs of attachment by a handful of practitioners (as advised by the RAF's finance department). We are advised that approaches to Treasury for additional funding have not proved successful and the RAF, therefore, has to do the best it can with its available cash flow.

Interest at the legal rate is claimable on late payments and the allocated payment system can work, provided that it is not disrupted by attachments which, in effect, curtail the RAF's ability to structure and manage its cash flow in the best interests of all claimants.

### Road Accident Benefit Scheme (RABS)

In March 2016 the LSSA's Parliamentary Liaison Officer reported that the Road Accident Benefit Scheme Bill was then before Nedlac; thereafter it would be referred to Cabinet for approval and then tabled before Parliament. It was further reported that the Deputy Minister of Transport had advised that the Bill would be introduced in the 2016/2017 financial year. The Bill was previously delayed, according to

the Department of Transport, by the need to research four areas in the Bill which needed to be confirmed by actuarial calculation. Those areas were reported to be family support, income and support benefit, funding model and benefit levels. In other words all 'benefits', excluding medical and hospital costs, where the tariff has yet to be published, had to be calculated and costed actuarially. Because the Bill had been referred to Nedlac, it is assumed that the actuarial calculations have now been done.

The latest indications are that the Bill may well be tabled in Parliament during the first quarter of 2017.

The salient features of the Bill are 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 663.75 per month, regardless of the actual earning capacity lost. All benefits are payable as a monthly pension 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 and loss of earnings from age 18.

The common law right to claim the balance from the wrongdoer is abolished. This leaves the seriously injured victim to her/his own resources and to add insult to injury, the wrongdoer receives the same benefit from RABS as does the innocent. There is, therefore, no economic incentive to drive with care.

The general public are by and large unaware of the impact that this legislation, if passed, will have on the lives of those who have the misfortune to suffer an injury or have to care for a family member who is seriously injured in a car accident despite the fact that they are entirely innocent of blame.

Colleagues are requested to inform clients and associates and to lobby those who may have an influence on the process to reconsider this far-reaching legislation. At the very least, the common law rights of innocent injured parties should be restored to them.

The LSSA's comments and submission on the RABS Bill are on the LSSA website ([www.LSSA.org.za](http://www.LSSA.org.za)).

## Road Accident Fund Amendment Bill, 2016

Whereas RABS remains very much a priority for the RAF, the Department of Transport introduced the Road Accident Fund Amendment Bill, 2016 to Parliament on 7 February 2017. The Bill was published in *Government Gazette* 40441 of 24 November 2016. That Bill contains the following material provisions:-

- Section 15 of the Road Accident Fund Act 56 of 1996 (the Act) will be amended to provide for restrictions on the right to issue writs as well as the right to remove goods which are eventually attached.

The stated intention is to bring this section in line with the provisions of the State Liability Act 20 of 1957 as amended.

- Section 17(1) of the Act will be amended by introducing two classes of claims to be paid on a no-fault basis, namely hospital and medical treatment rendered within 30 days following immediately after the injury was suffered, and funeral costs as contemplated in s 18(4) of the Act. The latter is, however, capped at R10 000.
- Sections 17 and 26 of the Act are amended to provide for the Minister of Transport to prescribe a list of injuries which are 'deemed serious' in addition to the already published list by way of regulation of injuries that are 'not serious'.
- Section 17(4) is amended to provide for the Minister of Transport to prescribe one tariff, after consultation with the Minister of Health, in respect of all treatment, hospital accommodation and/or services thus doing away with the concept of a dual tariff, for emergency treatment and the other treatment.
- The amendment of s 23 to eliminate the different procedures and time limits in respect of identified and unidentified owners and/or drivers.

Naturally, much will depend on the content of both the prescribed tariff as well as the list of 'serious injuries' to be prescribed by the Minister. The 2014 Bill did not contain any draft regulations, list of injuries or tariff for comment.

This is seen as an intermediary step in the introduction of no-fault benefits preparatory to RABS.

## Direct claimants

The RAF has persisted with its aggressive campaign to encourage direct claimants. This has, in turn, led to various practical problems, such as the need to sue itself to interrupt prescription and to appoint curators for claimants suffering from a legal disability.

This campaign also negatively impacts on cash flow and the fair distribution of available funds to settle existing claims first.

The LSSA has repeatedly engaged the RAF on this and continues to do so.

**Jacqui Sohn,**

*Chairperson, Personal Injury Law Committee*

## PRACTICE DEVELOPMENT COMMITTEE

**Members: Praveen Sham (Chairperson), Koos Alberts, Michelle Beatson, David Bekker, Robert Burawundi, Llewellyn Curlewis, Jan de Beer, Thulani Kgomo, EC Maswazi, Motlatsi Molefe, Harshna Mun- glee, Mirah Ranchad, Thomas Harban and Claudia Shalala**

The Practice Development Committee (PDC) noted that this year LEAD received the highest number of registrations for the course since the first mandatory course was presented in 2010. Registrations for 2016 stood at 941 for the full course and 120 for individual modules. This trend is still continuing as more registrations have been received for the second intake as practitioners want to apply for Fidelity Fund certificates (FFCs) to be able to practise the following year. The following three firms were accredited previously to provide practice management training (PMT) in-house, including 2017: Webber Wentzel, ENSafrica and Cliffe Dekker Hofmeyr. Bowmans has also been accredited to provide in-house PMT in 2017.

The PDC supports the presentation of practice management (PM) related seminars and webinars. The committee agreed that webinars should be a greater use of webinars as they will reach those attorneys in remote areas without them having to travel as compared to attendance (face-to-face) seminars.

One of the major highlights of 2016 was a joint meeting of the PDC, Standing Committee on Legal Education (SCLE) and Attorneys Development Fund (ADF) held on 11 November 2016. Both funds, the Attorneys Fidelity Fund (AFF) and the Attorneys Insurance Indemnity Fund (AIIF), were also represented as they have representation in the PDC. The objective of the meeting was to redefine the purpose and mandate of the PDC and also to decide if the terms of reference were still relevant, considering the practice development needs of newly established firms and small firms. An invitation was also extended to attorneys who had recently started practising for own account so that they could share their challenges, if any, at the meeting.

The meeting agreed that mentorship and education were two of the best ways of transferring skills, and proposed that for the next 18 months before the statutory law societies and LEAD come to an end, that practice development and legal education activities should be coordinated by LEAD in conjunction with other stakeholders. This approach was to ensure that there is no duplication of activities and competition between stakeholders. There was an agreement that there should be a recruitment drive for mentors in order to meet the high number of applications received by practi-

tioners who want to be mentored. The invited practitioner emphasised the importance of mentorship for any practitioner who had recently started to practise for own account.

It was also agreed that the ADF would facilitate access to the services it provides and assist those persons that could not afford to pay the PMT registration fee. The money would, however, be made available to practitioners as a grant for repayment in future at no interest.

There was general consensus that practice development was crucial for the empowerment of legal practitioners, both for younger and older attorneys, and that it is important to identify a structure that will be responsible for this task going forward into the LPA dispensation.

**Praveen Sham,**

*Chairperson, Practice Development Committee*

## PRO BONO COMMITTEE

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

The committee met on 17 February, 27 May and 9 November 2016. The *Pro Bono* Coordinators from the provincial law societies met on 3 March 2016. Members of the committee also participated in the dialogue project hosted by the National Association of Democratic Lawyers (NADEL) on 18 March 2016.

Ilan Lax served as the chairperson of the committee during 2015 and as a member prior to that. The committee members expressed their deep appreciation for his dedication and the service rendered as chairperson and committee member. Mohamed Randera was appointed chairperson and Liesl Williams as deputy chairperson by the committee on 27 May 2016.

The committee met on 17 February and was addressed by NADEL on a dialogue project, aimed at investigating relevant models for the implementation of a national model for the delivery of *pro bono*/community services by the legal profession. NADEL invited the LSSA to participate in its dialogue session scheduled for 18 March 2016, which was aimed at investigating relevant models for the delivery of legal services and enhancing discussions on the launching of social activism among the legal profession.

It was evident from the dialogue that there is a need to clar-

ify the implications of not having express reference to *pro bono* in the Legal Practice Act 28 of 2014. The implications of community service in the Act have not been defined.

At its meeting on 27 May the committee considered, among other things, the implications of the Legal Practice Act on the rendering of *pro bono* services by legal practitioners and how the concept of a clearing house may function within the new dispensation. The committee resolved to review the current *pro bono* provisions in the new Rules for the Attorneys' Profession, in order to identify any challenges and to ensure synergy of policy and practical considerations. The committee endorsed the need to provide recognition to attorneys for *pro bono* services rendered. The committee also undertook to prepare guidelines on how *pro bono* awards can potentially be appraised.

The *Pro Bono* Committee met on 9 November, at which stage it was agreed that the implementation and management of community service pursuant to the Legal Practice Act is not confined to the Legal Practice Council and should be the prerogative of the profession. The committee also agreed to focus its efforts on proposing regulations reflecting a diverse range of community service options for consideration by the Minister of Justice and Correctional Services. We also expressed the aspiration to have a uniform application of *pro bono* in all provinces.

The *Pro Bono* Coordinators at the four provincial law societies have been instrumental in implementing and supporting the mandate of the committee. They continued to co-ordinate and liaise in order to increase integration of various operational processes, including data-capturing, means tests and workflow processes to undergird applicable uniformity. A meeting between the coordinators took place on 3 March 2016, which yielded positive results. The coordinators suggested that it is important for all law societies to utilise the database in the same manner. The committee agreed that another workshop be convened during the first quarter of 2017, which should involve all coordinators, IT personnel at the law societies and key stakeholders that are directly impacted by *pro bono* and who can meaningfully add to the process of promoting uniformity in relation to the issues identified.

We have also received most of the minutes of *Pro Bono* Committee meetings that took place at provincial law societies. This provided the committee with a bird's eye view of developments taking place at provincial level and we commend the provincial *Pro Bono* Committees for their cooperation and productiveness.

I wish to applaud the many legal practitioners who have embraced a *pro bono* culture and continue to offer assistance

to indigent individuals and communities. A special word of thanks to our co-workers in *pro bono*, including Legal Aid South Africa, ProBono.Org as well as the Department of Justice and Constitutional Development.

**Mohamed Randeria,**

*Chairperson, Pro Bono Committee*

## PROPERTY LAW COMMITTEE

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

2016 was a productive year for the committee as significant property law developments have taken place. The committee participated in several meetings, including:

- a meeting between the LSSA and the Office of the Chief Registrar of Deeds on 8 April 2016;
- a meeting with the National Home Builders Registration Council on 27 June 2016;
- Electronic Deeds Registries System Task Team meetings on 20 May, 10 June, 8 and 15 July 2016;
- a meeting with the Minister of Rural Development and Land Reform (DRDLR) on 19 July 2016; and
- committee meetings held on 16 March 2016 and 21 July 2016.

### Chief Registrar of Deeds

The Chief Registrar of Deeds requested a meeting with the LSSA to discuss a number of pertinent matters, including the re-alignment of the Deeds Registries Programme. The engagement with the legal profession was at its initial consultation stage. The Chief Registrar offered a presentation on the proposed re-alignment of provincial deeds offices, including the potential establishment of various sub-registries at different locations. The Chief Registrar indicated that some deeds registries could not sustain themselves financially and potential closure and relocation to other cities was being considered. The Chief Registrar also indicated that they were considering raising lodgement levies on all lodgements, including relodgement of rejected deeds.



The LSSA's representatives emphasised that they do not have a mandate from the attorneys' profession to agree to the principle of re-aligning of Deeds Registries or the disestablishment of an office. Proper, extensive consultation would have to take place with all affected parties, including conveyancers at the seat and in the province of the affected registries, as well as with the community. Neither did they have mandate to agree to lodgement levies being raised.

The Chief Registrar also addressed the meeting on the modernisation of the deeds registration system. The intention was that, once the proposed electronic deeds registration system was in operation, a conveyancer would be able to lodge transfer documents from anywhere in the country. The LSSA representatives requested to be involved in the processes of modernisation, and for the profession to be informed timeously of intended changes to legislation and systems, in order for the profession to have the opportunity for meaningful participation in these processes.

The LSSA raised concern that not all deeds offices dealt with certain matters in the same way. The same deeds office may also deal with matters inconsistently. A number of proposals emanated from this discussion, including the need to have monthly meetings between the deeds offices and conveyancers.

## Deeds Registries Amendment Bill

The Deeds Registries Amendment Bill (the Bill) was published for comment and the LSSA prepared comments on the basis that, although the profession is supportive of a move to an electronic system and believe it to be long overdue, it is not in favour of an amendment to the Deeds Registries Act and believe that separate legislation enabling the development of an electronic deeds registration system should rather be considered.

Representatives of the LSSA met with delegates from the DRDLR on Friday 20 May 2016 to discuss, among other issues, the formation of an E-Deeds Registries System (EDRS) Task Team, which the LSSA, in its submission on the Bill, recommended. The DRDLR welcomed the proposal. The LSSA is represented on the Task Team. Further meetings were held, during which a separate enabling Bill was considered. The Bill will be presented to the Minister of Rural Development and Land Reform for consideration as an alternative to the Deeds Registries Amendment Bill that had been published.

## Meetings with the Minister of Rural Development and Land Reform

The LSSA had a very fruitful meeting with the Minister of Rural Development and Land Reform, Gugile Nkwinti, on 19 July 2016. The Bill was the LSSA's central issue of discussion with the Minister.

The LSSA reiterated that the profession was supportive of an electronic registration system, but that this should be done in a structured way without jeopardising the ongoing process of registration. Separate legislation to provide an enabling framework for electronic deeds registration and provide for a development of an e-registration system should be enacted, to run alongside the Deeds Registries Act 47 of 1937 and Sectional Titles Act 95 of 1986.

It was agreed at the meeting that the two Acts would remain unchanged and that, in the meantime, the development of an e-registration system will be pursued. The e-registration system would be phased in, to ensure that there would be no hiatus between the paper-based system and the online system.

Following the meeting on the e-registration system, the Minister invited the LSSA to attend a meeting between him and delegates of The Forum of Concerned Residents of the Naledi and Dr Ruth S Mompoti Districts. Representatives explained to the Minister the negative impact that a relocation of a deeds office may have on a community at large. It was reiterated that proper, structured engagement needs to take place before any decision about the relocation of a deeds office can be made.

The Minister was supportive of the delegation's proposals and agreed that, in the short and medium term, the status quo will remain, i.e. until online registration is implemented. However, e-lodgement will have to be fast-tracked, albeit on a phased-in basis.

## Meeting with National Home Builders Registration Council

The committee met with the National Home Builders Registration Council (NHBRC) during 2015 to discuss, among other issues, access by attorneys to NHBRC Certificates. At a follow-up meeting, it was confirmed that the NHBRC would, as an interim arrangement while finalising its relevant internal system, provide the LSSA with the details of dedicated resource personnel to deal with the queries from attorneys regarding the status of home builders' and units' enrolment, and would inform the LSSA as soon as its website was ready for access by attorneys.

## Committee meetings

The committee agreed, among other issues, to prepare a draft submission motivating for changes to s 118 of the Municipal Systems Act 44 of 2003, given the implications it may have on the property transfer regime and South Africa's economy. The committee was of the view that an appeal on the Supreme Court of Appeal's judgment (*City of Tshwane Metropolitan Municipality v PJ Mitchell* (38/2015) [2016] ZASCA 1; [2016] 2 All SA 1 (SCA); 2016 (3) SA 231 (SCA)) to the Constitutional Court is not the ideal remedy in this context. The committee also recommended that the LSSA should explore a meeting with the

relevant Minister to raise this issue. The committee's discussions were held prior to the decision in *New Ventures and others vs City of Tshwane Metropolitan Municipality* [2016] ZAGPPHC 941; [2017] 1 All SA 585 (GP); 2017 (2) SA 295 (GP), in which certain of the provisions of s 118(3) of the Act were declared to be unconstitutional.

## Conclusion

It is with immense heartache that I submitted my resignation as chair and member of the LSSA's Property Law Committee. It has been a privilege to serve the legal profession and public as part of this dynamic and diligent committee. A big thank you to the committee members and the LSSA staff for their exceptional efforts. I wish the committee and the LSSA all of the best with its future endeavours.

**Selemeng Mokose,**

*Chairperson, Property Law Committee*

## SMALL CLAIMS COURTS COMMITTEE

**Members: Crystal Cambanis (Chairperson), Ettienne Barnard, Llewellyn Curlewis, Jerome Levitz, Charmaine Lindsay, Joseph Mhlambi, Nomachule Oliphant, Mojau Ramathe, Ngqiqo Sakhela and Butch van Blerk**

The Committee met on 28 January and 10 August 2016.

### Powers to make rules pertaining to Small Claims Courts

The Judicial Matters Amendment Bill, 2016 was published during April 2016. It proposes a significant change with regards to Small Claims Courts as the Rules Board for Courts of Law will, in future, be empowered to make, amend or repeal rules regulating the listed matters of Small Claims Courts, subject to the approval of the Minister of Justice and Correctional Services.

### Small Claims Courts and the Consumer Protection Act

The committee primarily considered the implications of the Consumer Protection Act 68 of 2008 (CPA) on the Small Claims Courts at its first meeting during January 2016. The committee noted an earlier legal opinion provided by the State Law Advisers that a consumer should first exhaust the channels of dispute resolution listed in the CPA before approaching the Small Claims Courts. The committee prepared its own memorandum on this issue and was of the view that the Department

of Justice and Constitutional Development (DoJ&CD) should be approached to amend the CPA, and Small Claims Courts commissioners should be provided with guidance on the powers of the Small Claims Courts. The committee submitted the draft memorandum setting out the challenges pertaining to this issue to the DoJ&CD, which agreed that some action is required to ensure that the public can be assisted through Small Claims Courts without first trying the consumer protection measures in the CPA.

### Information brochure on Small Claims Courts

The committee also considered its first draft brochure aimed at informing members of the public on the procedures in the Small Claims Courts. The committee plans on finalising the brochure during the first quarter of 2017.

### Awards to deserving Small Claims Courts commissioners

At its meeting on 10 August 2016, the committee considered, among other things, the possibility of presenting awards to deserving Small Claims Courts commissioners at the annual general meetings of the respective law societies.

It transpired, however, that neither the provincial law societies, nor the DoJ&CD have accurate information regarding the length of service of Small Claims Courts commissioners. The LSSA is in contact with the DoJ&CD and the law societies to exchange information in an attempt to compile an accurate database.

Furthermore, the DoJ&CD recently presented awards to Small Claims Courts commissioners in various areas and suggested that the profession participate jointly with them in future.

Legal practitioners are a vital component in the efficient functioning of Small Claims Courts and we hope to give them proper recognition in 2017.

## Conclusion

We congratulate committee member Joseph Mhlambi on his appointment to the Bench. I thank my fellow committee members for their dedication to the work of the committee and the confidence displayed in electing me as the chairperson of the committee. I also thank Johan Gresse, who had been the chairperson of the committee for years, for his unselfish service to the profession.

**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 met in May and held a telephone conference in August 2016 to discuss a wide range of topics. Action points arising concerned:

- a raising of the profile of attorneys in tax practice and in particular involvement of the legal profession in the Annual Tax Indaba;
- general comments on draft tax legislation; and
- specific tax issues affecting the profession and the public, such as the amendments to s 12E of the Income Tax Act 58 of 1962.

The actions were as follows:

- Our committee was represented at the 2016 Annual Tax Indaba, albeit not as a presenter. 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 the event.
- The committee reviewed proposed tax legislation of general import, and made extensive written submissions in cooperation with other professional bodies. We attended SARS's workshops on the Special Voluntary Disclosure Programme (SVDP) and tax proposals. We followed these with

written and oral submissions to the Parliamentary Portfolio Committee. Largely, our submissions found favour.

- Our written and oral submissions to the Parliamentary Portfolio Committee on the retrospective correction of s 12E of the Income Tax Act were favorably received. These can be accessed on the LSSA website at [www.LSSA.org.za](http://www.LSSA.org.za).

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.

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 the committee members very much for all their input and efforts during the course of 2016. I would also like to thank Lizette Burger for her efforts as well as those of her professional assistant, Kris Devan, Nonhlanhla Chanza (Parliamentary Liaison Officer), Ricardo Wyngaard (Senior Legal Official) and Edward Kafesu (Committee Secretary).

The committee would also like to congratulate Nelisa Mali, who has been a member of the committee for years, for her appointment to the Bench.

**Robert Gad,**

*Chairperson, Tax Matters and Exchange Control Committee*

## NOTES

## NOTES



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