



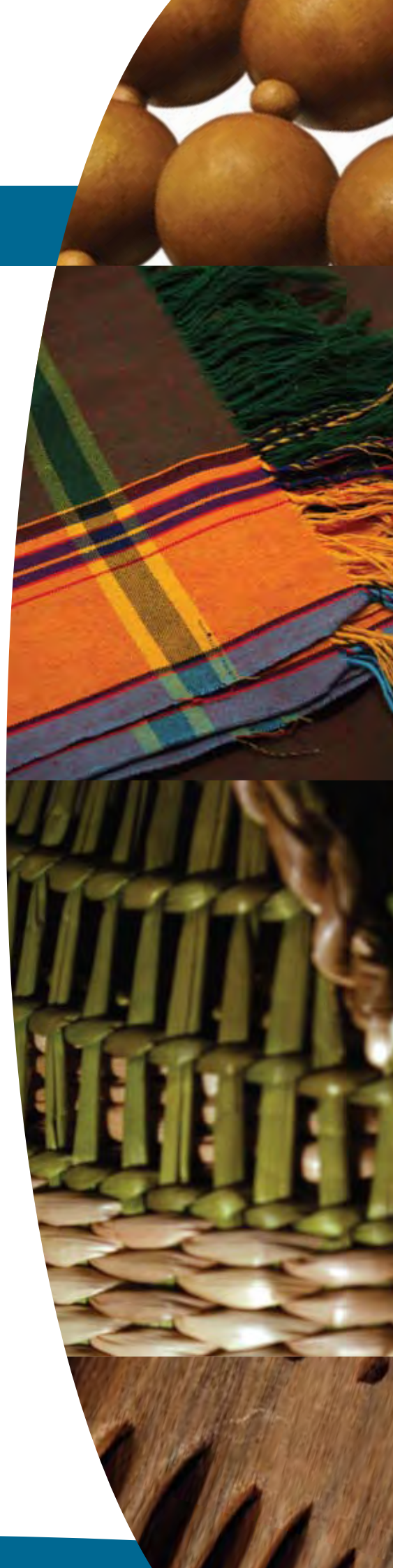
**LAW SOCIETY**  
OF SOUTH AFRICA

DE REBUS (L.E.A.D) PROFESSIONAL  
AFFAIRS

**Law Society of South Africa**  
**Annual Report**  
**April 2007 to March 2008**

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# The Law Society of South Africa

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

(From the constitution of the LSSA)

## Mission

The Law Society is the umbrella body of the attorneys’ profession in South Africa.

The Law Society aims to promote the common interests of its members, having regard at all times to the broader interests of the public whom the profession serves.

## Aims and objectives

The Law Society 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;
- to safeguard and maintain the independence, objectivity and integrity of the profession;
- to maintain and enhance the professional standards, prestige and standing of the profession and of its members both nationally and internationally;
- to uphold and encourage the practice of law, and to promote and facilitate access to the profession;
- to 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;
- to 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;
- to uphold, safeguard and advance the rule of law, the administration of justice, the Constitution and the laws of the Republic of South Africa;
- to initiate, consider, promote, support, oppose or endeavour to modify legislation, whether existing or proposed;
- to initiate, consider, promote, support, oppose or endeavour to modify proposed reforms or changes in law, practice, procedure and the administration of justice;
- to 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;
- to strive towards the achievement of a system of law that is fair, just, equitable, certain and free from unfair discrimination;
- to represent generally the views of the profession on a national basis;
- to 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 the Law Society;
- to cooperate or liaise with any fund or other body established for the purpose of guaranteeing the fidelity of practitioners of the profession;
- to deal with any matter referred to it by the Council or governing body of any constituent member; and
- to 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 VII 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  
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Tel: +27 (51) 447 3237; Fax: +27 (51) 430  
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[www.fs-law.co.za](http://www.fs-law.co.za)

#### Law Society of the Northern Provinces

Procforum, 123 Paul Kruger Street, Pretoria  
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2606; E-mail: [info@northernlaw.co.za](mailto:info@northernlaw.co.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: 078 324 585;  
E-mail: [fazoe@nadel.co.za](mailto:fazoe@nadel.co.za)

## Report by the Co-Chairpersons

When we took office as Co-Chairpersons of the Law Society of South Africa (LSSA) the issue foremost on our agenda was the Legal Services Sector Charter. We are proud to report that the Charter was adopted unanimously by the LSSA and its six constituent members at the last Council meeting in 2007, and was officially handed to the Minister of Justice and Constitutional Development at a gala function at the beginning of December 2007.

The transformation charter process had commenced some two years previously at an indaba convened by the Minister and her Department. This indaba was followed by the publication of a draft charter and the commencement of an extended consultation process. The general consultation process was followed by the establishment of Focus Working Groups convened by the Director-General of Justice and Constitutional Development, and a second draft of the charter was prepared. This process involved calling for comments.

In September the LSSA was asked by the Minister to prepare a charter based on the previous drafts and comments. The charter would serve to promote transformation of the profession. We grasped this opportunity and, after thorough consultation, the third draft of the charter was accepted by both the attorneys' and the advocates' professions.

We are grateful for the assistance provided by the Transformation Committee and the members of the Focus Working Groups. The process was very time-consuming.

Another pressing issue on our agenda for our term of office was the Legal Practice Bill. In July, in anticipation of developments on this front, a joint drafting committee was established with the General Council of the Bar (GCB), and a joint process commenced to try and reach consensus on the shape and form of the long-awaited Legal Practice Bill. At the time of writing this report these discussions continue.

We are also currently in discussion with the Department of Justice and Constitutional Development regarding the drafting of the



David Gush and Henry Msimang

Legal Practice Bill and trust that, in the near future, a document serving the interests of the profession and acceptable to the profession will be finalised. It is important that the profession remain steadfast and united in ensuring the independence of the judiciary and the profession. A strong, united independent profession is the best protection of our constitutional democracy and will ensure that the best interests of the public are served.

During the year the LSSA made representations in respect of a number of matters and has commented in the media when required.

The relationship between the profession and the Road Accident Fund (RAF) continues to be a source of great concern. Currently the RAF has proposed the introduction of a direct payment system to claimants which the LSSA has vigorously opposed. Apart from the serious impact such a system would have on the members of our profession, of prior concern is the fact that the effect of such a system will be to impact negatively on members of the public in their right to choose to be represented and in their ability to access legal assistance and advice. There have been meetings with the senior management of the RAF and we sincerely hope that this matter can be resolved responsibly. If not, the LSSA is ready to approach the court to resolve the matter.

Among the proposed legislation received by the LSSA for comment was the Attorneys

Amendment Bill which sought to allow candidate attorneys to perform community service at financial institutions. This Bill was opposed by the LSSA for a wide variety of reasons, not least of which being the inadequacy of the training that the candidate attorneys would receive, and the problem of non-attorneys falling outside the regulation of the statutory law societies being responsible for candidate attorneys.

The LSSA supported the Jurisdiction of Regional Courts Amendment Bill, with the clear proviso that such support was premised on the development and provision of adequate infrastructure and sufficient trained judicial officers to deal with the increased jurisdiction. The Bill was the subject of a Parliamentary Portfolio Committee hearing in February 2008, where the LSSA also made representation.

The LSSA was cited in a matter in the Cape High Court in which an application was made by a non-resident for admission as an attorney. Given the statutory requirements regarding non-citizenship and non-residence, the LSSA opposed the matter. Judgment was awaited at the time of writing.

The LSSA's Management Committee (Manco) met with Chief Justice Pius Langa in August to brief him on developments relating to the Charter and the Bill. In addition meetings have been held with the Legal Aid Board

(LAB), and we are pleased to report that the relationship with the LAB is, in our view, better than it has been for some time. We sincerely hope that this relationship will continue to improve.

Public comments made by the LSSA included concerns expressed at the human rights abuses currently taking place in Zimbabwe and Kenya, and on a variety of domestic issues.

Manco members were fortunate to participate in the annual SADC Lawyers Association conference in Dar es Salaam, and the Commonwealth Lawyers Association and International Bar Association conferences. We are proud of the fact that Johannesburg attorney Mohamed Husain has been elected Vice President of the Commonwealth Lawyers Association, and we expect that he will assume the leadership of the Association at its next conference.

Both in Nairobi and in Singapore we held meetings with the Law Society of England and Wales. Our discussions revolved around their Legal Services Bill, which followed the Clementi Report, and an exchange of views particularly with regard to our Legal Practice Bill. We also explored cooperative ventures such as possible mentorship and internship programmes.

At local level we attended the annual general meetings of the LSSA's six constituent members including the Nadel AGM in Durban in June, the BLA AGM in November and the AGMs of the law societies of the Free State, KwaZulu-Natal, Cape and Northern Provinces.

Substantial steps have been made towards the drafting and assumption of a common set of rules and regulations governing the profession in the four statutory law societies. In particular – and in response to concerns expressed by the Independent Regulatory Board of Auditors – it has been resolved that a common set of accounting rules will be prepared and adopted by the statutory law societies at their AGMs towards the end of 2008.

The Legal Education and Development (LEAD) division of the LSSA continues to provide essential training and development programmes to both candidate attorneys and qualified members of the profession. Its role is increasingly important as we strive to improve access to justice and the provision of well-qualified lawyers.

The numbers of practising attorneys continues to increase, but relatively slowly. The role of providing training and education is important in encouraging and facilitating entry into the profession.

De Rebus continues to provide attorneys and other readers with up-to-date information and comment.

It is necessary for us to record our thanks to the six constituent members of the LSSA and their councils and directorates who make an immense contribution to the successful functioning of the LSSA. Thanks are also due to all the members of the various law societies and, in particular, those involved in the standing committees both at provincial and national level. It is the work of these committees that ensures the relevance and efficiency of the LSSA. The Manager of Professional Affairs is responsible for the co-ordination and efficient functioning of the committees.

The Communication Manager has managed to coordinate our public image expertly. We are now able to respond timeously to issues concerning the profession and requiring comment. The Human Resources Manager has overseen the review of the internal staff structures and the establishment of policies. The LSSA's finances continue to be controlled efficiently by the Finance Director.

In conclusion, we wish to express our gratitude to Raj Daya, the Chief Executive Officer of the LSSA, for his time and efforts in holding the organisation together and to his directors and staff who have all worked unstintingly in ensuring that our year has been a fruitful one.

**David Gush and Henry Msimang,**  
Co-Chairpersons



# The Council

‘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

Key:

05 – May 2007

07 – July 2007

09 – September 2007

11 – November 2007

02 – February 2008

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

Councillor	Constituency	Meeting attended
David Gush	Co-Chairperson	05, 07, 09, 11, 02
Henry Msimang	Co-Chairperson	05, 07, 09, 11, 02
Koos Alberts	CLS	05, 07, 09, 11, 02
Dave Bennett	LSNP	05, 07, 09, 11, 02
Ronald Bobroff	LSNP	05, 07, 09, 11, 02
Max Boqwana	Nadel	05, 07, 09, 11
William Booth	CLS	05
CP Fourie <sup>1</sup>	LSNP	05, 07, 09, 11
Peter Horn	CLS	05, 07, 09, 11, 02
Mohamed Husain	LSNP/Nadel	05, 07, 02
Jan Janse van Rensburg	LSNP	05, 07, 09, 11, 02
Lulama Lobi	BLA	05, 07, 09, 11, 02
Babalwa Mantame	BLA	05, 07, 09, 11, 02
Vincent Matsepe	LSFS	05, 07, 09
Davies Mculu	BLA	05, 07, 09, 11, 02
Saloshna Moodley	Nadel	09
Nosidima Ndlovu	Nadel	05
Silas Nkanunu	Nadel	05, 07, 09, 11, 02
Thoba Poyo-Dlwati	BLA/KZNLS	05, 07, 09, 11, 02
Vincent Saldanha <sup>2</sup>	Nadel	02
Praveen Sham	KZNLS	05, 07, 09, 11, 02
Jan Stemmett	LSNP	05, 11, 02
Henri van Rooyen	LSFS	07, 09, 11, 02
Mtutuzeli Zepe	Nadel	05, 07, 09, 11, 02

1 Mr Fourie was on the Pretoria High Court bench for the February 2008 meeting.

2 Mr Saldanha was on the Cape High Court bench for the 2007 meetings.



Chief Justice Pius Langa (centre, front) with LSSA Management Committee members (back) Peter Horn, CP Fourie, Raj Daya (CEO) and Praveen Sham, and (front), Thoba Poyo-Dlwati and Max Boqwana.



# Report by the Chief Executive Officer

2007 was a year of consolidation and of creating closer ties for the LSSA. It was with great relief that we moved back into our offices at the end of August 2007, after much of the year spent in temporary premises while our offices were being repaired after the fire damage at the end of 2006. During that time we concentrated on building our relationship within the various departments of the LSSA, between the constituent members of the LSSA (the four statutory law societies, the Black Lawyers Association and the National Association of Democratic Lawyers), with the Co-Chairpersons, the Management Committee, Council and with other stakeholders in the legal services sector.

## Stakeholder meetings

The Co-Chairpersons, David Gush and Henry Msimang, and I as CEO, met with various stakeholders in the legal profession throughout the year. These included the Department of Justice and Constitutional Development, the Legal Aid Board, the Road Accident Fund, the Chief Justice and the Heads of Courts and the General Council of the Bar. Our standing committees, through the Professional Affairs Department, also met and communicated with government and other institutions that closely affect the work of legal practitioners in their particular field of specialisation – their reports are contained later in this Annual Report.

Our closer cooperation with the Justice Department led to the successful and timely finalisation of the Legal Services Sector Charter in December 2007. I believe this open communication policy with the Ministry and Department will stand us in good stead during the forthcoming discussions on the Legal Practice Bill.

As CEO I participated in all LSSA delegations and discussions with other stakeholders in the legal profession. I maintain an open-door policy and open communication channels with these stakeholders as I believe the CEO's office should be the first port of call for anyone wishing to engage the attorneys' profession.

## Media coverage

The Co-Chairpersons and I, as spokespersons for the LSSA, were called upon regularly to issue statements in the media, both print and broadcast, on a number of issues. I believe our responsiveness, availability and accessibility in this regard has gone some way to increasing public awareness of the LSSA and of its views on a number of topical issues that affect not only the attorneys' profession and the public, but also the independence of the judiciary and the promotion of the rule of law in our country and in other areas in the Southern African region.

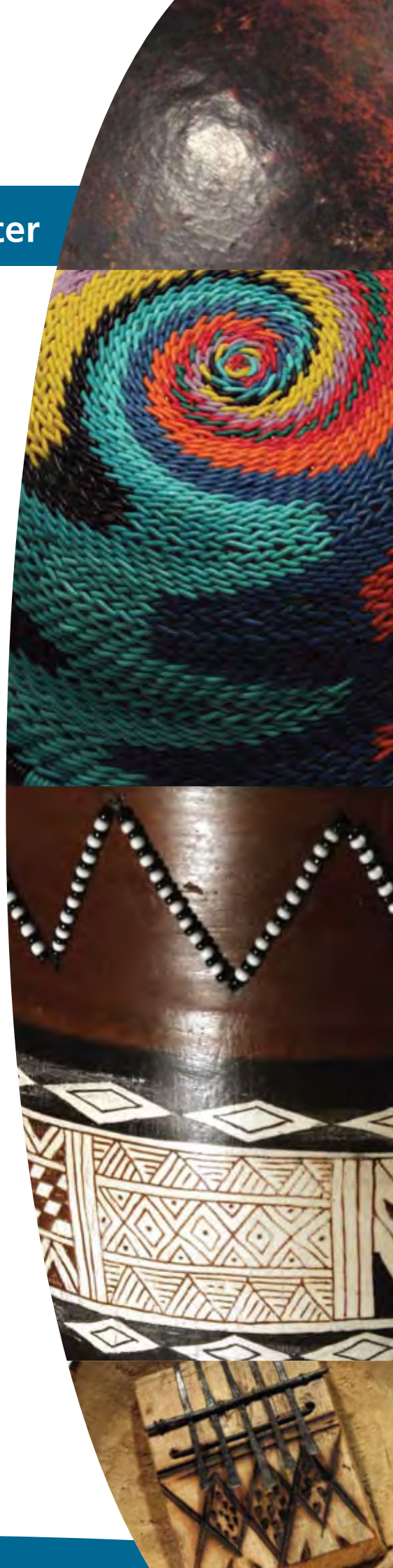
## SADC Lawyers Association

Our ties with the SADC Lawyers Association continue as the association grows stronger and increases its profile in the region through various missions and interventions. The closer links being forged between the Southern and East African lawyers association through our common member, the Tanganyika Law Society, is also a promising and important development, particularly since a number of the international tribunals are based in East Africa.

## Conference attendance

At international level I attended the Commonwealth Lawyers Association conference in Kenya in September 2007 and was pleased to meet with its Chief Executive, Clair Martin, during her visit to South Africa earlier this year.

In October I attended the International Institute of Law Association Chief Executives (IILACE) conference in Singapore. This organisation brings together the chief executives of bar associations and law societies and provides a forum to discuss issues of common concern. As the African representative on the executive, I encouraged increased participation of African countries and subsidies were made available to those countries that needed funding. This exposure, in essence, gives us as African law societies a global perspective of governance issues. The role of





Raj Daya, Chief Executive Officer

executive directors is becoming increasingly important and, globally, there is a shift away from appointments as mere functionaries to using their resource and talents to guide policy and governance issues.

The following week, also in Singapore, I attended the International Bar Association (IBA) conference. I was concerned to note that the IBA's African Regional Forum appears to be in a state of disarray due to lack of communication and cooperation, and I plan to promote closer contact with this forum with the aim of hosting an IBA regional forum conference in Southern Africa in the near future.

In November 2007, the LSSA was pleased to host a press conference in Johannesburg on behalf of the IBA at which its Human Rights Institute's Report on human rights abuses by the authorities in Zimbabwe was released. This report received wide coverage both locally and overseas.

### Directors' Committee

At local level, the LSSA's Directors' Committee has brought the chief executives of the six constituents together. This committee meets on a bimonthly basis before LSSA Council meetings and via teleconference in the months between Council meetings. We have forged closer ties and better interaction with each other, which allows us to draw on one another's strengths and resources in the interests of the attorneys' profession. The major issue which the committee has been grappling with is the consolidation of the four different sets of rules of the four provincial societies. It is hoped that a draft set of unified rules will be available for discussion at the LSSA AGM, and for ultimate approval at the AGMs of the constituents later in 2008.

### LSSA departments

This brings me to the LSSA itself. The various departments of the LSSA, which include my office, Professional Affairs, Legal Education and Development (LEAD), De Rebus, Com-

munications, Finance and Human Resources, have forged greater synergy throughout 2007 as we strive to provide and promote the services provided by the LSSA.

### Legal Education and Development (LEAD)


LEAD continues to provide excellent service through its School for Legal Practice, courses and seminars, Nic Swart has kept this unit functioning while challenged with staff shortages. The School not only provides an excellent opportunity for those candidates who are unable to secure articles of clerkship to receive vocational training, but also to provide an overall and wider exposure to candidates at law firms who want greater exposure.

LEAD has embarked on limited free seminars, which makes it possible for everyone to attend, and more seminars are planned at rural centres. Provincial law societies conduct their own seminars for their members. I had noticed a certain 'bumping of heads' at the way the co-ordination was done. The communications department intervened and facilitated meetings to create more synergy and understanding and, to some extent, the avoidance of duplication. At Directors' Committee level, seminars planned by all constituents are now discussed and information shared. This has led to better planning and understanding.

At the Standing Committee on Legal Education level, discussions are vibrant and positive. The core function of LEAD is discussed openly and the increased areas for LEAD to provide services are debated. Unless we are able to capacitate LEAD with more staff, it has always been my view that we should confine ourselves to our core function, which is to provide practical legal training for candidate attorneys and continuing legal education for attorneys.

LEAD has embarked on an extensive drive to obtain mentors who will be part of its skills transfer projects. Apart from the relevance of skills transfer in the Legal Ser-





vices Sector Charter, attorneys have a wealth of experience and exposure which can be passed on to attorneys needing training in areas in which they would otherwise not have gained skills. We are indebted to those attorneys and firms who give of their time and, more importantly, their skills, as mentors.

We are in the process of conducting interviews for a Senior Manager at LEAD. This development is extremely positive and very overdue. The coordination of practice support and development will be an important focus area for the new incumbent who, as deputy to Mr Swart, will add value in critical focus areas.

### Professional Affairs

Members will read reports of the committees that have met during 2007. It is still concerning that budgets allocated for meetings have to be returned to the Attorneys Fidelity Fund because some committees have not met. We are all mindful of the fact that all our committee members are practising attorneys and the time they make available and the honorarium to cover what is, in effect, an entire day out of the office, is a huge sacrifice. The recent decision to appoint vice-chairpersons for the committees will assist to ensure scheduled meetings take place. The committee protocol document that was accepted at the AGM in March 2007 has served as a guideline to all committees.

Committee members that are nominated to committees by their constituents sometimes are not available for meetings. Some members, in fact, have not attended a single meeting for the entire year, yet constituents nominate the very same members the following year. Attorneys nominated to committees must, at the very least, have an interest in committee matters. This is one of the challenges faced by Professional Affairs. Hopefully committee members' performance and commitment will be increased in 2008.

I have also been privy to comments that the provincial law societies' committees

function well and that LSSA committees are really a duplication of activities. If this is the general feeling, then it would be prudent for the LSSA to discuss this openly and frankly.

### De Rebus

Our attorneys' journal, under the able and competent hand of Philip van der Merwe, continues to be a source of monthly information and update for attorneys. The new committee chairperson, Krish Govender, has challenged the Editorial Committee to 'think outside the box'. What shape should the magazine take in an ever-changing profession? What should the focus areas be? Are we content with the current magazine? Should we report more local activities?

The recent appointment of a news editor is to be welcomed. Reporting on local activities and 'grass-roots' challenges will, in my view, take the magazine closer to our members.

De Rebus has been criticised for not having enough participation by black practitioners. Sadly, although valiant efforts have been made to redress this, the response from black practitioners has been dismal.

De Rebus is well-received by our attorneys. It was interesting to note that a survey on the name of De Rebus received overwhelming support for its retention. However, if practitioners want a change in any form or format, they should correspond with the Editorial Committee or via the letters page to initiate these discussions.

### Human Resources

The report of Human Resources Manager, Poppy Ngesi, in this Annual Report will inform on the developments at the LSSA for the past year. Most posts have been filled. The employment equity policy is implemented in all appointments. A Human Resources Committee, comprising Ms Ngesi, myself as CEO, employee representative Oglvie Ramoshaba and two attorneys, Nano Matlala and CP Fourie, guide the LSSA on compliance with policy.





The Law Society of South Africa's management team includes, front, Finance Director Anthony Pillay, Chief Executive Officer Raj Daya and Human Resources Manager Poppy Ngesi, and back, Communication Manager Barbara Whittle, *De Rebus* Editor Philip van der Merwe, Professional Affairs Manager Nosipo Matanzima and Director of Legal Education and Development Nic Swart

### Communications

The LSSA has responded timeously and actively in the print and electronic media. Barbara Whittle, Communication Manager, prepares draft statements on matters relevant for the LSSA to respond to. The Co-Chairpersons and I are designated to deal with the media. Attorneys have called me and written letters of support to the LSSA in responding to a range of issues. Ms Whittle is to be commended for her professional and diligent commitment to communications.

The branding exercise for the entire LSSA – stationery, communications and publications – has been finalised. This unifies the various divisions of the LSSA.

All LSSA activities are covered by Ms Whittle in the LSSA news column in *De Rebus*. An internal electronic newsletter, LSSA Ditaba, was launched and keeps staff in touch with one another. The Communication Committee was revived with new terms of reference. This committee will ensure that, nationally and provincially, the LSSA's constituents are speaking with one voice, or that areas of divergence are discussed and agreed upon in advance.

### Finance

The LSSA has continuously received unqualified annual reports. We anticipate no deviation from the above and Finance Director Tony Pillay is once again acknowledged for keeping tight control of budgets and ensuring that expenses are incurred in terms of section 46(b) requirements.

### AGM 2008

The AGM programme for this year promises to be informative and educational. This AGM will discuss pro bono commitments the profession has made and on practical implementation strategies. Professional ethics is a cornerstone and pillar of the attorneys' profession. The session at the AGM will be lively, and robust debates are guaranteed. The benefit of having exposure to the regulatory and representative functions of the law societies in other jurisdictions will, no doubt, educate and inform our deliberations on the Legal Practice Bill.

### Conclusion

I wish to thank Manco members for their unselfish commitment to attending meetings

every month. This necessitates an entire day out of the office and practice. This excludes the volume of e-mails that are sent to Manco members so that they are apprised of developments.

To the Co-Chairpersons, Muzi Msimang and David Gush: Well done gentlemen on a tough year with many challenges.

To each and every councillor: Thank you for making discussions at the LSSA vibrant and relevant.

To the new incoming Council for 2008: Congratulations and welcome aboard. Exciting events confront us this year and my directorate commits itself to support you.

Finally, the directorate and staff at the LSSA are acknowledged for their continued commitment and dedication to making the LSSA function professionally and executing our mandate with confidence.

**Raj Daya,**

Chief Executive Officer

# Human Resources

## Staff numbers

Consolidated LSSA staff numbers	Total as at 31/12/2006	Add new posts	Add transfers in	Less transfers out	Less resign other	Add replace	Total as at 31/12/2007
LSSA	22	2			1	1	24
De Rebus	5		1	1	2	2	4
CLE	14	1	1	1	2	2	15
PLT	32	1			1	1	34
<b>Total: Actual</b>	<b>73</b>	<b>4</b>	<b>2</b>	<b>2</b>	<b>6</b>	<b>6</b>	<b>77</b>
Budget	73						77

## Staff movement report

Period: 01/01/2007 - 31/12/2007

Title	Name	Replaced	Start date
Training Coordinator	John Hlophe Mofokeng	Convert ex contract	01/01/2007
LEAD Income Recognition Officer	Sharon Sun	New position	01/03/2007
Secretary to LEAD Director	Ntokozo Manzi	Scebile Mokano	01/05/2007
Pretoria School Administrator	Maggie Ballakistan	Maggie Ballakistan	01/06/2007
Secretary to CEO	Yuthika Ramsamuh (Soman)	Mmabatho Phuduhudu/ Leyla Akhalwaya	25/06/2007
Skills Development Officer/ Project Manager	Ashley Shitereka Mashaba	New position	01/07/2007
Sub-editor	Chuma Makeleni	Carol Fofo	01/08/2007
Secretary to HR Manager and Communication Manager	Leonie Marais	Lebogang Malopise	01/09/2007
Senior Training Coordinator	Dudu Khukhama	John Hlophe Mofokeng	01/10/2007
Receptionist	Grizelda Nkagiseng Mosetlho	Leonie Marais	01/10/2007
General Administrative Assistant	Grizelda Nkagiseng Mosetlho	New post	12/11/2007
Training Coordinator	Thembakasi Koni	Dudu Khukhama	01/12/2007
Johannesburg School Director	Chandika Singh	Nohlanga Motaung	01/11/2007
Production Editor	Alisea Chetty	Elizabeth Elphick	01/11/2007

### Temporary/Contract appointments

Title	Name	Replaced	Start date
Assistant Accountant New title- Bookkeeper (post downgraded)	Alana Abrahams	Johannie Bloem Temp in 2006	01/08/2007
Manager: Seminars	Jeanette Grobelaar	Jeanette Grobelaar	01/08/2007
Seminar Coordinator	Tamara Sihlangu	Lilian Jacobs	13/08/2007
Committee Secretary	Hillary Meyer	New post	01/09/2007
Senior Training Coordinator	Neville Ndlovu	Dudu Khukhama	31/10/2007
Night School Coordinator	Jody van der Linde	Zukiswa Kala	22/11/2007

### Promotions within the LSSA

New title	Name	Previous position	Date
Senior Training Coordinator	Dudu Khukhama	Training Coordinator	01/10/2007
Production Editor	Alisea Chetty	Sub-editor	01/11/2007

### Resignations

Period: 01/01/2007 - 31/12/2007

Title	Effective date
Secretary to CEO	22/02/2007
Secretary to LEAD Director	04/04/2007
Pretoria School Administrator	30/04/2007
Johannesburg School Director	09/05/2007
Production Editor	31/10/07
Senior Seminar Coordinator	31/05/2007
Training Coordinator	31/05/2007

### New posts:

De Rebus 1: News Editor

LSSA 1: Committee Secretary

LEAD 1: General Administration Assistant

2: Senior Manager: LEAD – still vacant

### Training

The LSSA strives to ensure that individuals develop to their full potential with the emphasis of those previously disadvantaged. The training budget was combined and this motivated staff to attend training as one group from the LSSA.

Staff at LEAD identified courses and staff from the Menlo Park office were invited to attend.

Training expenditure – 2007	Attendance: staff numbers	Total workdays	Total cost R
Computer skills	6	10	4 288
Project management	10	6	30 000
Creative/English business writing	16	8	14 560
Technical	8	3	22 800
Miscellaneous			14 860
Total			86 508



## Occupational Injuries (COLD)

Reportable

	Number	Nature
2007	0	0
2006	0	0
2005	1	Serious

## Staff turnover

Staff turnover at LEAD remains a challenge. Exit interview reports indicate that most staff members leave the LSSA because there are no benefits, eg housing, subsidised medical aid (LSSA has medical-aid allowance built into cost-to-company salary). Replacement of staff in 2007 was not difficult as compared to 2006 as positions were advertised immediately and filled.

## Salary benchmarking

Only part-time School directors' salaries were benchmarked in 2007 (all other posts were benchmarked in December 2006). The approach was to look at the hours allocated to the School directors and the number of students managed by the directors to ensure parity. This exercise was done by Human Resources with the input of the Finance Director.

The exercise results showed that only two part-time school directors were below the benchmark quartile of 50%, and their salaries were adjusted accordingly.

## Performance management system

Managers and Directors had a clear understanding of the performance management system that was revised in 2006.

- Managers and Directors conducted performance appraisals for the measurement of performance only.
- The Human Resources Manager utilised the performance appraisals to recommend salary increases based on the appraisals.
- Directors were informed about the allocation only once approval was obtained.

This ensured objectivity in the completion of appraisals.

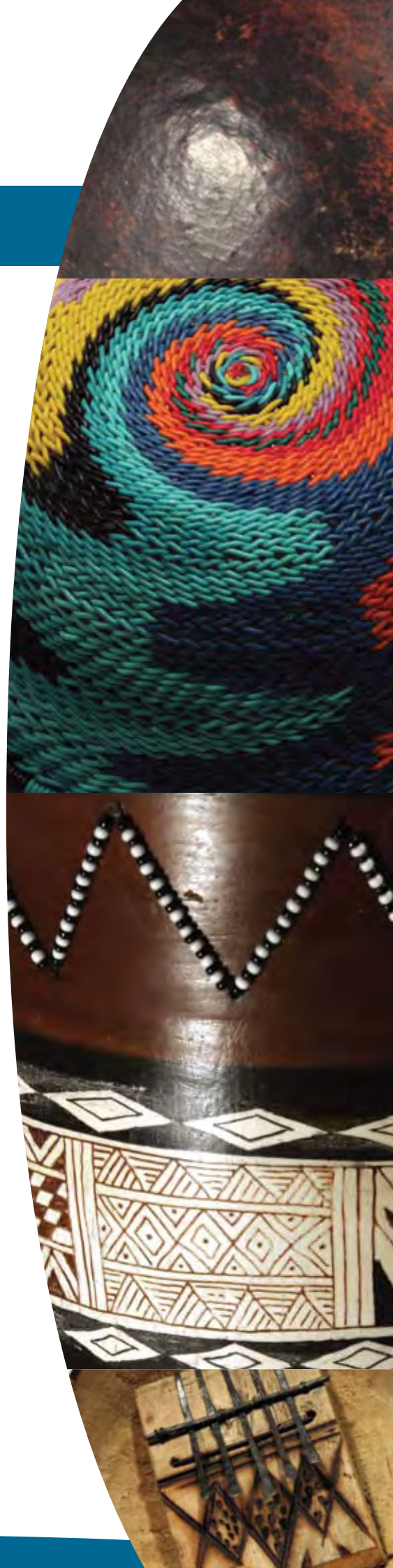
- All staff members obtained a rating scale that exceeds minimum position requirements.
- Three staff members were considered for a once-off merit bonus.

## Employment equity

During 2007 the LSSA's Employment Equity Committee (EEC) focused on the EE barriers within LSSA and other perceptions. The EEC continues to meet on a monthly basis and members are replaced as soon as the EEC is notified of resignation by a member. The members, who represent the LSSA staff at all categories of employment, are:

Raj Daya (CEO)  
Tony Pillay (EE Officer)  
Poppy Ngesi (Human Resources Manager)  
Glen-Rose Manzini – Chairperson from November 2007 to date  
Nosipo Matanzima – Vice-Chairperson  
Lazarus Dlamini (LSSA)  
Seth Hermanus (LSSA)  
Zukiswa Kala (LEAD)  
Shireen Mahomed (De Rebus)  
John Hlophe Mofokeng – Chairperson until October 2007  
Selina Ramano (LEAD)  
Jaco van Niekerk (LSSA)  
Belinda van Rensburg (LEAD)  
Barbara Whittle (LSSA)

**Poppy Ngesi,**  
Human Resources Manager



# Specialist committee reports

## ALTERNATIVE DISPUTE RESOLUTION

The committee worked along the following lines to achieve its objectives:

Pressure is placed on the Ministry of Justice and Constitutional Development to promote both the domestic and international Arbitration Bills. As chairperson, I will continue efforts to engage the Minister for a National Forum on Alternative Dispute Resolution (ADR).

The committee endeavours to influence the relevant authorities dealing with legislation to the extent that ADR would not be lost to the profession and to strive for mandatory ADR before court trials may proceed.

It attempts to ensure and oversee, through LEAD training, that attorneys become mediators in all legal fora, once legislation is in place.

It plans to arrange that on the websites of the LSSA and the provincial law societies, there should be lists of trained and accredited attorneys who are arbitrators/mediators so that the public and commerce has access to them.

The committee sells the notion to Government that the profession can train and accredit mediators and arbitrators.

It investigates how and where an infrastructure can be created (possibly through the law societies) where training, accreditation and the provision of information can be controlled.

It engages with the court structures, the Justice Department and with other applicable committees of the LSSA so as to point out where the present adversarial systems fail the public, and to make litigation practitioners more aware of the benefits of mediation and arbitration.

It deals with the ADR imperatives in new legislation, particularly in the Children's Act and SARS legislation and, to this end, aims to follow up the outcome of, and to pursue the objectives debated at, the LEAD workshop at OR Tambo International Airport on 31 January 2007, followed by a special meeting of the committee.

Generally, and perhaps most importantly, it does all things and takes all steps possible to promote the culture of ADR as a means of providing speedy and affordable access to justice for all citizens involved in conflict and/or disputes.

The committee members are Charles Cohen, Maake Kganyago, Charlie Mnisi, John O'Leary and Richard Pemberton.

### Daryl Burman,

Chairperson, Alternative Dispute Resolution Committee

## COMPANY MATTERS

The Committee on Company Matters is a committee which operates on an ad hoc basis and does not meet regularly. I am the chairperson and the members are John Simon, Davies Mculu, Nontuthuzelo Memka and Yves Seckle-Maruping.

The committee meets as and when circumstances dictate, however, the committee did not meet in the period covered by this report.

The committee was invited to submit its comments regarding the first public draft of the Companies Bill in conjunction with the Company Law Sub Committee of the Law Society of the Northern Provinces (LSNP). Two members of the committee, Mr Mculu and I, are also members of the LSNP Company Law Sub Committee. A detailed memorandum was submitted jointly by the LSSA committee and the LSNP committee, in the very short time allowed, to the Department of Trade and Industry (DTI), detailing the concerns of the attorneys' profession.

The LSSA committee was also invited to participate in a day-long meeting, arranged by the LSNP committee, with representatives of the DTI to discuss the first draft of the Companies Bill. Apart from Mr Mculu and me, the other members of the committee did not attend this meeting. A full and useful discussion was held with the DTI officials at which the concerns raised in the written memorandum submitted jointly by the LSSA

**"The committee endeavours to influence the relevant authorities dealing with legislation to strive for mandatory ADR before court trials may proceed."**

and LSNP committees were discussed and explained. The second public draft of the Companies Bill was expected to have been made available from May 2007 onwards but, as at the date of this report, had not yet been made public.

The DTI has advised that certain of the submissions made jointly by the LSSA and LSNP committees have not been taken into account and that it will be necessary for the two committees to put these before the parliamentary portfolio committee as there is no further opportunity to interact with the DTI.

As this is one of the most important matters which the committee must deal with, the second draft of the Companies Bill is awaited with intense interest.

### Miranda Feinstein,

Chairperson, Committee on Company Matters



## COMPETITION LAW

The Competition Act 89 of 1998 has been in operation since 1999. There is increased media interest in competition cases due to the imposition of huge fines on important South African companies such as SAA, Tiger Brands and Mittal Steel (formerly Iscor), the maximum thus far being for R697 million. Many more are being prosecuted for engaging in anti-competitive practices such as price-fixing, abuse of dominance and resale price maintenance. The Competition Committee is continuing to encourage practitioners to educate themselves in this new legal field and to start to practise competition law.

The committee's main task is to consider the impact of the Competition Act on the regulation of the legal profession. We have been monitoring the exemption application which the LSSA filed with the Competition Commission in 2004. It would seem that the Commission has sensibly delayed the adjudication of the application until the enactment of the Legal Practice Act, since that may have significant implications for competition within the legal profession. In addition, various provincial law societies have been (and are still in the process of) considering changes to their own rules to bring them in line with the Competition Act.

The committee had one face-to-face meeting and one telecon during the year, and all the constituents were represented at each meeting. The committee provided guidance to the LSSA Council on two competition matters which were brought to its attention. The one related to the practice of a major bank in inducing conveyancers to provide preferential rates to the bank's staff, and the other to the conduct of a survey of conditions in the attorneys' profession.

The regulation of competition has become a worldwide phenomenon and there is cooperation between competition agencies all over the world. In addition, various multi-national entities such as the World Bank and the Organisation for Economic Cooperation and Development (OECD) engage with com-

petition issues. In 2007, the OECD called for submission of written contributions from interested parties in advance of an international roundtable discussion organised by its Working Party on Competition and Regulation. The committee prepared a comprehensive contribution, in conjunction with the Competition Commission, which dealt, inter alia, with

- regulation of entry to the profession (quality standards and reserved matters);
- setting of professional fees;
- advertising and promotion;
- partnerships and multidisciplinary practices; and
- regulatory oversight.

It is clear to the committee that competition regulatory agencies and institutions all over the world are working towards reforming the legal profession. It is very likely that our own Competition Commission will be influenced by these international developments. It is, therefore, important for the LSSA to keep abreast of these developments and even to attend some of the international meetings in this regard to make its voice heard.

**Paul Coetser,**

Chairperson, Competition Committee

## CONSTITUTIONAL AFFAIRS AND HUMAN RIGHTS

The committee has proposed convening a national conference or workshop on 'minimum standards' in South African prisons. Arising out of the experience of the committee's prison visits project, the committee is of the view that a workshop on minimum standards would be an appropriate issue through which to refocus the project. It is proposed that the workshop be held in partnership with the office of the Judicial Inspectorate of Prisons. The idea has already been raised with them and there is support for it.

It is also proposed that a survey be conducted on what should be regarded



# Specialist committee reports

as minimum standards, and work has been done together with the Manager of Professional Affairs on a draft questionnaire. The survey will be conducted among prisoners, members of the legal profession and other organs of civil society. The feedback from the survey will be considered at the workshop which will be held during the course of 2008.

The Committee continues to monitor legislation before Parliament that has constitutional and human rights impact. We anticipate that we will once again have to respond to the proposed Superior Courts Bill in 2008.

The committee also monitors and comments, where appropriate, on human rights issues in the public domain and in January we issued a statement through the LSSA condemning the human rights abuses and disruption of the rule of law in Kenya pursuant to the elections in December 2007.

## **Vincent Saldanha,**

Chairperson, Constitutional Affairs and Human Rights Committee

## **CONTINGENCY FEES**

This committee did not hold any meetings in 2007. The reason for this resides in that the committee reflects the same division as is to be found nationally. By this I mean that the Cape Law Society (CLS) currently adheres to strict conformity with the Contingency Fees Act, whereas the Law Society of the Northern Provinces (LSNP), for many years, freely utilises the American system of imposing a 25%-33,3% 'levy' on recoveries in contingency matters.

It must be emphasised that the Black Lawyers Association supports the approach of the LSNP.

George van Niekerk is assisting me in

reviewing the matter with the CLS in the hope that this will lead to a situation where I can convene a meeting of the committee and hopefully try to find a via media so that we can eliminate the present embarrassment where the profession is divided on the issue.

## **Clem Druker,**

Chairperson, Contingency Fees Committee

## **CRIMINAL PROCEDURE AND LEGAL AID**

The Criminal Procedure and Legal Aid committees met on the same days – 6 June 2007 and 20 September – as some members sit on both committees. Some members of the Legal Aid Committee met with the Legal Aid Board (LAB) in September to discuss matters of mutual interest to both the profession and the Board.

It is suggested that both committees meet at least twice a year, and should there be any matters that need to be debated urgently, a telecon could be arranged. As members come from various centres logistically, there are always problems to get everybody together at the same place and time. To avoid this happening, it is suggested that dates be arranged long in advance or meetings held during weekends.

## **Criminal procedure**

An aspect of concern to the Criminal Procedure Committee has been the issue of the so-called independent advocates. This item has also been discussed by the Legal Aid Committee in meetings with the LAB. It is recommended that the LAB instruct only practitioners who are members of a recognised professional structure and who have the necessary fidelity cover. A concern was raised regarding the lack of proper training by these advocates as well as the fact that the public may be prejudiced insofar as it would appear that none of the independent advocates have fidelity cover to protect the

public from unscrupulous behaviour. It has been suggested that in each law society's jurisdiction a major effort be made to have all magistrates and judges ascertain, should such an advocate appear, who his/her instructing attorney is.

It is hoped that this will go a long way to eradicating the practice of independent advocates. Recently in the Cape High Court an independent advocate was suspended from practice for eighteen months because she was operating a trust account and also because she was appearing without an instructing attorney. All members of the committee indicated that they will make a concerted effort to try to curtail this practice within their jurisdictions. Newspaper articles have also been published highlighting the problems that the profession has with the independent advocates. It is felt that the public must, at all times, be aware of the dangers that may arise if they should approach such an advocate directly.

The issue of police bail was discussed and the fact that, in many instances, police officers do not have the required knowledge of the law with regard to when they may fix bail. Many people are detained in custody for petty crimes. To avoid this situation police officers are encouraged to use the procedure of police bail in terms of section 59 the Criminal Procedure Act 51 of 1977. Insofar as the bail laws in general are concerned, the committee felt that representations should be made to the prosecuting authorities to amend the laws to allow for both prosecutors and police officers to have greater scope in fixing bail for non-serious offences. It was noted that if an accused is arrested for a Schedule 1 offence, a prosecutor cannot fix bail after hours as the Criminal Procedure Act allows a prosecutor to fix bail only when a person is arrested for a Schedule 7 offence. There are many Schedule 1 offences that can be categorised as non-serious. It is felt that if an accused is not a flight risk, the prosecutors and the police should have greater discretion to fix bail.

The committee dealt with the fixing of admission of guilt fines, and it was felt that this procedure should be followed more frequently, particularly in cases involving drink-and-drive offences.

It was felt that, in general, the police arrest suspects too easily. A suspect is sometimes arrested and detained for a weekend at a police station and when he/she appears on a Monday morning in court, the charges are withdrawn as the prosecutor feels there is no prospect of a successful prosecution. The committee is of the view that the police should arrest suspects only as a last resort and that if someone is a not a flight risk, they should be summoned to appear in court. This would alleviate the problem that arises with regard to bail for less serious offences.

Committee members discussed the lack of consultation facilities at prisons and at all courts. It was suggested that individual committee members should approach the Department of Correctional Service and the Justice Department to upgrade these facilities or, where none exist, to have them built. It was noted that it is virtually impossible to consult at prisons because of a lack of facilities.

Members were encouraged to become part of the case-flow management committees which have now been set up in various areas to deal with administrative problems at courts. It was suggested that the issue of consultation facilities should also be raised at these meetings. It was noted that in certain areas attorneys regularly attend such meetings.

From time to time the committee is also asked to comment on new Bills. There have been practical difficulties to get all the committee members to comment; often the request has come through at the last minute which makes it extremely difficult to study the Bill properly and draft an in-depth response. The committee endeavours to do its best in this regard.

### Legal aid

Insofar as the Legal Aid Committee is concerned, the issue of the accreditation system was discussed and the fact that the LAB now allocates 20% of its work to judicare. The Board indicated that it does not have sufficient attorneys on the accreditation system and the committee calls on attorneys to become accredited.

The LAB has also requested that more attorneys make themselves available for High Court work. There has been a reluctance among many attorneys to take on this work because of the low tariff and the fact that, if an attorney is instructed, he/she may have to be out of office for lengthy periods of time if a case takes a few months to complete. The request from the LAB is that attorneys make themselves available to deal with appeals, which are usually finalised on one day.

It was noted that the LAB justice centres do not have the capacity to deal adequately with civil matters. The Board has, in principle, accepted that it should allocate more civil work to judicare at least until such time as it has improved its capacity to deal adequately with civil cases.

At the meeting between members of Legal Aid Committee and the Legal Aid Board on 20 September 2007, various issues of concern to both the profession and the board were discussed. It was suggested that more regular meetings take place.

Various provincial law society specialist committees have, as their members, practitioners from the LAB. It is, therefore, very important to ensure that meetings between the profession and the Board at local and national level continue to take place. It is also important that we share ideas regularly and, in some instances, join forces when dealing with issues that need to be canvassed, such as changes to the bail laws, the issue of independent advocates, etc. The employees of the justice centres are in the main attorneys and, therefore, share the same concerns as the

# Specialist committee reports

rest of the profession. The professionals can also become more involved with the training of candidate attorneys at the justice centres.

Besides myself as chairperson, the other members of the Legal Aid Committee are Jan Maree, Johan Gresse, Ebi Moolla, Phenda Shembe, Maake Kganyago and Nontuthuzelo Memka.

The members of the Criminal Procedure Committee are Johan Gresse, Strike Madiba, Martha Mbhele, Xolani Mpeto and Eric Zaca.

## **William Booth,**

Chairperson, Criminal Procedure Committee and Legal Aid Committee

## **DECEASED ESTATES, TRUSTS AND PLANNING**

The following meetings of the committee were held:

22 February 2007: As chairperson, I met with the Chief Master of the High Court and Mr Basson, the Chief Director in the Office of the Master of the High Court. The South African Institute of Chartered Accountants (SAICA), the Association of Trust Companies (ATC) and the Society of Trust and Estate Practitioners (STEP) were also represented at the meeting.

16 August 2007: I met with Mr A Roup, Secretary of the ATC.

3 September 2007: A committee meeting was held.

## **Master's *lekgotla***

The Master's annual *lekgotla* was held at Karridene, KwaZulu-Natal, on 8 March 2007. I made a presentation at the *lekgotla*.

## **Office of the Chief Master of the High Court**

Hassen Ebrahim resigned as Chief Master of the High Court of South Africa as of 27 September 2007 and Ms K Mbeki was appointed as Acting Chief Master.

## **Chief Master's Directive**

Chief Master's Directive 4 of 2007 was issued on 12 July 2007. The purpose of the directive was to ensure uniformity in the various Master's Offices in respect of

- municipal valuations and executors fees;
- section 18(3): Jurisdictional value;
- dispensing of bank accounts where an executor uses an attorney's trust account;
- transfer of immovable properties in small estates;
- customary adoption of minor children;
- prefixes for inter vivos trusts;
- selling of property in section 18(3) estates – Master's certificate;
- withdrawal of signing/acting appointment;
- accuracy of home affairs documents;
- standing Committee on Deceased Estates;
- legislative changes to provide for ability to join executor; and
- postage and petties

## **Report on work plan for 2007**

A submission was made on 1 June 2007 by the Chief Master of the High Court to the Director General of the Department of Justice and Constitutional Development, to increase the fixed share of the spouse from R125 000 to R550 000. There have been no further developments in this regard. The considerable delay in resolving this issue is a matter for serious concern.

The Chief Master is supportive of the proposed amendment to section 18(3) of the Administration of Estates Act to increase the threshold of estates administered from R125 000 to R500 000. The considerable delay in resolving this issue is also a matter of serious concern.

The submission made by the Attorneys Fidelity Fund to the Chief Master to exempt practising attorneys, when acting as executors, from compliance with the requirement to open a separate estate banking account for each estate has been approved by the Chief Master, subject to the requirements set out in the Chief Master's Directive 4 of 2007. Some of these require amendment and/or refinement.

Copyright authority in terms of section 5(2) of the Copyright Act 98 of 1978 has been obtained on behalf of LEAD from the Government Printing Works to reproduce estate forms published in the Regulations of the Administration of Estates Act and Estate Duty Act.

A deceased estates software program for use by attorneys to generate reporting documents is in the course of being developed. A memorandum prepared by Gavin McLachlan, Chairperson of the LSSA's E-Commerce Committee, was tabled for discussion at the committee meeting on 3 September 2007 followed by a presentation of the program. The idea is that such a program should be given to every practising attorney, free of charge, nationally. The committee was in agreement with this initiative but some members of the committee expressed concern in regard to product liability. The estimated project costs of R50 000 is not significant in the context of the benefits that will accrue to attorneys. The matter was referred to Manco for further consideration.

The concept of a Shared Services Office and access thereto by attorneys was discussed by Mr McLachlan with the Chief Master, Department of Justice, on 12 July 2007.

A service-level agreement has not yet been concluded with the Chief Master. It is important to enter into a service-level agreement. However, it would be meaningless to enter into such an agreement unless the various Master's Offices are sufficiently resourced.

It is intended, in the future, to arrange workshops for attorneys with SARS on capital gains tax and deceased estates in consultation with LEAD.

## **Committee**

Besides myself, the other members of the committee are Mervyn Messias, David Bekker, Prof Willie van der Westhuizen, Iqbal Ganie, Kums Makume and Nicholas Yeo-ward.



## Conclusion

I am convinced that we must embrace and invest in technology on a sustained basis for the benefit of attorneys. Our failure to do so will eventually have dire consequences for our profession, especially sole practitioners attending to the administration of deceased estates. Technology is an imperative to improving the enabling environment and increasing productivity.

I wish to express my sincere appreciation to all members of the committee for their assistance, commitment and guidance. I hope 2008 will be a more progressive year.

### Hussan Goga,

Chairperson, Committee on Deceased Estates, Trusts and Planning

## DE REBUS

*The SA Attorneys' Journal*

*De Rebus* celebrated the 51st year of its existence in 2007 with its role as a credible voice of the attorneys' profession firmly rooted.

The challenges that the ever-changing socio-political and economic landscape of our country present have a daily impact on the legal profession. For some attorneys they present new sources of legal work and for others increased areas of difficulty. The mandate of our journal is not as broad as that of the tabloids. However, *De Rebus* attempts to reach out to all attorneys and also to those in the broader profession, including the judiciary and law academics, to provide a forum for their thoughts and to disseminate to them information on all developments in the law.

The year under review saw three new columns featured in the magazine. One was on good legal writing and another on practice management for small and new firms. The third is an IP Law primer, aimed at introducing younger lawyers to this field of practice. A very successful series of articles on immigration law by Julian Pokroy and Chris Watters came to an end during the year. Both are Gauteng attorneys and prominent

members of the Immigration and Refugee Law Committee of the LSSA.

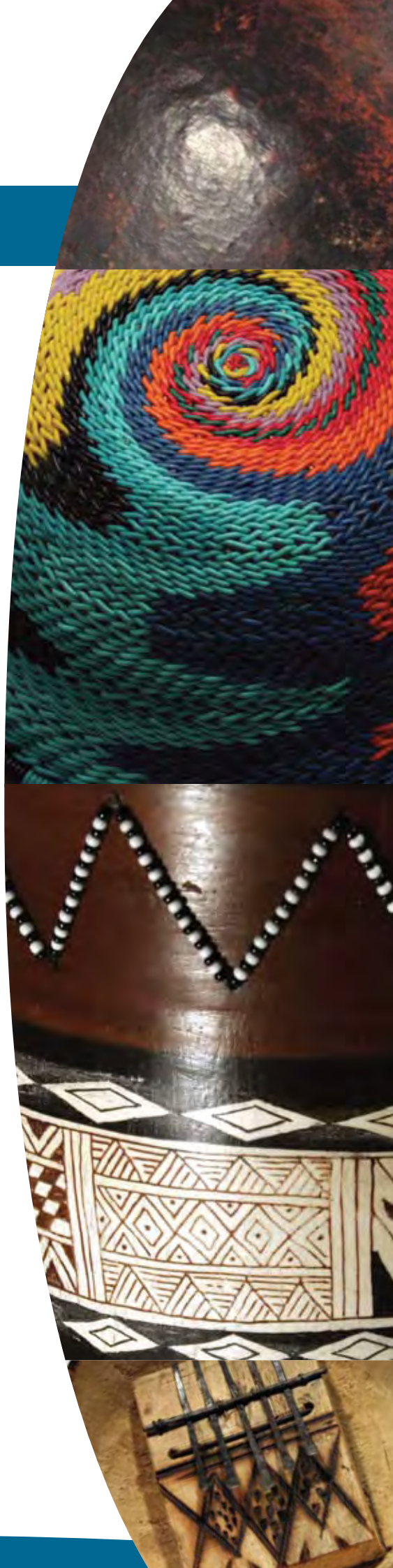
The LexisNexis Prize for the Best Article in *De Rebus* by a Legal Practitioner in 2006 was awarded to Dr Owen Dean, an attorney from Tshwane, for his article 'Stalking the Sleeping Lion'. This article vividly described how the Linda case, which involved the claim to the copyright relating to the famous song Mbube (The Lion Sleeps Tonight), was won. The prize was presented at a function which was graciously hosted by LexisNexis. This function also enabled our hosts to present the annual *De Rebus*/LexisNexis bursaries for postgraduate study to two previously disadvantaged attorneys. The two bursaries are funded by LexisNexis as part of its contribution to the development and transformation of the legal profession.

The growth of *De Rebus* is evidenced by

- the large number of articles that are received monthly and the lively letters column that is always full;
- the increased circulation figures, namely 21 227 as at December 2007, to members of the profession;
- paying subscriptions of non members which stood at 1 291;
- the overall circulation which topped 23 000;
- increased income from advertising in the journal itself of over R3 million, which was substantially over budget;
- the classified advertising supplement, our 'yellow pages', realised an additional R1,3 million in advertisement fees;
- our very active website [www.derebus.org.za](http://www.derebus.org.za), with its powerful search engine which enables browsers and researchers to access any item swiftly.

*De Rebus* also provides a free service to all candidate attorneys who are seeking employment through the popular 'yellow pages'. This has proved to be a success and is a service that the LSSA can be proud of.

For all of this we acknowledge our editorial staff for their dedication, our contributors for the high quality of their work and



# Specialist committee reports

the members of the Editorial Committee for their commitment. During 2007 Ed Southey stood down from the chairmanship of the committee that he had held for 11 years and Esmé du Plessis retired from the committee.

We have also seen changes in our editorial staff, which have been announced in the journal. The long vacant post of News Editor was filled in February 2008. The editorial staff is to be complimented on not missing one deadline in 2007, notwithstanding the disruptions of the journal's electronic media as a result of moving to temporary premises after the fire in the LSSA building and then back again.

An important and dynamic step was taken in the year under review to build a closer relationship between the Editorial Committee and the Manco of the LSSA, by the holding of a joint meeting at which substantial consensus was reached on the sensitive issues around the editorial independence of *De Rebus*, the freedom of attorneys to express their views through the journal and the duty *De Rebus* owes to the profession. This meeting was a great success and cemented the relationships for the future.

In conclusion one may say that the magazine is a powerful medium for our profession in our vibrant democracy and is a shining star on the continent of Africa, especially to the wider legal world. 2008 is going to be a year for many new challenges, as the recent robust political activities have shown at Polokwane. We have every confidence that *De Rebus* and the LSSA will meet them.

Finally, the Editorial Committee acknowledges with appreciation the participation and involvement of the CEO of the LSSA, Raj Daya, and the unstinting support of the Communication Manager of the LSSA, Barbara Whittle, at all our meetings.

**Krish Govender,**

Chairperson, Editorial Committee

**Philip van der Merwe,**

Editor

## E-COMMERCE

The committee had one face-to-face meeting this year and has been allocated two meetings during the next year. The meeting this year was useful.

We have worked with the Deceased Estates, Trusts and Planning Committee as a result of the meeting for all chairpersons held in early 2007, and we will try to extend this cooperation to other committees.

## Committee activities

Our written submission on the amendments to the Electronic Communications Act was delivered to the parliamentary committee involved. We, in common with most commentators, questioned the need for yet another State communications supplier, as the real answer is to open up access to communications as broadly as possible.

The major consumer issue involves pricing of services, which is still exorbitant, but resolution of that involves political aspects which are not within the mandate of this committee.

Improved contact with government departments such as Communications and Justice has been and is also being sought wherever possible. We have the chief legal adviser to the Department of Communications as an associate of our committee, and this has already been useful in providing access to relevant information.

We are arranging further access to Department of Justice trial programmes on video courts (for juvenile witnesses, especially in sexual abuse cases) and online courts in Durban. The KwaZulu-Natal Law Society has a representative involved with the Justice Department and we will be meeting shortly to discuss this.

It remains important to try and arrange assistance on electronic issues to practitioners throughout the country as there is a very clear need for such assistance at present. At our meeting, Ian McLaren suggested that we investigate the acquisition of still functional computers from larger firms and others when they upgraded so that we could have them refurbished and passed on to previously disad-

vantaged practitioners at either very low cost or no cost. We already have definite interest from firms and organisations in providing such machines and will try to set up a working programme to deal with this accordingly. It will require money and a well-defined set of rules. It should, we think, be dealt with through LEAD if we can get the basics in place.

Committee member Peppy Kekana was again involved in the South African IT Practitioners' Association 2007 workshop and led some panel discussions. We will invite its chairperson to address our next meeting to tell us more about this association and others with a view to working with them in future.

We will be drafting data privacy principles which we think the profession should adopt, if approved by Manco. The pending data privacy legislation should reach its final form soon and we would like the profession to lead in the adoption of data privacy principles as this will become a 'hot' topic.

We have commented as and when requested on a pending High Court application to allow electronic submission of documents for court purposes and will continue involvement as requested by Manco.

We have had useful interaction with the Deceased Estates, Trusts and Planning Committee over the development of a simple, free estate reporting tool. We have a basic estate reporting program running for the moment in Microsoft Access, using a run time licence that will capture all necessary details to ensure that all documents necessary to report a section 18(3) estate or a 'normal' testate as well as an intestate estate, are generated accurately. It is still being considered by Manco which has reservations about possible liability.

This program has at least 'bought' us access into the developing online management and reporting system for the Master's Office as we were able to demonstrate it to the Chief Master in charge of information technology. There is a system being developed that will allow online reporting and dealing with estates, and we will be invited to attend the report-back session later in 2008, once the



pilot program has run its course in Limpopo. The Chief Master wants the profession involved in future developments and we will, in conjunction with the Deceased Estates, Trusts and Planning Committee, maintain contact with his/her office accordingly.

We will continue to

- assist and advise the LSSA and any other committees whenever requested;
- work with the LSSA and the other formal structures on the implementation of a national shared database;
- work with business development and practice support managers of the law societies to spread ideas and provide assistance as widely as possible;
- provide reports or comments on behalf of the LSSA when necessary, especially in respect of developing legislation such as the forthcoming Privacy Act;
- engage Government proactively and contribute to the development of South Africa as a modern information technology-based society

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

#### **EXCHANGE CONTROL AND TAX MATTERS**

During the year under review the committee continued to monitor tax and exchange control developments in so far as those developments were relevant or of interest to members of the profession.

On behalf of the LSSA the committee prepared formal comments on draft revenue laws for filing with the South African Revenue Service and the Treasury. It remains a fact that the legislation considered by the committee is most often highly technical and that too little time is afforded by Government for commenting on draft legislation. For this reason it is not always possible to convene meetings of the committee for the consideration of the draft legislation concerned, and the burden of responding to the legislation has to be borne by the member of the committee to whom the

task is allocated. This problem is exacerbated by the geographical spread of the members of the committee and a budget which does not permit for the required travelling to enable the committee to meet regularly.

It is considered that the LSSA should seriously review the composition of this specialist committee, even if it were to result in a geographically concentrated representation.

The most important issue which the committee is continuing to monitor is the threat of regulation of all attorneys engaged in matters which can somehow be regarded as tax-related work. The draft legislation affects all attorneys and conveyancers regardless of the extent to which they regard themselves as 'tax' lawyers. The current position is that comments on the legislation are under consideration by the Government and a further draft of the legislation is awaited.

**Henry Vorster,**  
Chairperson, Exchange Control and Tax Matters Committee

**"The most important issue which the committee is continuing to monitor is the threat of regulation of all attorneys engaged in matters which can somehow be regarded as tax-related work."**

# Specialist committee reports

## FAMILY LAW

### Committee meetings

The committee held no meetings during 2007. Despite this, the committee has managed to accomplish a great deal throughout the year and there is constant communication and feedback via e-mail, which appears to be the manner in which to communicate, and rather to have meetings only when there is a real need, as this is also a cost-saving exercise.

Committee members again attended the Miller Du Toit Family Law Conference in Cape Town in January 2007 where there is attendance by overseas, African and local judges, attorneys and advocates, and a number of current issues are discussed and debated. This is part of ongoing legal education for the practitioners, government officials, social workers and psychologists who attend.

Miller Du Toit, a member of whom, Zenobia du Toit, sits on this committee, must be acknowledged for its continuing contribution to the development of this field of law. In 2008 the Miller Du Toit conference will be held in March.

The matters which remain under discussion for the committee are, inter alia,

- provincial family law committees – each provincial law society must ensure it has a functioning Family Law Committee;
- comments on various pieces of legislation which are made; and this year already include the Children's Act, Civil Unions Act, Child Justice Act and Domestic Partnerships Bill.

*Pro bono:* All members of the committee perform pro bono work in their personal capacities and on behalf of the profession when there are specific projects, for example, Women's Day and the 16 Days of Activism Campaign.

### Issues affecting people obtaining divorces

Division of pension benefits: There has been progress in this respect where the divorced spouse can now have immediate access to the non-member pension benefits after a divorce, and invest it in his/her own scheme and have access to growth.

Rule 43 proceedings: This remains an ongoing issue and will be taken up with the Rules Board.

Family advocates: The committee continues to communicate regularly with the Office of the Family Advocate to resolve the numerous problems which still occur.

### Court structures

The committee remains dedicated to pursuing a separate, specialised family court structure as recommended in the numerous reports and studies both local and international.

### Inter-country adoptions

Wybrow Oliver had a matter heard in the Constitutional Court at the end of 2007 and the court passed a judgment which vindicates the view held by the committee as set out in previous reports with regard to inter-country adoptions. Hopefully this will mean that there will be better relations with the Department, and this matter can be laid to rest.

### Children's Act

The Children's Act was signed by the President on 8 June 2005 as Act 38 of 2005. Parts of the Act were brought into operation on 1 July 2007, but other parts of the Act have still not come into operation. Members of the committee have met with LEAD and are planning seminars for the profession around the country in 2008.

### Maintenance Task Team

I, as chairperson of the committee, represent the profession on the National Prosecuting Authority Maintenance Task Team. This was

constituted in 2005 and despite the LSSA having prepared the Memorandum of Understanding after the Task Team failed to do so, after two meetings, nothing further has been done.

### Committee participation in conferences

I am the Deputy Chairperson of the Women's Interest Group of the International Bar Association (IBA) and was involved in the planning of and attended the IBA Conference in Singapore in 2007.

Ms Du Toit also attended at the IBA Conference in Singapore and delivered a paper on South African family law in the family law session.

I attended the International Association of Family Lawyers Conference in Chester in the United Kingdom in 2007.

I delivered a paper to the National Association of Psychologists of SA on the manner of giving expert evidence in court and the Children's Act, in 2007.

Ms Du Toit and Billy Gundelfinger, also a committee member, delivered lectures to the legal profession on the Children's Act.

### Planned activities for the year ahead

- Comment on any relevant legislation: Pressure the legislature to promulgate the stalking legislation and draft domestic partnership legislation – both of which are very important social issues, but are considered to be 'unimportant legislation' and have simply been ignored for years.
- Lobby the legislature to allow for arbitration in domestic matters.
- Lobby for changes to the divorce and interim maintenance and costs legislation.
- Arrange meetings with the Directors-General of the departments of Justice and Social Development.
- Raise awareness for a dedicated Family Court.
- Attend to problems in respect of service delivery for Maintenance Courts, Domes-



tic Violence Courts, Divorce Courts and lower courts.

- Endeavour to facilitate more communication and co-operation with other LSSA committees and the LSSA, and to provide regular feedback through De Rebus and the provincial law societies.
- Participate in the annual LSSA projects.
- Continue to participate in and contribute to international and local organisations and conferences, and provide feedback to practitioners.

### Succession and composition

The committee currently has five statutory, two BLA and one Nadel member. This is specialised area of law and interested people should be allowed to participate, in addition to committee members, to allow for transfer of skills. This will lead to an increase in numbers. The committee will also work in cooperation with LEAD to transfer skills.

The Family Law Committee should have at least four meetings a year and there should be provision for travel to attend relevant parliamentary hearings as there is always important legislation that needs to be dealt with. However, the committee should continue to try and save costs as far as possible by communicating via the alternative resources mentioned above.

I will be available again in 2008 to serve on and chair the Family Law Committee subject to the approval of the LSSA Manco. I would like to encourage other committee members to apply for the position of chairperson and I am happy to step aside in that respect.

#### Susan Abro,

Chairperson, Committee on Family Law

### FINANCIAL INTELLIGENCE CENTRE ACT (FICA)

No meetings of the Money Laundering Advisory Council were held in this calendar year and, accordingly, members of the committee did not attend these meetings.

As chairperson of the committee, I attended a meeting of the chairpersons of the standing

committees of the LSSA in 2007, where matters of common interest were discussed.

On 6 November 2007 a member of the committee accompanied representatives of the LSSA and the Law Society for the Northern Provinces to a meeting with the Financial Intelligence Centre pursuant to an invitation by the Centre to attend this meeting. Various issues of importance to the profession were raised, in particular the proposed amendments to the Financial Intelligence Centre Act (FICA) and how the amendments would impact on the profession, the LSSA and the provincial statutory law societies.

Throughout 2007 the committee, on behalf of the LSSA, liaised with the media, attorneys and the Financial Intelligence Centre regarding FICA and its practical implementation.

I would like to thank all members of the committee for their contribution in the period under review. They are Mervyn McKay, John Anderson, Leam Rousseau and Raj Badal.

#### Marelise van der Westhuizen,

Chairperson, Financial Intelligence Centre Act Committee

### GATS

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

- make a study of the General Agreement on Trade in Services (GATS) of the World Trade Organisation (WTO);
- 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;
- meet with representatives of the DTI and other government departments (such as the Department of Justice and Constitutional Development) and other role players (such as the GCB), and to participate in the formulation of an official position in regard to legal services;
- study the requests for commitments

# Specialist committee reports

by South Africa received from other countries, and the offers of commitments made to South Africa by other countries in the area of legal services;

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

## Activities of the committee

In the run-up to the WTO Ministerial Meeting in Hong Kong in December 2005, the committee had to meet frequently to carry out its mandate. This was an extremely active period for the committee, as is evident from its reports for 2005 and 2006.

When the Doha Round of negotiations was suspended after the Hong Kong meeting, which negotiations would have had an effect on the implementation of the next phase of the GATS agreement, the activity around GATS came to a virtual standstill. No further developments have taken place which required the attention of the committee.

## Future work

Once the WTO negotiations are resumed (which is expected during 2008), GATS issues will be high on the agenda and the GATS Committee will have to become active again.

Besides myself, the other members of the committee are Nosidima Ndlovu, Edward Ngubane, Vincent Saldanha, Iqbal Ganie, Silas Nkanunu and Wilfred Phalatsi.

Adv Peter Levenberg of the Johannesburg Bar and representing the GCB, is also a member of the committee. Furthermore, all meetings during 2006 were in the form of joint meetings of the GATS Committee with the LSSA Committee on Foreign Qualifications. In addition, both the DTI and the Justice Department were represented at committee meetings.

## Esmé du Plessis,

Chairperson, GATS Committee

## GENDER EQUALITY

During the year under review the Gender Equality Committee had one face-to-face meeting and, as chairperson, I also had a meeting with the chairperson of the Human Rights and Constitutional Affairs Committee (HRCA). The committee had two teleconferences in preparation for the 16 Days of Activism.

The meeting with the chairperson of HRCA Committee was mainly to deal with the prison visits project. It was agreed at this meeting that we would not conduct prison visits in 2007; instead the committee chairpersons, after approval by the LSSA's Manco, would seek a meeting with the Inspecting Judge of Prisons with a view to hosting a conference to deal with minimum standards in prisons. This was approved by Manco and negotiations are under way with various stakeholders in preparation for the conference.

During August the committee had a face-to-face meeting attended by four members. It was agreed at this meeting that we would participate in the minimum standards in prisons conference and that we would also like to have a conference on maintenance. Manco approved the conference in principle and the Manager of Professional Affairs is preparing a budget for such a conference. It was also agreed at the meeting that we would have an educational workshop with female prisoners during the 16 Days of Activism campaign.

This, unfortunately, did not happen and we had to decide on an activity at the last moment, hence the two teleconferences. In those telecons we agreed to have advice desks in the various family courts on 10 December 2007. The attendance was not good as there was no publicity for the event.

The role of the committee was also agreed as follows:

- Statistics: The use of statistics was held to be useful for the committee in determining how many women practitioners are admitted as attorneys and how many are practising as attorneys. As soon as the

committee has that information it will need to identify the barriers preventing women from entering practice.

- Transformation: It was resolved by the committee that transformation should be the committee's main focus. For transformation to happen, we needed to start with the LSSA and then move on to the six constituent members of the LSSA.
- Relationships with other organisations: The committee identified organisations that it needed to build relations with. These included the South African Women Lawyers Association, the Gender Commission and the International Federation of Women Lawyers SA (FidaSA).

We hope that this year there will be better communication and follow up by the LSSA and the committee members. We will also seek a meeting between our committee and the Family Law Committee as these overlap to some extent.

## Thoba Poyo-Dlwati,

Chairperson, Gender Equality Committee

## HIGH COURT

While the profession was debating complex issues with regard to the Legal Services Sector Charter, constituent members of the LSSA, in their own deliberations, had cause to consider what the future holds in store for the profession and, more particularly, what it has to offer to attorneys.

It has become extremely difficult to balance the interests of the public on the one hand and the interests of the profession/practitioners on the other. Two of the issues which impact pertinently on these interests are access to legal services and fees and tariffs.

As is the case with other professionals, attorneys are entitled to earn a decent living. Any argument that seeks to negate the participation of attorneys in the economic sphere of everyday life must be rejected. However, this is



**"The two committees were *ad idem* that there was no need to adopt a foreign dispensation and resolved that the existing High Court and Magistrates' Courts tariffs should be retained."**

always subject to the retention of professional values, one of which is the duty to ensure affordable quality legal services.

In executing its mandate, the Committee on High Court Matters had to ensure that all issues relating to civil court practice in the High Court are addressed within the context of the balancing exercise referred to above.

To that end the committee busied itself for the better part of 2007 with deliberations and submissions relating to a tariff structure for attorneys' fees which would be acceptable to the profession, the community at large and the powers that be. A joint meeting of members of the Committee on High Court Matters and Magistrates' Courts Committee was convened to consider a number of proposals by the Rules Board to introduce and implement a completely new tariff, which is current in a foreign jurisdiction. The two committees were *ad idem* that there was no need to adopt a foreign dispensation and resolved that the existing High Court and Magistrates' Courts tariffs should be retained.

Of far greater importance than a drive to change the basis of determining attorneys'

remuneration, was the need for an annual increase of the tariffs. The failure of the Rules Board to address the concerns and submissions of the profession with regard to tariffs has resulted in the tariff lagging behind the consumer price index. It will require a considerable once-off increase to bring it in line with current realities.

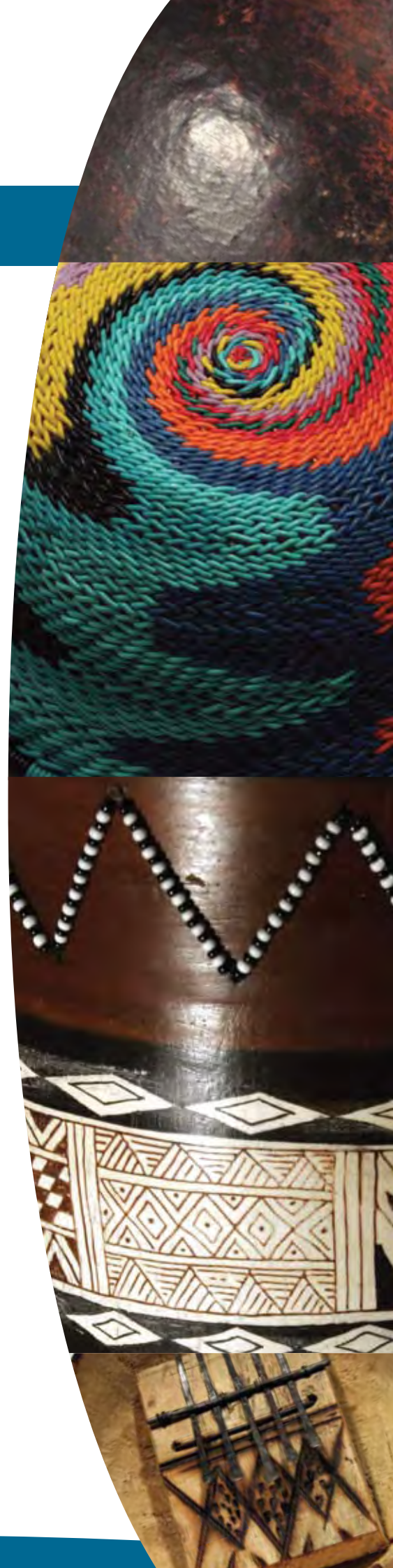
The two committees again engaged the Rules Board in this regard and specifically recorded their rejection of the argument that an increase in the party-and-party tariff would promote exclusivity of justice and work, as against the notion of access to justice. The Rules Board was advised that the purpose of the increase was to compensate a litigant more adequately for the fees he/she is paying to his/her own attorney, which fees are presently far in excess of the outdated tariff.

The issue relating to tariffs in general (including expert witness fees and other disbursements in litigation regulated by a tariff), was discussed on behalf of the profession in a short article by the chairpersons of the two committees in the June 2007 issue of *De Rebus*.

One further aspect relating to tariffs and tariff structures that is being attended to by the committee is liaison and discussions with the General Council of the Bar (GCB) on problems being experienced by its constituent Bars with regard to recovery of additional fees for preparation done by counsel, separate to that of a fee for hearing or first day of trial or appeal. A sub-committee of the High Court Committee was to meet with representatives of the GCB in this regard early this year.

As chairperson of the committee, I have continued to liaise with the judiciary by attending two meetings with the Chief Justice presiding at meetings of the Heads of Courts, including the magistracy. A number of important issues which impact on the profession, were discussed, namely,

- the civil jurisdiction of the regional courts;
- the rationalisation of courts;
- the Rules of Court;
- judicial education;





# Specialist committee reports

- judicial appointments in the lower courts;
- practice directives;
- harmonisation of the Rules of Courts; and
- the inadequate interpreting facilities at the courts.

The committee also responded to a number of Bills and Amendment Bills during the course of 2007, the most important of which were

- the Judicial Amendment Bill, seeking amendments to some 12 Acts, including the Attorneys Act, the Matrimonial Property Act and Promotion of Access to Information Act;
- the Criminal Law (Sentencing) Amendment Bill;
- draft legislation contained in the South African Law Reform Commission Discussion Paper 112 on the review of the Interpretation Act; and
- the Judicial Service Commission Amendment Bill.

The committee realises the importance and tremendous positive impact of joint efforts by the committees of the LSSA and will, in 2008, continue to support exercises of a joint nature.

The members of the Committee on High Court Matters wish to thank all High Court practitioners of the various South African jurisdictions for their support and input on relevant matters during the course of 2007.

## **Etienne Horn,**

Chairperson, Committee on High Court Matters

### **IMMIGRATION AND REFUGEE LAW**

During 2007 year the committee was exceptionally active and made a solid contribution in this area of practice.

Although the committee met formally only on one occasion, the committee members did attend certain of the other activi-

ties and meetings and/or were involved in such activities by way of e-mail or telecon.

The activities of the committee during the year under review were, briefly, as follows:

- attending and making input at the United Nations high level dialogue summit on immigration issues held in Pretoria in January 2007;
- a meeting with Human Rights Watch on the Zimbabwe situation;
- considering and drafting input on the Refugee Amendment Bill and making submissions in that regard on behalf of the organised legal profession;
- a meeting with the Human Rights Commission to discuss various matters of concern to the legal profession in the immigration and refugee law field;
- a meeting with the new Director General of Home Affairs, Mavuso Msimang, to discuss matters of mutual interest and certain matters of concern to immigration and refugee law practitioners;
- meeting and interaction with the Ministerial Turnaround Task Team which has been designated to turn around the Department of Home Affairs;
- attending the ministerial workshop of the Turnaround Task Team Action Group;
- meeting with the Ministerial Turnaround Task Team task group on permitting and refugee matters;
- meeting with the Ministerial Turnaround Task Team enforcement and corruption committee;
- providing ongoing articles and practice notes in De Rebus;
- contributing in the print media on an ongoing basis, with various members writing articles;
- participating in television and radio interviews on a regular and ongoing basis on this specialist field of practice;
- dealing with matters by way of formal

complaints to the Department of Home Affairs regarding abuses of the Immigration Act and specifically with respect to corporate permits; and

- attending the LSSA's committee chairpersons' meeting.

The committee will continue in the coming year to monitor the field of immigration law and will continue to be as active as possible during this period.

We will continue to meet on an ad hoc basis on a formal basis, or by way of teleconference as and when needed.

In 2008 the Immigration Amendment Act should come into operation and, at the time of writing this report, the proposed amendments to the Immigration Regulations are under consideration and will, in all likelihood, also come into effect during 2008.

The Director General of Home Affairs has undertaken to meet with our committee at least three times per year and we are committed, as a committee, to engage constructively with the Department not only at national level, but also at provincial level.

The LSSA's Immigration and Refugee Law Committee continues to interact on an ongoing and very constructive basis with the Immigration, Nationality and Refugee Law Committee of the Law Society of the Northern Provinces. However, efforts to connect with interest groups in the other provincial law societies have thus far been fruitless.

I would like to thank my fellow committee members for their efforts and input during 2007, with a further special thanks for the backup and assistance from the Secretariat of the LSSA.

## **Julian Pokroy,**

Chairperson, Immigration and Refugee Law Committee

### **INSOLVENCY AND LIQUIDATION**

The Committee on Insolvency and Liquidation Matters convened a meeting at OR Tambo International Airport in September 2007 which,

besides myself as chairperson, was attended to by committee members Vanessa Johnson, Org Basson and TV Matsepe. The other two members neither attended nor tendered apologies.

A very extensive agenda was prepared and dealt with fully at the meeting. The following are the main issues that were addressed and which needed the urgent attention of the Chief Master and the Department of Justice and Constitutional Development:

### Policy document

Member's agreed that a draft proposal should be prepared by Prof Burdette on behalf of the committee for further consideration by members of the legal profession presently practising as insolvency practitioners, after which the final amended document will be submitted to the Minister/Chief Master. This document would address matters of concern in the insolvency industry, namely, fronting, cheque collecting, requirements to qualify to serve on the Master's Panel of Liquidators, transformation and transfer of skills.

### Draft Companies Bill

This comprehensive Bill was still in draft form and the final draft was awaited before the committee could comment.

In November 2007, Dumisani Tabatha resigned from the committee due to work pressure in his practice.

### Ranjith Choonilall,

Chairperson, Committee on  
Insolvency and Liquidation Matters

### INTELLECTUAL PROPERTY

In the past, the mandate of the Committee was determined by Council. As chairperson, I attended the meeting on 14 May 2007 convened for the LSSA Directorate to address committee chairpersons. Committees were requested to submit proposals for alternative plans of action. Since the committee was satisfied with its existing mandate, and in the absence of contrary directives from Council, the committee conducted its

affairs also during 2007 in accordance with this mandate, namely to

- monitor developments (legislative as well as other trends, locally as well as abroad) in the area of intellectual property (IP), with a view to assessing the effect thereof on the legal position 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 intellectual property, such as the meetings of the Joint Liaison Committee (of which the committee is a founding member) with the CEO and other officials of the Companies and Intellectual Property Registration Office (CIPRO); and
- meet, as and when required, to consider and assess issues within the area of or impacting on intellectual property, to draft and submit comments as and when deemed necessary, or to recommend other appropriate action.

### Activities of the committee

It should be borne in mind, in assessing the activities of the committee, that it is a specialised committee responsible for a specialised area of law in which legislative changes do not occur regularly. Particularly in view of the suspension of the Doha Round of negotiations of the World Trade Organisation, which could have and in the past did have a bearing on IP rights, there were no developments on an international level which obliged South Africa to effect national legislative changes.

Only two developments of relevance in the IP field occurred during 2007:

- A General Notice no 787 was published in terms of the Merchandise Marks Act 17 of 1941 in GG 30001 of 21 June 2007, inviting comments on a substantial number of different words, phrases and emblems that FIFA had applied for to be

# Specialist committee reports

declared prohibited marks for purposes of the 2010 FIFA Football World Cup event. A final Notice no 1791 appeared in the GG 30595 of 14 December 2007, setting out the prohibition.

- A Proclamation no 46 was published by the President in GG 30593 of 14 December 2007, together with a Notice R1225 by the Minister of Trade and Industry, to put into effect the Patents Amendment Act 20 of 2005 together with implementing regulations. The publications corrected the invalid putting into effect of the regulations in GG R.204 of 28 February 2006 without the simultaneous promulgation of the enabling legislation.

## Future work

Once the expected draft Bills on IP – which will cover a wide area of IP law, including the Madrid Protocol in respect of trade marks; the Hague Agreement in respect of designs; and the protection of traditional knowledge as IP – are published for comment, it will be essential for the committee to become active again.

## Composition of the committee

Besides myself, the members of the committee are Dr Tim Burrell, Dr Owen Dean, Pumzile Majeke, Madoda Nxumalo, André van der Merwe, Yvonne Mbatha and Dan Badenhorst.

## Esmé du Plessis,

Chairperson, Committee on Intellectual Property

## JOINT ATTORNEYS' AND ACCOUNTANTS' COMMITTEE (JAAC)

2007 was a particularly busy year for this committee. The first major activity of the year was a telecon in February 2007 in order to form a view on the advisability or not of cellphone banking. The view of members who participated was generally negative because of the lack of audit trail. That view was passed on to Manco.

The next meeting held during the year, apart from my attendance at the meeting of committee chairpersons in May 2007, was the annual meeting with the auditors held at OR Tambo International Airport on 18 July 2007. Here again, the main issues of concern were the problems experienced in the annual audit reports, the report back on the KwaZulu-Natal Law Society Reform Audit Support System (RASS) project and the scope and role of the committee. This has become of particular concern because of the establishment of the Independent Regulatory Board for Auditors (IRBA) which has taken over the role of the old Public Accountants' and Auditors' Board.

Of particular concern was the fact that IRBA appeared to be acting independently of the committee and the South African Institute of Chartered Accountants (SAICA) in setting new standards and forms of reports for the trust audit. Ongoing correspondence culminating in a further meeting involving certain members of the committee with IRBA during November 2007, led to the joint obtaining of an opinion on the validity of the amended form of audit report imposed by IRBA following the adoption of international auditing standards, rather than South African auditing standards. The opinion obtained from Advocate SC van der Linde was to the effect that there was no problem with the amended report.

The view of the committee is that it retains relevance and serves a useful function in sorting out problems between the two professions, particularly on the vexed question of trust audits.

The members representing the attorneys' profession on the committee, besides myself, are, Nico Coetzer, Frank Dorey, Iqbal Ganie, Glenn Flatwell (ex-officio), Nano Matlala, Andrew Stansfield, Johan van Staden, Gavin John and Dirk Vercuil.

## Julian von Klemperer,

Chairperson, Joint Committee of Attorneys and Accountants

## LEGAL EDUCATION AND DEVELOPMENT (LEAD)

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

## Location

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

## Finance: Budget

It appears that there has been a substantial saving on the 2007 budget without curtailing delivery of services. The savings resulted mainly from the fact that the practice management course did not become mandatory, certain income increased and various savings were achieved.

## Staff

Employment equity and quality of service: LEAD has made a significant input to complying with the LSSA's Employment Equity Plan. The Standing Committee on Legal Education believes that staff are committed and equipped to render a high standard of service to the profession.

*LEAD staff in Pretoria: Anthony Mathimbe, Dudu Sibanyoni, Diane Angelopulo, Gail Mason, Glen-Rose Manzini, Imtiaz Mohammed, John Mokumo, Lolita Pieterse, Maria Mokwape, Martha Mokwebe, Nic Swart, Ogilvie Ramoshaba, Ria Mahlangu, Selina Ramano, Tasha Roestoff, William Khunou, Scebile Mokano (until 30 April), Hlophe Mofokeng (until 31 October), Beverley Chueu, Portia Kadi, Amanda Kibido, Lillian Jacobs (until 31 July); Thembakazi Koni (from 1 December), Ntokozo Manzi (from 1 May), Grizelda Mosetlho (from 1 November) and Shitereka Ashley Mashaba (from 1 July).*



*Bloemfontein: Willem Spangenberg and Marietjie van der Westhuizen.*

*Cape Town: Gail Kemp, Melanie Boltman, Ian Yuill and Dawn Arendze.*

*Durban: Mohini Murugasen and Nadira Sewnarain.*

*East London: Bongi Nkohla, Sue Donovan, Sina Mbutuma and Thandi Ncukuna.*

*Johannesburg: Nohlanga Motaung (until 31 March 2007), Titus Mbatha, Connie Malinga, Louisa Madikoe, Roeline Fölscher and Chandika Singh (from 1 November).*

*Polokwane: Mokgadi Mabilo, Louisa Motana, Matilda Molepo and Doreen Mamabolo.*

*Pretoria: Yvonne Sinclair, Maggie Balakistan and Zuki Kala.*

*Potchefstroom: Andrew Morathi and Isabel Bouwer.*

*Port Elizabeth: Vaneetha Dhanjee and Anita Strydom.*

*LSSA-Unisa distance learning school: Simla Budhu and Parma Govender.*

### General developments in 2007

**Commercial law training:** Fifty attorneys received training in commercial law at courses in Pretoria and Durban from Irish and South African lawyers. Irish Aid provided the funding.

### Legal Education task team and the LLB:

The task team reached consensus with the General Council of the Bar and the Association of University Legal Aid Institutions and, thereafter, consulted with the SA Law Deans Association. It met with all deans in May 2007 and further action will be taken in 2008.

### Transfer of skills and other aspects of skills development:

The LSSA Council supported a proposal aimed at a comprehensive programme and submitted this to the Safety and Security Seta (SASSETA) which approved a budget of R7million.

**Skills transfer:** 150 attorneys were recruited as learners

**Numeracy training:** Implemented at School and practical legal training courses.

Additional trial advocacy training presented through the BLA at three centres.

### Introductory training in judicial skills (SASSETA funded):

Sixty-two attorneys attended 4 courses of 5 days each at Midrand, Durban, East London and Cape Town. Nine judges and two regional magistrates provided the training, which was rated as extremely successful.

### Mandatory practice management training:

The amendments to the Act were approved by Parliament and now await implementation by the Justice Department.

### Learnerships:

The SASSETA provided a grant of R2million towards grants for courses and workplace training.

### SA-Unisa Distance Learning School:

123 persons attended the second programme, substantially more than in the previous year.

### International Client Counselling Competition:

The regional rounds took place.

### Training provided to the Legal Aid Board (LAB):

At the request of the LAB, extensive training was offered in criminal law practice, evidence and aspects of civil litigation to legal staff of the LAB. The training was rated as extremely successful.

### Pro bono work:

A programme was offered by the School for Legal Practice in Pretoria in conjunction with law firms in Mamelodi and Pretoria West. It was resolved that all School centres must implement 'social responsibility' programmes.

### Foreign liaison:

The Law Society of Ireland provides commercial law training.

The United States Embassy offered seminars in legal writing by visiting experts.

The LEAD Director attended the SADC Lawyers Association conference in Tanzania and

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Commonwealth Lawyers Association conference in Kenya

A delegation from the Law Society of Kenya visited LEAD.

A successful seminar was offered with the Law Society of Swaziland.

## Education and development activities

**Conveyancing and notarial training:** 964 persons participated in 2007.

**Seminars:** 2 070 persons attended seminars in 2007.

The following topics were offered:

- Pensions Law
- New Developments in Conveyancing
- National Credit Act
- Sports Law
- Divorce Law
- Family Law
- Mediation
- Sexual Offences
- Counselling Skills
- Trust Update
- Legal Writing

LEAD experiences certain constraints due to its efforts not to duplicate the activities of the LSSA's constituent members.

A major success was, again, the High Court litigation training where practitioners received intensive drafting training. This training was followed, a week later, with trial advocacy training offered by the BLA.

**Course for candidate attorneys (25 days):** This course was offered at 10 centres throughout the country. Except for one, all programmes are offered on university campuses. The course is offered part-time, full-time and, at one centre, after hours. 1 686 candidate attorneys attended in 2007.

**Instructors and presenters involved in LEAD activities:** More than 500 practitioners and other experts were involved in the

activities of LEAD in 2007. Instructors receive guidance from LEAD in training and assessment techniques, and most have been registered as Education, Training and Development (ETD) Practitioners by the SASSETA.

**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 also situated in Pretoria. 1 094 persons attended the day and night programmes in 2007.

**Statistical information:** LEAD collected information on attorneys, candidate attorneys, law graduates and training on a race and gender basis. This information gives a clear indication of how many persons study for and graduate with an LLB and what the trends are with regard to admission and practice.

**Placement information:** LEAD maintains a database of persons who are searching for articles or for placement as professional assistants.

**Selling of documentation:** LEAD has sold a substantial quantity of its publications in hard copy and electronic format in 2007. These publications included 'PLT manuals', Conveyancing and Notarial Manuals, Consulta and e-PLT (CD-Rom).

**Distance education programmes:** LEAD offered diploma and certificate programmes in conjunction with the universities of Pretoria, South Africa, KwaZulu-Natal and Potchefstroom in labour law, corporate law, administration of estates, tax and insolvency.

**Course for conveyancing assistants:** LEAD presented a successful course in Pretoria which was attended by 46 people.

## Summary of attendance of all LEAD core programmes

	2007	2006
School for Legal Practice	1 094	1 021
Conveyancing and notarial training	964	853
25-day Courses for candidate attorneys	1 686	1 248
Diplomas and certificates (distance)	152	168
Practice management training	114	132
Seminars	2 070	2 453
Other training: Trial advocacy, Legal Aid Board, Commercial law, SAPS, State attorney, Conveyancing assistants, Judicial skills	957	493
<b>Total:</b>	<b>7 037</b>	<b>6 368</b>

**Abe Mathebula,**

Chairperson, Standing Committee on Legal Education

**Nic Swart,**

Director, Legal Education and Development



## LEGAL PROVIDENT FUND

Not all attorneys' firms are aware that in 1966 the then Association of Law Societies established the Legal Provident Fund (the Fund) to provide retirement funding for employees of attorneys. The Fund is particularly effective as, through its umbrella fund status, individual law firms align to negotiate better employee benefits for staff and costs are reduced through economies of scale. Over time the Fund has been expanded to include employees of advocates, as well as directors of incorporated law practices. Today, participating employers also include the Law Society of South Africa, the statutory law societies, the Attorneys Fidelity Fund and many other legal organisations. Currently there are over 4 500 members on the Fund.

I have been the Chairman of the Fund since 1994, having taken over from Roger Cleaver, now Judge Cleaver. In my opinion, this has long been the only really viable option for small to medium-size law firms. Increased pension fund governance requirements and a desire to focus on core business activities makes this Fund an increasingly attractive option for larger law firms as well. From relatively modest beginnings, the

Fund has grown steadily and the funds under administration currently exceed R380 000 000.

Although Alexander Forbes has had an administration contract to administer the Fund since July 2004, the Fund has retained its link with the profession as it continues to be governed by trustees, the majority of which are nominated by the LSSA. Other members are senior legal practitioners and retirement fund experts. Ros Elphick has been the Fund's Principal Officer since April 2000 and the administration of the Fund is headed by Jenny Sneddon who has worked at the Fund since 2001.

The nomination of the LSSA representatives took place in March 2007 at the LSSA Annual General Meeting. The Fund also makes use of 'employee monitors' who are trustee nominated. Although these 'employee monitors' do not have any voting rights in terms of the Fund rules, they participate in Fund discussions and attend meetings.

The current members of the Board and 'employee monitors' are listed below:

Name	Constituent	Year appointed	Nominated by
Trustees			
Michael Pinnock, Chairperson	Tonkin Clacey	1994	LSSA
Andrew Stansfield	Attorneys Fidelity Fund	1997	LSSA
Henri van Rooyen	Neumann Van Rooyen Inc	1994	LSSA
Raj Daya	Law Society of South Africa	2006	LSSA
Jacques Basson	General Council of the Bar	2003	GCB
Tony Thobane	SA Thobane	2005	LSSA
Edwin Letty	Maitland Trust Ltd	1998	Independent
Vincent Faris	PriceWaterhouseCoopers (Consultant)	2001	Independent
Employee monitors nominated by trustees			
Caroline Hutchison	Smith Tabata Buchanan Boyes Inc	1997	Trustees
Susan Rossouw	Law Society of the Northern Provinces	2006	Trustees

The full Board met twice in 2007 and there were also two executive committee meetings held during the year. During these meetings, in keeping with their fiduciary duties, the

trustees applied their minds consistently and fairly in order to administer and manage the assets of the fund. A Code of Practice and Conduct was formalised during the second



# Specialist committee reports

Board meeting which takes into account the requirements of PF130, the Organisation for Economic Co-operation and Development (OECD) Governance Guidelines, the King Reports on good governance and the second discussion paper on Retirement Fund Reform. During the year, the trustees also attended training courses to ensure that they have all the skills and knowledge required to fulfil their obligations and duties effectively.

Over the years, the trustees have expanded the benefits offered by the Fund. In order to do this, its rules have been amended from time to time so that the needs of any individual employer/member can be accommodated. For the past two years, members who join the Fund can access a wealth of retirement information online through 'AF Online'. This is an interactive web-based financial portal designed to help members achieve long-term financial security.

The trustees of the Fund recognise the significance of members' preserving their withdrawal benefits and would like to encourage more members to do so. For this reason, in 2007 they arranged that the Fund participate in the Alexander Forbes Umbrella Preservation Fund. Through this preservation fund, members can easily preserve their retirement savings when they leave the Fund on a cost-effective seamless basis (no upfront costs). Similarly, members can also keep the same or a similar investment strategy as they had before and there is no minimum amount required.

In terms of the investment portfolios offered to members, the trustees of the Fund recognise that different members have varying investment needs. Members, therefore, have access to ten investment portfolios with varying degrees of investment risk. With effect from 1 January 2008, the Fund introduced the Shari'ah portfolio to members where the underlying investments are managed in accordance with the principles of the Shari'ah, the sacred law of the religion of Islam. This portfolio has been well received by our members.

The main reason for attorneys' firms setting up a retirement fund for their employees is to ensure that their employees are provided for on their retirement. However, it can also be used as an effective way for employers to retain hard-working, dedicated employees.

**Mike Pinnock,**

Chairperson, Legal Provident Fund

## MAGISTRATES' COURTS

The Magistrates' Courts Committee held a joint telecon with the High Court committee in May 2007 to consider a report comparing methods of computing legal costs in the various judicial systems around the world. Having discussed the matter, it was decided that the system presently operating in the High and Magistrates' Courts in South Africa should be retained as it is sufficient and has developed its own jurisprudence over a number of years. Furthermore, all practitioners are familiar with it. However, the joint committee recognised that what was of far more urgent and immediate concern was the fact that the tariff had not been amended for some years, despite numerous recommendations and requests having been directed to the Rules Board in this regard.

Pursuant to a request made of chairpersons at the LSSA chairpersons' conference, the committee met in October 2007 to, inter alia, determine a year plan. The strategies which were identified and adopted were the following:

- A line of communication must be established with the Rules Board and it is to be engaged on two main issues namely, its failure to deal with the issue of the increase of legal costs and, secondly, its failure to carry through proposals of and comments made by the committee in relation to amendments to the court rules.
- Engagement with the Department of Justice: The committee wishes to establish a line of communication with the Depart-

ment of Justice in order to deal effectively with complaints received about the inadequate performance of the Magistrates' Courts around the country.

- Continue to deal with issues raised by attorneys and the Rules Board from time to time on an ad hoc basis.

As chairperson, I addressed a letter to the Chief Executive Officer of the LSSA calling on him to convene meetings with the representatives of the Rules Board and Justice Department so that the strategies can be implemented and issues raised with them. A response is awaited.

In order to deal with the complaints regarding the inadequacies of the various Magistrates' Courts around the country, a questionnaire has been developed by the committee for completion by all attorneys. The information obtained will be collated and presented to the Justice Department.

It was also resolved by the committee that in order to function and improve its communication with attorneys, it should receive copies of the minutes of the Magistrates' Courts committees of the provincial law societies.

The committee has also recognised that the harmonisation of the High and Magistrates' Courts rules is an initiative which needs to progress. Steps are being taken to facilitate this process and it is an issue which will be taken up with the Rules Board at the proposed meeting.

The implementation of the National Credit Act is raising certain problems. The first is that in order for an attorney to become a debt counselor, the attorney must attend a five-day course at a cost of R6 000. The attorney would also be away from his/her practice for the period and incur accommodation costs. The LSSA has been requested to address an appropriate letter to the National Credit Regulator to exclude attorneys from this obligation. Secondly, a circular has been received from magistrates setting out their requirements in respect of summonses issued

on credit agreements. Whereas this document is helpful, it contains excessive requirements in relation to what is to be pleaded. The magistrates are to be engaged in this regard.

LSSA Manco member Vincent Saldanha and I, as committee chairperson, appeared before the Justice Portfolio Committee in Parliament in February to make submissions on behalf of the LSSA on the Jurisdiction of Regional Courts Amendment Bill. Our understanding is that the implementation of civil jurisdiction at the regional courts will be done on a phased basis and only once the Justice Department is satisfied that all structures and personnel are in place and have the capacity to deal with the civil matters. I expressed the LSSA's concern regarding the infrastructure of the courts and the training of judicial officers, and called on the Department to ensure that the standards of administration in the courts, particularly in the clerks of the courts' offices, are significantly improved to support the regional courts.

**Graham Bellairs,**  
Chairperson, Magistrates'  
Courts Committee

## **MOTOR VEHICLE ACCIDENTS**

### **Direct payment system (DPS)**

Since March 2007 there have been significant developments relating to the Road Accident Fund's (RAF) proposed implementation of a DPS.

A detailed submission was made on behalf of LSSA in response to a notice published by the RAF calling for public comment. This was in addition to comments made in January 2007 on the draft regulations. (Regulation 8(4) provided for payments direct to claimants despite the fact that they are represented by attorneys.)

A without prejudice meeting between members of this committee and the Chief Executive Officer of the RAF was facilitated by the Directorate.

Advocates Chaskalson and Mullins SC are now on brief for the LSSA and are fully

appraised of the issues. Prof Seekings, a statistician at the University of Cape Town, has also been fully briefed, in accordance with the advice given by counsel. Consultations have been held with counsel and Prof Seekings.

This committee has also been liaising closely with other bodies, such as the General Council of the Bar, the Johannesburg Attorneys Association, the South African Association of Personal Injury Lawyers (SAAPIL), the KwaZulu-Natal Association of Personal Injury Lawyers (KAPIL) and civic associations.

Correspondence drafted by this committee and/or counsel has been addressed by the Directorate to the RAF calling for an undertaking and documents, and putting on record the RAF's advice to both SAAPIL and the General Council of the Bar that no decision has been taken, as yet, on the implementation of a DPS (3 December 2007).

Committee members and counsel are on standby to deal with any further action by the RAF relative to the implementation of a DPS.

A report was made by Ronald Bobroff at the LSSA Council meeting on 29 November 2007 regarding a meeting between the RAF and the Attorneys Fidelity Fund (AFF) in August 2007. The attitude of the AFF to any proposed DPS is clearly of great significance relative to the public interest issues raised by the proposal, and it is hoped that the AFF has already clarified its stance on a DPS to the RAF. I am not able to take this any further as I have not received any report back as to whether the proposed round-robin decision was taken by the AFF Board, nor whether the proposed letter was despatched or not.

In the event of the AFF supporting a DPS, the profession's prospects of success in challenging the DPS will be significantly compromised. One of the major defences to a DPS is that there are other, as effective, ways of preventing or containing fraud, such as notification, which will not result in the elimination of lawyers representing clients with claims against the RAF. If the very body that was formed by the profession to protect the public from delinquent attorneys supports the RAF's proposal to

# Specialist committee reports

implement a DPS rather than lobby for a notification system as an effective counter to fraud, then anything said by the profession against a DPS will have a somewhat hollow ring.

Furthermore, quite apart from risk control, there are legal, constitutional, contractual and public-interest issues at stake, which should be carefully weighed before adopting a stance on risk control which will have the effect of throwing the baby out with the bath water. If all attorneys were precluded from holding money in trust there would, of course, be no theft of trust funds. There would also be no attorneys and no AFF.

Counsel has advised that it is imperative to produce reliable statistics as to the percentage of fraud attributable to attorneys representing road accident victims as against those attorneys who discharge their mandates honestly. Presumably, apart from the RAF, the bodies most qualified to comment would be the AFF and the statutory law societies. Any assistance which could be provided would be very welcome.

Counsel have also been asked to consider and advise on an appropriate contract (power of attorney) incorporating a pledge and cession of the proceeds of the claim once liquidated by settlement or judgment.

## The Amendment Act and the draft regulations

The RAF has adopted the view that it is unable to proceed with the promulgation of the regulations necessary for the operation of the Amendment Act, until the Constitutional Court has pronounced on the finding of the Transvaal Provincial Division of the High Court in the application brought by attorney Marius Kruger against the President in respect of the Proclamations R27, 2006 (No 29041 GG 19 July 2006) and R32, 2006 (No 29088 GG 31 July 2006). This case was due to be heard in the Constitutional Court in February 2008. However, recent developments (the intervention of the RAF) may result in a postponement of the hearing, although this is far from guaranteed. If re-

quired, copies of the Heads of Argument can be made available.

Earlier in the year and in response to the submissions made by this committee regarding the suitability of the American Medical Association Guidelines as an assessment method for the determination of a 'serious' injury, we were invited to produce an alternate definition of 'serious' injury. The question of any definition is extremely controversial (upon which the Parliamentary Portfolio Committee could also not reach resolution) and despite extended debate and many differing proposals, it was the consensus that no definition should be offered as the determination of whether an injury is 'serious' in relation to the circumstances of a particular accident victim should remain with the courts.

The definition of an injury as 'serious' or not is, in terms of the Amendment Act, the decisive factor as to whether an accident victim receives general damages or not. If the method of determination proposed in the draft regulations is adopted, it will effectively exclude the vast majority of accident victims who are currently compensated. This is the purpose of the definition, namely, to exclude these claims and thus save the RAF a considerable percentage of its current exposure.

The other aspect of the Amendment Act which is extremely controversial is the abolition of any common law claim in respect of damages not claimable in terms of the amendments to the current Act. The adverse implication of this for every road user has been spelt out in detail in our various submissions.

Our counsel have also been briefed to consider the Amendment Act and the draft regulations published for comment in December 2006. The RAF has been called upon to furnish documents and information relative to both.

It is anticipated that once the Kruger case is disposed of, the RAF will move quickly to proclaim regulations and bring the substantive sections of the Amendment

Act, 2005 into effect. The more so because the RAF and the Department of Transport have been roundly criticised by the Transport Portfolio Committee (when presenting their annual report on 17 October 2007) for not having implemented the Amendment Act, which was signed by the President in early January 2006.

## Jacqui Sohn,

Chairperson, Motor Vehicle  
Accident Committee

## PRO BONO

This brief report covers the activities and endeavours of the *Pro Bono* Committee for the year 2007.

The committee met twice during the period under review (August 2007 and January 2008), with a third meeting scheduled for March 2008.

## Collaboration towards a *pro bono* culture

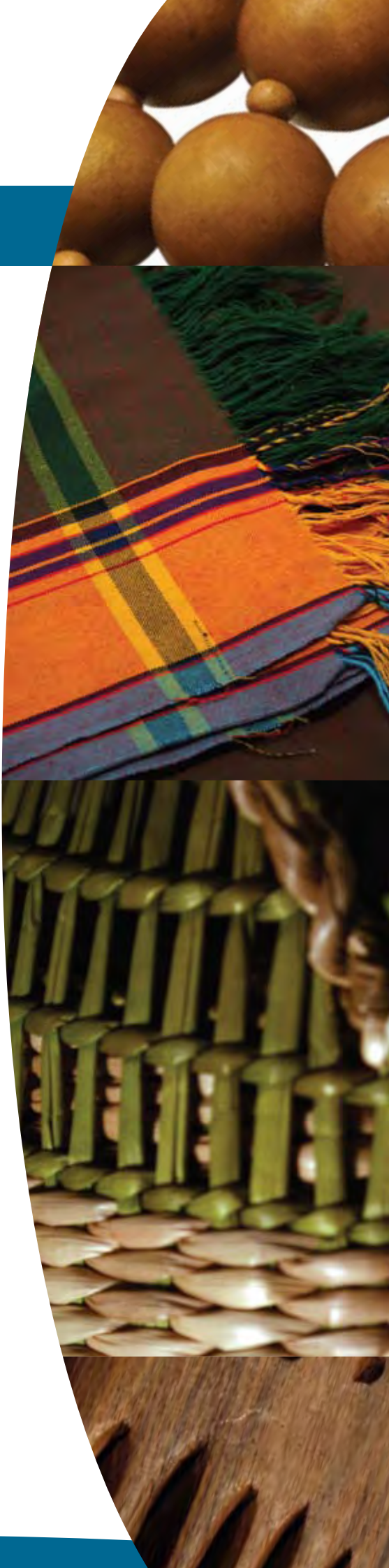
Committee members continue to be passionate about the implementation of a national *pro bono* model and developing a national *pro bono* culture in the profession. We recognise that we are dependent on an efficient, dedicated LSSA directorate to achieve this objective. The committee and the directorate have worked collaboratively to achieve the desired synergies between all relevant structures within the LSSA, the profession and stakeholders. While the year 2007 fell short of the expectations of the *Pro Bono* Committee in some respects, we look forward to addressing the challenges in 2008.

## The provincial law societies

It is heartening to note that the Cape, Free State and Northern Provinces law societies have all adopted an obligatory *pro bono* rule. The KwaZulu-Natal Law Society has adopted a *pro bono* rule, but is still contemplating the obligatory nature thereof.

Our committee resolved to encourage





all provincial law societies to employ a provincial *pro bono* coordinator, and the LSSA to employ a national *pro bono* coordinator. We are pleased to report that these appointments are being finalised and the LSSA is in the process of employing a *pro bono* consultant as an interim measure. The role of the *pro bono* consultant is, inter alia, to facilitate the implementation of *pro bono* nationally and provincially, and to design the budget for the *pro bono* project. This has been a tedious process but we are grateful that progress is nonetheless being made.

At the instance of the Co-Chairperson, a representative of the General Council of the Bar (GCB) was invited to attend our meeting in January 2008, and we have extended our committee to include a GCB representative.

### Conclusion

Our *pro bono* initiative does not seek to compete with any structure, NGO or institution whatsoever. It provides additional support in order to facilitate access to justice for the poor. It is imperative, therefore, that we pool our collective efforts to implement a successful *pro bono* project.

The year under review was frustrating in that the project appeared to be unduly retarded by bureaucracy. However, we are poised to make significant progress in 2008. In terms of the Legal Services Sector Charter, one of the required areas of transformation in the interest of promoting access to justice is the rendering of *pro bono* services. In light of this it would be prudent to establish our national structure as a matter of urgency.

### Taswell Papier,

Chairperson, *Pro Bono* Committee

### PROPERTY LAW

Several meetings were held during the course of 2007 by the Property Law Committee. The most important achievement was the meeting with the Estate Agents Affairs Board (EAAB) on 4 September 2007.

The meeting was attended by members of the Property Law Committee, members of the Law Society of the Northern Provinces (LSNP) Property Law Committee and the Chief Executive Officer of the EAAB and her officials.

It was agreed by all that the meeting was long overdue as there are matters of mutual interest and cooperation between the attorneys' profession and the estate agents in the property industry.

It was resolved that meetings in future be held on a regular basis, such as twice a year, and they would include officials of the EAAB and the Property Law Committees of both the LSSA and LSNP.

The interpretation of section 163 of the National Credit Act was a matter of discussion at a meeting of the Property Law Committee. The issue was whether attorneys were agents of the banks or not. It was decided that an opinion be sought from senior counsel to clarify this position as there is a lack of uniformity among the banking institutions.

### Selemeng Mokose,

Chairperson, Property Law Committee

**"The issue was whether attorneys were agents of the banks or not."**

# Specialist committee reports

## SASSETA

The Safety and Security Seta (SASSETA) Committee continued to meet regularly during the year under review. A number of workshops and interventions were conducted by both the law societies and the Seta itself in an attempt to assist our members in ensuring that they obtain the full range of benefits offered by the Seta. I am very pleased to report that Shitereka Ashley Mashaba was appointed to the staff of LEAD as Project Manager: Skills Development, and one of his main functions is to ensure that we make use of the full range of benefits offered by the Seta. He liaises with the duly appointed representatives at provincial law society, BLA and Nadel level.

Representation on the Seta has been changed to allow representation by the four statutory law societies, BLA and Nadel as opposed to the LSSA itself so as to remove any suggestions of a conflict as LEAD is a substantial supplier of training services to the Seta. The new committee will comprise representatives from the four law societies, BLA and Nadel, as well as the officials employed by the law societies, BLA and Nadel who are responsible for Seta matters. I anticipate that by the time this report is published this representation would have been finalised.

**David Gush,**

Chairperson, Sasseta Committee

## SASSETA Committee capacity development

The SASSETA Committee is responsible for the implementation of skills development initiatives in the profession.

The committee took a resolution in September 2007 to run a workshop on skills development for all involved in Sasseta projects, people at the provincial societies, Nadel and BLA who are in contact with firms. The workshop was run on 28 November 2007 at the OR Tambo International Airport.

The main aim of the workshop was to

capacitate delegates on the process of skills development and to establish awareness in firms, as the SASSETA is experiencing low participation from firms in the skills development system.

The workshop was well attended by constituencies' delegates (some 19 delegates) and the SASSETA was represented by Naledi Nkula, Roshni Pillay and Makie Modipane, who gave the background to the SASSETA, skills planning and the Workplace Skills Plan (WSP)/Annual Training Reports (ATR) System, learnerships (benefits and processes) and the role of Education and Training Quality Assurance (ETQA) in the learning process within the sector. The discussions were an eye-opener to most of the delegates who attended, and positive feedback was received from the majority of them.

Emanating from the discussions, the following items were highlighted and recommended to improve the participation of firms in the system:

- Constituents must appoint or have a dedicated person who deals with skills development issues to assist firms. The SASSETA will train the person on the new unit standards of the Skills Development Facilitator (SDF).
- The SASSETA must involve the constituents in the monitoring of learnerships, WSP to ensure continuity.
- A short and simple practical guide on learnerships and submission of WSP/ATR is to be developed to assist firms
- The SASSETA is to honour its commitments, eg to provide long-promised assessor training.
- The SASSETA must involve firms through the constituents on the trademarks learnership, paralegal learnership and other activities. It must report to the LSSA on the progress of the trademarks learnership which was introduced some time ago.
- All communications/request to firms

or constituents must be channelled via the LSSA's Manager of Professional Affairs for the information to be filtered through faster to relevant people.

**Shitereka Ashley Mashaba,**

Project Manager: Skills Development

## SMALL CLAIMS COURTS

The committee did not meet during 2007, but members of the committee were actively engaged in discussions with the Justice Department, and several meetings took place in the office of Deputy Minister Johnny de Lange during the course of the year.

During the discussions with Mr De Lange and other senior members of the Justice Department, problems which are being experienced in the running of the Small Claims Courts were brought to their attention including, *inter alia*, the following:

- The issuing of certificates of appointment of nominated commissioners by the Justice Department takes months to finalise, notwithstanding the fact that the Deputy Minister indicated to us that he had established a sub-directorate: specialised court services to deal with Small Claims Courts issues, and that the necessary personnel had already been appointed in this sub-directorate.
- The service of documents, particularly Warrant of Executions by the sheriffs, is very costly and the Department undertook to approach the Board for Sheriffs to try to come to an arrangement whereby sheriffs will serve documents at a reduced rate or on a *pro bono* basis. However, nothing appears to have come of this suggestion as yet.
- Appeal procedure: A proposal was put to the Deputy Minister that, where litigants in small claims matters are dissatisfied with a judgment, it would not be necessary for them to become involved in costly review proceedings



in the High Court, but that a new structure should be introduced in the Small Claims Courts system where judgments can be reviewed by three senior attorneys who will then have the authority to overturn a judgment and, if necessary, substitute it with a new judgment. This proposal also appears not to have received any further attention.

- Several commissioners have indicated that they have to travel great distances and that their costs are not being reimbursed. It was proposed that commissioners should receive some form of remuneration for their services and that they should be reimbursed for costs which they incur in the performance of their duties as commissioners.
- No minutes are ever received from the Justice Department regarding discussions with the Deputy Minister and/or senior officials of the Department.

A High Court judge from Zambia attended several discussions with members of the Justice College and practitioners in order to obtain information on the running of the Small Claims Courts since the Zambian Government intends introducing a system similar to ours in Zambia.

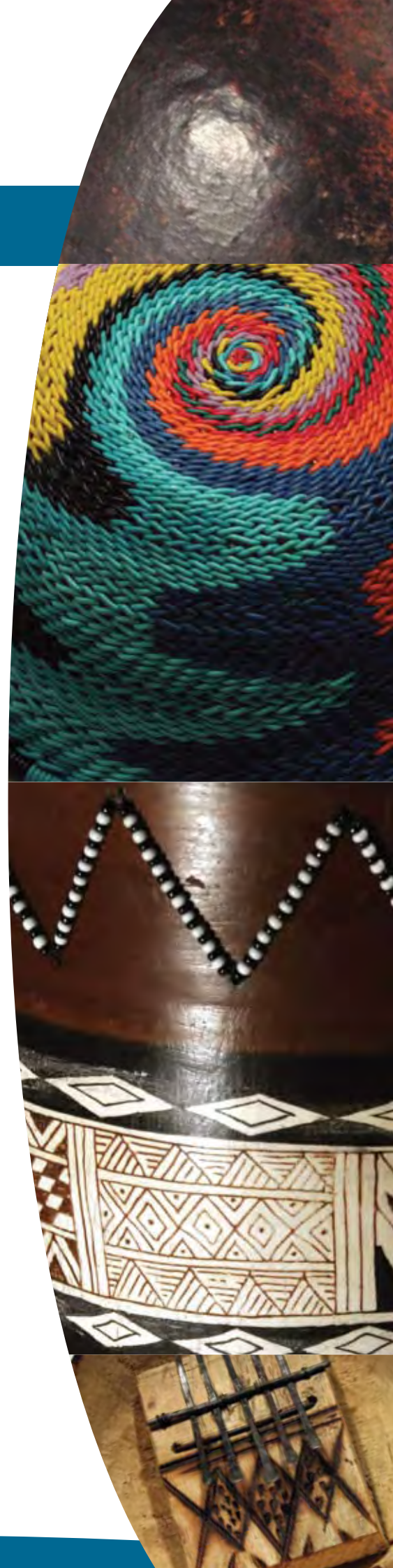
Many problems are still being experienced due to the fact that the clerks who issue the summonses and do the administrative work in the clerk's office are not properly trained. They often issue summonses which should not have been issued, causing problems for the litigants and for the commissioners. The only solution to this problem is for the clerks to be properly trained and, once they are trained, they should not be rotated within the Magistrate's Office where they are doing duty, as it is extremely frustrating for the commissioners to try and adjudicate matters which should not have been in the court in the first instance.

**"A new structure should be introduced in the Small Claims Courts system where judgments can be reviewed by three senior attorneys who will then have the authority to overturn a judgment and, if necessary, substitute it with a new judgment."**

In general the Small Claims Courts are performing a valuable function and if *pro bono* work becomes compulsory for attorneys, a high priority must be placed on the services rendered by practitioners who do duty as Small Claims Courts commissioners.

**Johann Gresse,**

Chairperson, Small Claims Courts Committee





## EXAMINATIONS

Each of the examinations in attorneys', notarial and conveyancing practices were written twice in 2007. All the examinations and the subsequent orals went off without problems.

The examiners are of the view that the standard of the question papers was fair and was an adequate test of the candidates' abilities. The pass rate in all the examinations was acceptable, except for that in the conveyancing examination, which was very low throughout. This matter was addressed at a meeting of all stakeholders involved in conveyancing. Valuable proposals came out of this meeting which have already been considered by the Standing Committee on Legal Education and will be further considered by the Examinations Committee this year.

Statistics setting out the number of candidates who wrote the various examinations and the pass rates appear below.

All of the agreed security systems relating to the preparation and dissemination of the examination papers are in place and work well.

The system of panels of drafters drafting examination papers meeting in June or July of each year for the following year is effective and it is recommended that the system be continued. The drafters and moderators of the papers are appointed annually, with all the constituents being represented as far as possible.

The tasks of preparing the examination papers, administering the examinations and marking the answer scripts are very onerous. The whole process could not run smoothly without the competent efforts of the administrative staff at LEAD and the provincial law societies, the drafters of examination papers and the examiners. To them I express my thanks.

**Chris Petty,**

Chairperson, Examinations Committee

## Admission examination

	February 2007			% Pass	August 2007			% Pass
	Wrote	Passed	Failed		Wrote	Passed	Failed	
Cape Law Society Paper 1	252	206	46	82%	363	257	106	71%
Paper 2	354	262	92	74%	348	236	112	68%
Paper 3	381	293	88	77%	294	214	80	73%
Paper 4	376	258	118	67%	368	177	191	48%
Law Society of the Northern Provinces Paper 1	721	465	256	64%	955	517	438	54%
Paper 2	793	598	195	75%	944	487	457	52%
Paper 3	861	650	211	75%	868	602	266	69%
Paper 4	823	620	203	75%	954	475	479	50%
Law Society of the Free State Paper 1	64	60	4	94%	58	43	15	74%
Paper 2	79	60	19	76%	67	24	43	36%
Paper 3	66	46	20	70%	63	33	30	52%
Paper 4	70	51	19	73%	59	26	33	44%
KwaZulu-Natal Law Society Paper 1	159	127	32	80%	255	190	65	75%
Paper 2	251	232	19	92%	205	119	86	58%
Paper 3	239	203	36	85%	215	157	58	73%
Paper 4	220	183	37	83%	217	146	71	67%

## Notarial examination

	June 2007			% Pass	October 2007			% Pass
	Wrote	Passed	Failed		Wrote	Passed	Failed	
Cape Law Society	44	21	23	48%	80	57	23	71%
Law Society of the Northern Provinces	97	32	65	33%	115	68	47	59%
Law Society of the Free State	16	6	10	38%	11	7	4	64%
KwaZulu-Natal Law Society	38	8	30	21%	43	19	24	44%

## Conveyancing examination

	May 2007			% Pass	September 2007			% Pass
	Wrote	Passed	Failed		Wrote	Passed	Failed	
Cape Law Society	146	58	88	40%	176	67	109	38%
Law Society of the Northern Provinces	389	50	339	13%	446	134	312	30%
Law Society of the Free State	44	10	34	23%	44	21	23	48%
KwaZulu-Natal Law Society	140	32	108	23%	139	47	92	34%