

THE LAW SOCIETY OF SOUTH AFRICA

301 BROOKS STREET

Annual Report
April 2006 to March 2007



LAW SOCIETY OF SOUTH AFRICA



Law Society of South Africa

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Law Society of South Africa

Annual Report

April 2006 to March 2007

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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;
- to promote legal aid and the accessibility of all to the law and the courts;
- to 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 LSSA;

- 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

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Cape Law Society

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KwaZulu-Natal Law Society

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National Association of Democratic Lawyers

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CODE OF ETHICS

All legal practitioners shall

- 1 honour, respect and promote the values enshrined in the Bill of Rights;
- 2 maintain the highest standards of honesty, integrity and independence at all times;
- 3 act with care and skill, honour undertakings and maintain the reputation and high standards required in the performance of their duties;
- 4 conduct themselves with courtesy and respect towards participants in proceedings, especially persons without legal representation, so as to ensure compliance with the rules and procedures for the fair conduct of such proceedings;
- 5 maintain the highest standards of professionalism and promptly respond to correspondence and messages from colleagues, clients and members of the public;
- 6 comply with all ethical and professional rules of practice;
- 7 respect the legal privilege and confidentiality that exists with clients and former clients;
- 8 subject to the laws as regards contingency fees, and the rules and guidelines as regards advertising, not engage in any form of activity that may be construed as touting;
- 9 extend to all colleagues, judges, academics, professionals, litigants and students, including persons from foreign jurisdictions, cordiality and respect at all times.

(The code of ethics was adopted by the LSSA Council at its annual general meeting in March 2006.)

REPORT BY THE CO-CHAIRPERSONS

2006 has been a busy, challenging and most surprising year. It has, however, also been a most fulfilling year. Each department of the Law Society of South Africa (LSSA) has performed to its utmost. The vacancy for a Chief Executive Officer was filled through the employment of Raj Daya.

(GATS) to practise in South Africa. This is merely one of the major problems among the problems being faced by the profession. We do not have much time and we must deal with transformation issues seriously so that we can speak with one voice when dealing with the other challenges that GATS and globalisation are likely to bring.

to discussing international trade transactions and the SADC Trade Protocol. It was a well-intended seminar which was, however, not well attended. Its intention was to empower legal practitioners with information regarding state regulations, business strategies and the procedures involved in cross-border trade transactions.



Nosidima Ndlovu and David Macdonald served as Co-Chairpersons of the Law Society of South Africa from April 2006 until March 2007.

Crucial issues for the profession include the need for skills development and funds to be made available by the Safety and Security SETA (SASSETA) to the LSSA, as well as the *pro bono* work discussions, including those on a national clearing house. The LSSA's SASSETA and *Pro Bono* Committees are dealing with these aspects.

As a result of developments within the legal field in South Africa, the LSSA has prioritised the need to revive all its committees to be fully functional. There have been developments by the Department of Transport which have had an impact on MVA claims and the LSSA's MVA committee has commented timeously on the published regulations. Counsel has been briefed to provide an opinion on the constitutionality of the amending legislation.

The LSSA has many standing and *ad hoc* committees that deal with issues affecting the profession. Currently, and throughout the year, the LSSA has had to and continues to meet the challenge posed by the need to transform the profession. Members will recall that the Legal Practice Bill is still pending as a result of controversial views and a diversity of approaches between the attorneys' and advocates' professions.

The Legal Services Charter took us by storm and we decided that, rather than point fingers, we should engage constructively with the other stakeholders. The LSSA's Transformation Committee has the task of dealing with the challenges posed by the Charter.

While our country's practitioners are grappling with issues raised in the Charter, practitioners internationally wish to make use of the avenues that can be provided by the General Agreement on Trade in Services

The Southern African Development Community Lawyers Association (SADCLA) held its conference and annual general meeting in Boksburg in November where we were confronted with the principles of cross-border practice. A practical seminar on cross-border trade was held in Pretoria immediately following the SADCLA meeting with a view

“ While our country's practitioners are grappling with issues raised in the Charter, practitioners internationally wish to make use of the avenues that can be provided by the General Agreement on Trade in Services (GATS) to practise in South Africa. ”

One is struck immediately by the many challenges facing our profession. The LSSA continues to contribute to and interact with many other institutions such as the SASSETA, the Judicial Service Commission, the Attorneys Fidelity Fund Board of Control, etc.

In June, the LSSA's Management Committee (Manco) paid a courtesy visit to the Chief Justice who welcomed us warmly to the Constitutional Court. He has invited the LSSA to participate in the meetings of the Heads of Courts held prior to Judicial Service Commission meetings.

We were most impressed by the KwaZulu-Natal Law Society's centralised law library and electronic resources geared towards catering for those whose offices do not have access to the Internet and legal publications. Co-Chairperson Nosidima Ndlovu attended the opening of the new library and conference centre on behalf of the LSSA.



Chief Justice Pius Langa seated between LSSA Co-Chairpersons Nosidima Ndlovu and David Macdonald, and with some of the members of the LSSA's Management Committee, back, David Gush, Mvusi Edward Ngubane, Thoba Poyo-Dlwati and Henri van Rooyen, as well as LSSA Director of Professional Affairs, Arno Botha, at a meeting at the Constitutional Court in June 2006.

The LSSA's Co-Chairpersons were invited to the annual general meetings of all four statutory law societies and, for the first time, to that of the Black Lawyers Association. We appreciated the manner in which LSSA Council members implemented policies raised at LSSA level within their constituencies so as to create interaction and communication within the profession.

We also had the privilege of attending the International Bar Association (IAB) annual meeting in Chicago in September. This was an eye-opener; particularly the realisation that the legal profession is being challenged in one way or another in all countries, be the challenges political or social. Also, globalisation is a glaring reality and although the World Trade Organisation's Doha Round negotiations – including GATS – appear to have stalled, this is only temporary and the sooner we are ready for their resumption, the better.

We were honoured to have been invited by the Law Society of Namibia to attend its 85th anniversary celebrations and annual general meeting in Windhoek at the end of November. All lawyers appear to have similar challenges, and we in South Africa are not doing badly at all, since Namibia is also challenged by access to justice.

The Constitution Fourteenth Amendment Bill and the Superior Courts Bill raise issues which lawyers must be very vocal about in order to protect the rule of law. The two controversial Bills have been put on hold, but when they are reintroduced they will require full scrutiny by the profession.

The full staff complement at the LSSA is welcomed. However, the fire damage to the Menlo Park offices of the LSSA in December has posed great challenges for us all.

Nosidima Ndlovu and David Macdonald,
Co-Chairpersons, April 2006 to March 2007.

REPORT BY THE CHIEF EXECUTIVE OFFICER

1 July 2006 was, indeed, an important date for me and for the Law Society of South Africa (LSSA). I took office as Chief Executive Officer, and the LSSA received its first black CEO. Being a practitioner for 22 years and a past director of the LSSA's School for Legal Practice in Port Elizabeth, the Law Society was not a foreign institution to me. The challenge, of course, lay in being thrown into the deep end and having to learn very quickly about its institutional needs. My grooming at the National Association of Democratic Lawyers (Nadel) has assisted my understanding of protocols and transformation.

The voice of the organised profession at national level has been absent for many years, and the need to be 'out there', commenting and participating in national debates, was urgent. The need to be part of the transformation process of the profession was perhaps the key reason for my wishing to take office.

At my interview I was asked what would be the first thing I would do, if successful. My response was obvious: conduct a skills audit and familiarise myself with who does what and how the LSSA functions.

Having conducted the above survey, I quickly learnt that the departments within the LSSA – Legal Education and Development (L.E.A.D.), *De Rebus* and Finance – operated almost independently. The lack of a proper understanding of corporate governance was evident. Although the LSSA is by no means a corporate institution, the principles adopted have to be governed by recognised governance charters. Members will note that a governance charter is on the agenda for adoption at the AGM.

The numerous standing and *ad hoc* committees had not functioned in a cohesive manner. Some committees did not meet at all with just a few having maintained regular interaction and commitment towards enhancing the profession's needs.

The fact that the LSSA is a voluntary association not governed by statute, unlike the provincial law societies, is another challenge and perhaps the reason why we do not

speak with one voice. Rules and regulations at provincial level differ. At the level of the LSSA we debate issues and attempt to reach consensus. However, the resolutions of the LSSA are not legally binding on the provincial law societies.

I had barely moved into my office when, early in August 2006, we were unexpectedly presented with the first draft of the Legal Services Charter. I embraced the challenge presented by the Charter as it coincided with my vision of working towards the transformation of the attorneys' profession in general, and the LSSA in particular.

The recent fire at the LSSA's Menlo Park office (see 2007 (Jan/Feb) *DR* 19) was a serious challenge for us all. Out of this experience, greater unity has been fostered among the staff, our most vital asset. Disaster management, backup systems and an integrated IT system are the areas that have been given priority. We must learn positively from all obstacles that confront us.

The Legal Services Charter

The Charter negotiations have been unrelenting and, like the Co-Chairpersons, I had the benefit of attending some of the discussions on the Charter held at the annual general meetings of the statutory law societies and the Black Lawyers Association (BLA), as well as at some of the workshops held nationally. I have worked closely with the LSSA's Transformation Committee and its consultants through numerous drafts. We were also able

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Law Society of South Africa
Chief Executive Officer, Raj Daya

to meet the Justice Department's Director-General, Advocate Menzi Simelane, earlier this year for a frank and open discussion on various aspects of the Charter.

The next few months will be vital in charting the way forward for the profession, always keeping in mind the primary purpose of providing access to work for practitioners, access to the profession for aspirant practitioners and access to justice for the public, whom the profession serves.

The need to consult and communicate with paralegals is important. The draft Charter includes paralegals under the definition of legal services providers. Our concerns relating to 'commercial' paralegals – as opposed to community-based paralegals – must be addressed. Our opportunity to consult, inform and shape the Charter process is with us. The focus groups established to drive the Charter process will include all stakeholders and it is our duty to mandate those we deploy to represent us with proper understanding and briefs.

The continued interest by the banks to employ articulated candidate attorneys is seen by most in the profession as an additional area for competition with the organised profession. In our quest to provide access



to justice for candidates to commercial and property work, we must also be mindful of the fact that in-house conveyancers will cripple the profession.

The areas of reserved work for practitioners are under continuous threat. Amendments to the Attorneys Act 53 of 1979 currently under discussion and yet to be made public, will have far-reaching consequences for us. Again, those that participate in the focus groups must be properly mandated to protect the interests of the members they serve.

I am aware that the completion of the Charter will signal the start of negotiations on the long-dormant Legal Practice Bill which will reform the governance structures of the legal profession.

Foreign and local affairs

I was fortunate to attend the International Institute of Law Association Chief Executives' (IILACE) conference in New York in September 2006, where I was able to interact with the CEOs of other law societies and Bar associations. I was appointed to the IILACE Executive and I look forward to making a contribution from the perspective of a developing-economy and African law society, and to learning from the experiences of others who have faced or may be facing the same challenges as we are.

In September 2006, I accompanied the Co-Chairpersons and the rest of the South African delegation – including the presidents of the statutory law societies – to the International Bar Association conference in Chicago. At my request, the South African consulate in Chicago kindly hosted a function for the South African conference delegates.

I also attended the Southern African Development Community Lawyers Association conference and AGM held in Boksburg at the end of November.

As mentioned above, I attended the AGMs of the statutory law societies and the BLA in October and November. This allowed me to meet a broad cross-section of practitioners and to listen to discussions and debates that were of national interest, but which also reflected local and individual concerns.

The Legal Aid Board's conference on 'Access to Justice' held in Midrand in

November highlighted the need for critical attention to be paid to access to justice. The LSSA's Council met with the CEO and some of the LAB executives at the end of September. The acknowledgement of the need to have frank discussions on areas of concern and commonality was long overdue. Sole practitioners and small firms have been affected by the reduction in judicare allocations. The continued allocation of legal aid work, albeit reduced, to practitioners is most welcome. The LSSA is also concerned about the perceived encroachment by the LAB into attorneys' areas of work. The extension of the LAB's mandate into civil matters is a point of concern for practitioners. This concern is shared by the Department of Justice. We will continue to foster positive relationships with the LAB and seek areas of consensus.

LSSA

I would like to highlight some of the issues that I have prioritised at the LSSA.

Performance appraisals

I was pleased when Fincom accepted recommendations from the Human Resources Manager and myself on the manner in which performance appraisals are carried out at the LSSA. The performance appraisal system involved initial self-evaluation by employees followed by the director or supervisor interrogating the evaluation, with final overall evaluation and recommendations by the Human Resources Manager, Poppy Ngesi. (For further information on this, see the Human Resources report in this annual report.)

A number of salary and job-banding surveys have been done in the past. The reports have now been brought to finality and recommendations accepted (see also the Human Resources report).

Professional Affairs and Communications

I focused on putting together a full management team at the LSSA to assist me. I was pleased to be able to promote two existing employees to management level, with Nosipo Matanzima, the Practice Management Manager at LEAD, being appointed Professional Affairs Manager from 1 November; and Barbara Whittle, the former Deputy Editor of *De Rebus*, as Communication Manager from 1 December.

With the retirement of Arno Botha as Director of Professional Affairs in December,

Ms Matanzima now has the challenge of coordinating the functions of the LSSA's 32 standing and *ad hoc* committees. As I mentioned above, some of these committees have not met for some time, and they need to be revitalised and spurred into activity. Committee members must commit themselves to attending and participating in meetings or else their deployment to these committees remains academic and does not enhance the profession. Ms Matanzima's challenge is magnified by her department's documentation having been destroyed by a fire that raged through some of the offices on the first floor of the LSSA in December.

The coordination of committee discussions at provincial level must be linked to the national committees. This has been discussed and I am pleased to advise that our website will be revamped with a link to all provincial and national committee discussions.

Ms Whittle too faces the challenge of having to resurrect a department that had been dormant for various reasons for a long time. There is also a need to coordinate the communication and marketing functions of the various departments of the LSSA into one integrated communication strategy.

Legal Education and Development (L.E.A.D.)

The biggest department of the LSSA has ongoing challenges. Under the hand of its dedicated Director, Nic Swart, this department provides ongoing support to candidate attorneys and practitioners. The new LLB curriculum is being interrogated continuously by the Standing Committee on Legal Education to ensure that candidates at university level are not studying in a vacuum. Numeracy skills are a concern. Practical exposure to different areas of practice is another area of concern. We need to ensure that courses offered to practitioners also reach the thousands of rural practitioners. We need to convince the Attorneys Fidelity Fund (AFF) that additional funding must be made available to allow the thousands of attorneys who cannot afford course and travel expenditure to attend courses and be accommodated.

The commitments regarding mandatory practice management being finalised will no doubt confront us soon. Are we ready? Do we have sufficient practitioners willing to empower those entering the profession? Can we offer practice management courses at nominal cost?



These are hard questions that confront us. The participation of our members is crucial. Regrettably, very few seasoned practitioners have responded to the ongoing requests from L.E.A.D. to serve as tutors and mentors.

De Rebus

Our award-winning journal under the hand of Philip van der Merwe is provided free of charge to all practising and candidate attorneys. This monthly magazine empowers many with the latest legal information. Are we doing enough? Practitioners are still not making themselves available to contribute as regular columnists and writers. The participation of black practitioners is questionable. I have raised this at a number of Editorial Committee meetings.

The reactivation of the LSSA's news column in *De Rebus* is most welcome. I have requested the newly appointed managers of communication and professional affairs to inform members of discussions happening at various committee meetings. Attorneys must be apprised of what is being discussed and debated at national level. I am pleased to advise you that the LSSA news will be featured in a regular column.

The facility offered to candidate attorneys of advertising their search for articles of clerkship free of charge in the classified advertising supplement – or 'yellow pages' – is positive, and Editorial Committee member Krish Govender is to be commended for recognising and motivating the implementation of this long-overdue service.

Finance and Human Resources

Anthony Pillay, the LSSA's Finance Director, and Human Resources Manager Poppy Ngesi, are both ably charged with running their departments.

It is worth noting that, after almost two years, the LSSA now has a full complement of management staff in place.

Menlo Park office fire and staff

The LSSA's staff is its most valuable asset and this was demonstrated vividly by the fire I referred to above and which happened on 16 December. The Menlo Park office, which houses the directorate, *De Rebus*, Communications and Finance, had to be vacated early in January to



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

allow for restoration which will take some months yet. Staff had to be accommodated at short notice in temporary offices where, for some time at the beginning of the year, we had to continue our work without adequate telephone lines, Internet and e-mail access and with the bare essentials as regards office equipment and furniture. However, we had no time to lick our wounds. There was a meeting on the Charter to attend, Manco meetings as well as the AGM and other meetings of standing committees to arrange and attend, *De Rebus* had an issue to put together and the Finance Department – kindly accommodated by L.E.A.D. at its Sunnyside offices – had the annual audit to contend with. It was then that I realised that it is the LSSA staff – and not its building or its archives of documents – that makes the LSSA.

I would like to pay special tribute to Arno Botha, the Director of Professional Affairs at the LSSA for 21 years, who retired in December. His contribution to the profession has been invaluable.

Conclusion

I would also like to pay tribute to the members of Manco: CP Fourie, David Gush, Mvuseni Edward Ngubane, Thoba Poyo-Dlwati, Vincent Saldanha, Henri van Rooyen and the Co-Chairpersons. Manco is the first port of call to deliberate matters and I look to the Manco

members continuously for their guidance, vision and decision-making.

I thank the Co-Chairpersons – Nosidima Ndlovu and David Macdonald – who have been exemplary and tireless in representing the LSSA at all the relevant forums, meetings and functions. Their support of my position and ongoing guidance to me has been constant and invaluable.

I take this opportunity of recognising each and every councillor and committee member. The LSSA cannot function without you. Your sacrifice and commitment at this level is no small feat. Thank you for all that you have done. To the companions and spouses of our councillors and committee members, thank you too for releasing your loved ones, at times at the expense of family time and commitments.

To the incoming Council, congratulations!

I commit our directorate and staff to providing you with ongoing support and assistance. We look continuously to you for guidance and recommendations.

2007 is going to be a brilliant year!

Raj Daya
Chief Executive Officer



FROM THE CONSTITUENT MEMBERS

FROM THE BLACK LAWYERS ASSOCIATION

The formation of the Law Society of South Africa (LSSA) was, by its very nature, the transformation of the attorneys' profession. The intention was clear: it was not only to give the Black Lawyers Association (BLA) and the National Association of Democratic Lawyers (Nadel) a hand in the regulation of the profession, but also that such participation would enshrine transformation.

Pivotal to the transformation process is the enactment of the Legal Practice Act. However, we have lost count of the number of draft Bills which have been submitted to the Ministry. Not only has the last Bill submitted been gathering dust somewhere, there has also been an eerie silence and an inertness on the part of the profession. The only explanation for this inertness may be that the profession is still divided, and territorial safeguards still exist.

The draft Legal Services Charter championed by the Justice Department seems to have caught the profession off guard. Whether the profession will be able to speak with one voice remains to be seen. Unless the profession addresses the entire spectrum of its own problems and issues steadfastly, one will not be surprised to find the profession stampeding into compromising decisions.

The LSSA should also look to its own governance. The fact that corporate governance has been on the agenda for several years leaves much to be desired.

Henry Msimang

*President, Black Lawyers Association,
October 2005 to date*

FROM THE CAPE LAW SOCIETY

The Cape Law Society (CLS) and its members have played an active role in the affairs of the LSSA over the past year, especially with our councillor and past president David Macdonald being the Co-Chairperson, and our member, Nosidima Ndlovu, being the other Co-Chairperson of the LSSA.

The CLS's specialist committee members continue to play an active role in the LSSA specialist committees. Unfortunately the lack of regular meetings of the LSSA committees and the lack of capacity at the LSSA in key positions has been a set-back.

The CLS appreciates the fact that the LSSA has taken steps to fill key positions as the LSSA should enhance the role it plays in the trade-union function of the profession. The appointment of a Parliamentary Liaison Officer is an aspect that the LSSA should consider seriously as a priority.

The recent constitution of a national Practice Support Committee and an Empowerment Committee are steps in a positive direction to assist members of the profession to set themselves up for success; and to look at empowering members and increasing access to work.

It is also notable that the LSSA has been looking seriously at governance aspects such as the appointment of an internal audit committee as well as the terms of office of committee members and councillors.

The lack of capacity at the LSSA has also been evident in its low media presence. The appointment of a Communication Manager and a definitive communications strategy are welcomed.

Hopefully the LSSA will strive for the promotion of a unified profession, governed by a national structure in our country. It should pressurise government to act with a greater sense of purpose to conclude the transformation process.

Sithembele Mgxaji

*President, Cape Law Society,
October 2004 to October 2006*

FROM THE LAW SOCIETY OF THE FREE STATE

The Law Society of the Free State (LSFS) has identified the non-participation of the

members of the profession in its structures and activities as one of the major problems and challenges facing it.

The LSFS's Council is trying to come up with programmes that can be beneficial to our members, but we have realised that without attorneys becoming involved, there is nothing that can be done.

We have also realised that this is one of the matters that must be initiated and implemented at LSSA level so that all the members of the attorneys' profession can be involved, for example, when negotiating and arranging meetings with government Ministers and/or officials in matters raised by the LSSA's standing committees.

Wilfred Phalatsi,

*President, Law Society of the Free State
October 2005 to October 2006*

FROM THE KWAZULU-NATAL LAW SOCIETY

We are now well into the 13th year of our democracy and the LSSA continues to play a vital part in furthering that democracy. The issues facing our fledgling democracy come alive in debates and discussions within the LSSA Council, in which the KwaZulu-Natal Law Society (KZNLS) plays an active role.

The KZNLS is represented on the LSSA's Transformation Committee which is dealing with the Legal Services Charter. We believe that the challenge to our profession is to transform without government intervention. If we do not, Government will impose legislation on the profession. The signs are that it will do so in the near future. This sense of urgency refers not only to the Charter, but also to the Legal Practice Bill.

The KZNLS is particularly proud of the Reform Audit Support System (RASS) pilot project, which was spearheaded by the KZNLS and which is being considered for national implementation. RASS is funded by the Attorneys Fidelity Fund as a risk-management project and has been in operation for over two years.



The feedback from participating firms has indicated that the project has offered great assistance, support and understanding of the legislation and rules governing trust accounting.

Raj Badal,

*President, KwaZulu-Natal Law Society
October 2005 to September 2006*

FROM THE LAW SOCIETY OF THE NORTHERN PROVINCES

The Law Society of the Northern Provinces (LSNP) enjoyed yet another year of fruitful participation on the Council of the LSSA. During my term as President of the LSNP I was able to incorporate my intimate knowledge of the workings of the affairs of the LSSA – having served on its Council since its establishment – into the LSNP Council's interaction with the LSSA. The major issues dealt with during the year under review related to the State's ongoing efforts to remove the rights of road accident victims to proper compensation; and towards the latter part of 2006, with the draft Legal Services Charter. To its credit – and notwithstanding that it is comprised of diverse constituents – the LSSA was able to address both these vital issues on a non-partisan basis.

Having regard to the logistics and cost involved in setting up meetings of the LSSA Council, I was gratified to note a realisation on the part of the Management Committee (Manco) of the need for Council meetings to occupy a full day so that important issues were properly ventilated. I also understood the LSNP's perspective to be that the LSSA Council should meet monthly rather than bimonthly, and that the full Council should play a greater role than is currently the case whereby Manco plays a particularly active executive role. Further, there is a strong view within the LSNP that the AGM of the LSSA should not be simply an AGM of the Council itself, but that members of all six constituents – in addition to councillors – should be entitled to participate in and vote on issues raised at the AGM.

The LSNP, comprising as it does over 60% of all practicing attorneys, plays a major role in the affairs of the LSSA, and its members serve on all the LSSA's

specialist committees. Currently, the LSNP is represented by only four councillors on the LSSA Council. There is a strong view both at the Gauteng Council and at LSNP Council level that the LSNP's representation on the LSSA's Council needs to be substantially increased so as to ensure appropriate proportional representation.

Ronald Bobroff,

*President, Law Society of the Northern Provinces
November 2005 to November 2006*

FROM THE NATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS

It is now 13 years since our country obtained its freedom from oppression from the apartheid regime. In the legal profession racial divisions were created; inequalities and imbalances were caused among the citizens of South Africa and among lawyers themselves. The National Association of Democratic Lawyers (Nadel) was formed as a home for lawyers who were opposed to the oppressive, degrading laws of the previous regime. To address these imbalances attorneys agreed to form and be represented by an association with constituencies from different backgrounds, and as a result the statutory law societies, the Black Lawyers Association (BLA) and Nadel influence decisions and engage as one body – the Law Society of South Africa (LSSA).

Nadel views 2006 as a year in which harmonisation of the profession was sought to be fostered through acknowledgement of the need for skills development. Nadel sees the developments around the General Agreement on Trade in Services (GATS) as making it necessary for this to be its main focus, so that globalisation can be meaningful to all attorneys in South Africa.

Greater access to funds will enable Nadel to train and build the capacity of its members, most of whom have financial challenges. Nadel appreciates the financial assistance it has received from the Attorneys Fidelity Fund through the support of the LSSA. We pledge to stimulate our members who, as a result of daily financial handicaps, find themselves unable to sustain their practices and are greatly demotivated.


When Nadel reviews its contribution towards addressing the imbalances created by the past that it has made through its participation within the LSSA, we acknowledge that a good culture exists, and groundwork has been laid for interaction and consultation between all stakeholders and constituencies. However, we realise that there is still great room for improvement, specifically when it comes to addressing the inequalities and imbalances within the profession.

Concern has been raised by the so-called 'floor-crossing' by practitioners who may have lost confidence that this balance will ever be achieved within their firms. There is a need for the creation of an environment where skills are developed for each individual attorney, to enable each practitioner to have the capacity and necessary skill in the field that she/he chooses, so that all are equal. Sustainable development within the profession has to be the norm.

We applaud policies being drafted on the tenure of councillors in order to promote change and representivity. This is meant to discourage the tendency to be rigid about change, and to recognise that any person's productivity has a ceiling. One can influence development and change only so much and no further. The contribution made by LSSA councillors can be diminished by their overstaying their welcome.

The Legal Services Charter is a document intended to influence transformation and we recognise that a greater number of LSSA members have been very willing to address issues of development and transformation. 2006 has seen many Nadel members engaging and participating in the process within the LSSA. We are looking forward to a time when we can say there is harmony within the profession and there are no longer imbalances that need to be addressed.

The meeting with the Chief Justice and participation in the Chief Justice's Heads of Courts meeting are some indications of the LSSA's 'humbleness' to engage on behalf of all practitioners. The opening of the KwaZulu-Natal Law Society's Durban law library and conference centre is to be applauded as a milestone in providing and facilitating access to information for the profession in KwaZulu-Natal (see 2007 (Jan/Feb) DR 16).



We are mindful of every constituent's dedication to do the best for the profession, and this is highly appreciated.

Nadel is concerned that Safety and Security Seta (SASSETA) funding is controlled by the LSSA only, and raises the point that the courses offered by the LSSA's Legal Education and Development department may be good, but that they fail to address the imbalances that SASSETA funding is meant to address. This cannot be achieved unless all constituents design independent programmes in accordance with their members' specific skills development demands.

We hope that 2007 takes processes forward, and appreciate the preparedness and dedication of all the LSSA councillors to their call. This is very crucial so that when globalisation processes face us, we have formed a chain and can stand together as one. This makes the harmonisation of the attorneys' profession a matter of urgency to avoid an emergency. Indications from the Southern African Development Community (SADC) region are that our neighbours themselves have an interest in our country. The entire profession must work together to equip all practitioners so that they are fully developed and up to par as far as skills and capacity are concerned.

At the end of 2006 it was encouraging to attend the annual general meetings of all the law societies as well as that of the BLA, and to listen to very encouraging, intelligent and stimulating discussion on the challenges raised by the Legal Services Charter, while anticipating the pending Legal Practice Bill. Attorneys debated the issues and the LSSA cannot fail but to take these up. It must adopt strategies to advance the interests of all attorneys.

Nosidima Ndlovu,

President, National Association of Democratic Lawyers, February 2006 to date



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

Councillor	Constituency	Meeting attended
David Macdonald	Co-Chairperson	05, 07, 09, 11, 02
Nosidima Ndlovu (P)	Co-Chairperson	05, 07, 09, 11, 02
Koos Alberts	CLS	05, 07, 09, 11, 02
Raj Badal (P)	KZNLS	05, 07
Dave Bennett	LSNP	05, 07, 09, 11
Ronald Bobroff (P)	LSNP	05, 07, 09, 02
William Booth	CLS	11, 02
CP Fourie	LSNP	05, 07, 09, 11, 02
David Gush	KZNLS	05, 07, 09, 11, 02
Peter Horn (P)	CLS	05, 07, 09, 11, 02
Mohamed Husain	Nadel	07
Mohamed Husain (P)	LSNP	11, 02
Jan Jansen van Rensburg	LSNP	05, 07, 09, 11, 02
Babalwa Mantame	BLA	05, 07, 09, 02
Clayton Manxiwa	BLA	05, 07, 09, 11, 02
Vincent Matsepe (P)	LSFS	11, 02
Sithembele Mgxaji (P)	CLS	05, 07, 09
Saloshna Moodley	Nadel	05, 07, 09, 11, 02
Henry Msimang (P)	BLA	07, 09, 11
Mvuseni Edward Ngubane	BLA	05, 07, 02
Silas Nkanunu	Nadel	05, 07, 09, 11
Wilfred Phalatsi (P)	LSFS	07, 09
Thoba Poyo-Dlwati	BLA	05, 07, 11, 02
Vincent Saldanha	Nadel	05, 07, 09, 02
Praveen Sham (P)	KZNLS	11, 02
Jan Stemmett	LSNP	05, 07, 09, 11, 02
Henri van Rooyen	LSFS	05, 07, 09, 11, 02

Key:

05	May 2006
07	July 2006
09	September 2006
11	November 2006
02	February 2007
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
(P)	President

HUMAN RESOURCES

Staff numbers

LSSA consolidated staff numbers	
LSSA	22
De Rebus	05
LEAD (CLE)	14
LEAD (PLT)	31
Total	72

Staff appointments

Period: 01/01/2006 - 31/12/2006	
Title	Commence-ment date
Human Resources Manager	01/03/2006
Marketing Assistant	01/04/2006
Marketing Manager	01/04/2006
CEO	01/07/2006
Sub-editor	01/08/2006
School Administrator	01/10/2006
Professional Affairs Manager	01/11/2006
Communication Manager	01/12/2006
Seminar Coordinator	01/12/2006

New posts:

LSSA (1) – Human Resources Manager

LEAD (PLT) (1) – Marketing Assistant

Existing positions (replacements):

LSSA (3)
 – CEO
 – Professional Affairs Manager (ex director)
 – Communication Manager (ex director)

De Rebus (1) – Sub-editor

LEAD (PLT) (3)
 – Marketing Manager
 – School Administrator
 – Seminar Coordinator

Resignations

Period: 01/01/2006 - 31/12/2006	
Title	Effective date
Marketing Manager	28/02/2006
Director: Communications	30/08/2006
Manager: Seminars (retirement)	30/09/2006
Director: Professional Affairs (retirement)	31/12/2006

Training

The LSSA strives to ensure that individuals develop to their full potential, with the emphasis placed on the training of those previously disadvantaged. Significant expenditure has been incurred during the year by LEAD, with less spending by the LSSA and De Rebus.

Training expenditure 2006	Atten-dance: staff numbers	Total work-days	Total cost: R
Computer skills	3	6	16 048
Events management	11	2	18 397
Project management	13	1	13 000
Project management	13	1	13 000
Creative	26	2	4 305
Part-time – technical	3		14 627
Miscellaneous			440
Total			66 817

Occupational injuries (COID) – Reportable

	Number	Nature
2006	0	
2005	1	serious



Staff turnover

Staff turnover at LEAD is under control. First preference is given to internal staff members whenever a position is advertised. Three advertised positions were filled internally: Professional Affairs Manager; Communication Manager and Seminar Coordinator.

Salary benchmarking

A salary benchmarking exercise has been carried out by independent remuneration research company, Remchannel. The Remchannel approach is to look at the key performance areas (KPA's) of each position and then to match them as closely as possible to the relevant responsibility within the market and with the job title. This eliminated the vast discrepancies that would have resulted if job titles only were used, and is therefore as realistic as possible.

All salaries were compared to the market in terms of KPA's and the LSSA agreed that its salaries should be at 50% of the benchmark salaries (P2). This is consistent with the approach adopted by the South African Institute of Chartered Accountants.

The benchmark proposal was presented to the Remuneration Committee (Remco), Finance Committee (Fincom) and Management Committee (Manco). It is to be approved finally by the Council.

Performance management system

The LSSA's performance management system was changed and implemented successfully to address performance of staff. Directors and managers had a clear understanding of how to measure and rate staff performance.

Directors and managers conducted performance appraisals strictly for the measurement of performance. The Human Resources Manager utilised the performance appraisals to recommend salary increases based on the appraisals. Directors were later sent a separate overall rating scorecard and asked to rate the overall performance of staff members.

Directors were informed about the allocation only once approval was obtained. This ensured objectivity in the completion of appraisals.

Only two staff members were considered for once-off merit bonuses.

Employment equity

During 2006 the LSSA's Employment Equity Committee (EEC) focused on the LSSA's employment equity policy and plan.

In order to draft a proper employment equity (EE) plan, the EEC had to carry out a survey among all staff on EE barriers and other perceptions. This was done with the assistance of an external, independent facilitator, who analysed the survey data and identified the EE barriers. The main barriers identified were the performance management system, inadequate promotions and incentives policies and no active drive to encourage the employment of disabled people.

The EEC then went on to draft an EE plan which includes affirmative action measures to overcome the identified EE barriers. The measures have been delegated to the relevant person at the LSSA and they include progress measures and due dates.

The plan also includes numerical goals designated by occupational category and occupational level. Here the EEC will work closely with the Human Resources Manager to ensure that promotions and vacancies at the LSSA are handled in terms of the numerical goals plan.

The EEC agreed that the LSSA's EE policy, which was originally drafted in 1999, should be updated to take into account subsequent legislative and policy developments. A new EE policy was drafted and the EEC resolved that the LSSA Council and Manco should be made aware of the policy to ensure commitment at all levels and to promote an enabling environment for the implementation of the policy.

The EEC continues to meet on a monthly basis. The members, who represent the LSSA staff at all levels, are:

Raj Daya, (CEO)
Tony Pillay, (EE Officer)
Poppy Ngesi, (Human Resources Manager)
Barbara Whittle, Chairman until October 2006
John Mofokeng, Chairman from November 2006 to date

Nosipo Matanzima, Vice-Chairman
Lazarus Dlamini, (LSSA)
Seth Hermanus, (LSSA)
Zukiswa Kala, (LEAD)
Glenrose Manzini, (LEAD)
Selina Ramano, (LEAD)
Jaco van Niekerk, (LSSA)

Poppy Ngesi

LSSA Human Resources Manager

REPORTS BY STANDING AND *AD HOC* COMMITTEES

CRIMINAL PROCEDURE

The LSSA's Committee on Criminal Procedure discussed various issues at its meeting. It appears that the independent advocates are a problem in all provinces. Over a period of years the profession has spoken about this issue, but it has never been dealt with. In terms of certain High Court judgments, the briefing of advocates by attorneys has been dealt with, and here one can highlight the Natal High Court judgment in *Society of Advocates of Natal v De Freitas and Another* (Natal Law Society intervening) 1997 (4) SA 1134 (N), where it is specifically held that advocates need to be briefed by attorneys before they can appear in any matter. Independent advocates are in the main *not* briefed by attorneys, except for instances in which the Legal Aid Board has instructed them.

It is also of concern that independent advocates receive instructions and money direct from the public. The public is not protected if funds disappear as independent advocates do not appear to have any form of insurance cover along the lines of the cover that attorneys enjoy from the Attorneys Fidelity Fund.

There does not appear to be an effective organisation controlling independent advocates. Until the Legal Practice Bill becomes law and various formal structures are set up that could incorporate independent advocates, it is felt that the LSSA should step in on behalf of the public to deal with this problem. Judges and magistrates could also ensure that independent advocates are *properly* briefed before they appear in any court.

Unfortunately, the public has a total misconception of the roles of attorneys and advocates, and what they do. Historically,

“ The public perception is that an advocate is some sort of ‘superior species’; this misconception must be addressed immediately. ”

attorneys did not appear in the High Court, but that has changed and the public needs to be informed that attorneys do have a right of appearance in the High Court, the Supreme Court of Appeal and the Constitutional Court. The public perception is that an advocate is some sort of ‘superior species’; this misconception must be addressed immediately.

Other issues that were discussed included the following:

- Members of the South African Police Service (SAPS) tend to arrest people without probable cause. The SAPS should look at other means of getting suspects to court rather than by arresting them. The LSSA needs to engage the SAPS to deal with this problem.
- Our criminal justice system is in a chaotic state because too many people are arrested for less serious offences (misdemeanours) and kept in custody. Many petty offences clog up our criminal justice system with the result that the SAPS and the prosecuting authorities cannot deal effectively with the more serious crimes. Admission of guilt fines and summonses to court could be used to try to unclog the criminal justice system.

The Committee on Criminal Procedure suggests that attorneys become involved more effectively with committees that deal with case-flow management from the lower courts to our higher courts. Our representatives in the various jurisdictions need to become involved and need to get themselves elected to these committees so that they can play a meaningful role in trying to solve the problems that beset our criminal justice system.

I am aware that it is difficult to get people together who are usually in court every day and have to travel long distances to attend committee meetings. I would like to thank the members of my committee for their contribution in 2006.

William Booth

Chairman, Committee on Criminal Procedure

DECEASED ESTATES, TRUSTS AND PLANNING

The Committee on Deceased Estates, Trusts and Planning has been revitalised and the following meetings were held:

6 June 2006

The Chairman attended a meeting of the Fiduciary Forum at which the Association of Trust Companies (ATC) and the South African Institute of Chartered Accountants (SAICA) were represented.

8 June 2006

A committee meeting was held.

27 June 2006

The committee met with the Chief Master of the High Court.

24 August 2006

A committee meeting was held.

7 September 2006

The committee met again with the Chief Master of the High Court. T Cronjé from the South African Law Reform Commission and Andrew Stansfield from the Attorneys Fidelity Fund were also present.

19 September 2006

Kums Makume represented the committee at the Master's Office Iekgotla held at Polokwane in Limpopo.

13 November 2006

The Chairman and the Professional Affairs Director, Arno Botha, met with the Executive of the ATC.

12 December 2006

The Chairman and the Professional Affairs Manager, Nosipo Matanzima, 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. SAICA and the Society of Trust and Estate Practitioners (STEP) were also represented at the meeting.

The core issues for discussion at the various meetings related to the following:



- The proposed establishment of the South African Fiduciary Association.
- Accreditation to wind up deceased estates.
- Legal issues relating to a Shared Services Office.
- Functionality of the Master's offices.
 - Measures to be taken to improve the efficiency of service levels at the Master's offices.
 - Service level agreements.
- Amendments to the Intestate Succession Act 81 of 1987.
- Refinements to the Administration of Estates Act 66 of 1965.
- Amendments to the Trust Property Control Act 57 of 1988.
- Trusts: The policy of the Master's Office on the appointment of trustees in *inter-vivos* trusts.
- Registration of trusts and noting of amendments to trust deeds.
- South African Law Reform Commission: Administration of estates.

Many of the Master's offices throughout the country are in a sorry state and are neither operating effectively nor efficiently. Attorneys are suffering immense frustration and it is becoming uneconomical for them to attend to the winding up of smaller estates. An inefficient Master's Office is certainly not in the public interest. We have obtained a dedicated complaints e-mail address at the Offices of the Chief Master and this address has been furnished to all attorneys. This has served a useful purpose. We have also obtained a directive from the Chief Master in regard to the appointment of executors and/or master's representatives in deceased estates, and this has also been circulated to all the statutory law societies for dispatch to attorneys.

The fiduciary services industry is at the dawn of a new era with the proposed

establishment of the South African Fiduciary Association. Proposals for the establishment of a Shared Services Office are also currently being considered. The trust companies are ahead of us both in terms of strategic thinking and planning. Attorneys have to be empowered in terms of skills training and technology in order to compete effectively in the market place. In my view a basic deceased estates software package to facilitate the reporting of estates and drawing simple liquidation and distribution accounts should be provided to every attorney. This would revolutionise the way in which attorneys administer estates and would enable attorneys to capture market share. It should be possible to investigate the development costs of the software, time frames and funding for such a project. If we are not proactive our market share will be at great risk in the future.

The committee was not in favour of attorneys becoming members of the proposed South African Fiduciary Association, but preferred rather to develop synergies with other roleplayers like the ATC, SAICA and STEP.

Amendments to the Intestate Succession Act and refinements to the Administration of Estates Act are crucial to meet the challenges that lie ahead. It is hoped that 2007 will be a more progressive year.

I wish to express my sincere appreciation to all the members of the committee for their assistance, commitment and guidance.

Hussan Goga

Chairman, Committee on Deceased Estates, Trusts and Planning

DE REBUS THE SA ATTORNEYS' JOURNAL

De Rebus celebrated its 50th anniversary as an attorneys' journal in September 2006 with the publication of a special supplement recording the journal's history and, through it, the history of the attorneys' profession since 1956. It would not be an overstatement to describe those 50 years, which include the democratisation of South Africa in the 1990s, as tumultuous. The supplement made good



The Chairman of *De Rebus*'s Editorial Committee, Johannesburg attorney Ed Southey, left, and the Chief Executive Officer of legal information solutions provider LexisNexis Butterworths, Billy Last, centre back, with the first recipients of the *De Rebus*/LexisNexis Bursary for Postgraduate Study, Johannesburg attorney Sylvia Lekhutlile, front, and Pretoria attorney Lekoa Lekoko after a luncheon in Pretoria at the end of November 2006. (See also 2006 (Nov) DR 12.)

reading and was well received by readers. We owe a special word of thanks to the editorial staff who compiled it in addition to their demanding usual duties. The supplement's cost was more than covered by advertisements, including several congratulatory ones from attorneys' firms.

An exciting innovation in 2006 was the launch, to coincide with the journal's 50th anniversary, of the *De Rebus*/LexisNexis Bursary for Postgraduate Study. Two bursaries are awarded to practising attorneys from a previously disadvantaged background for studies at a South African university of their choice. They are funded by LexisNexis Butterworths as part of its contribution towards the development and transformation of the legal profession.

The quality of *De Rebus* received external professional recognition once again in 2006. The journal won a highly commended certificate from the Magazine Publishers Association of South Africa in the highly contested 'Other Specialist Titles' category of the 2006 Sappi Pica Awards. Altogether *De Rebus* has received four full Pica awards and four highly commended certificates since 1998 – a creditable total of eight awards in nine years, five of which have been won in the last five years.

An important measure of *De Rebus*'s popularity among the profession is that, during

“... a basic deceased estates software package to facilitate the reporting of estates and drawing simple liquidation and distribution accounts should be provided to every attorney”



the year under review, it once again received more contributions than it had space to publish, many of them of an excellent standard. This meant that the selection process was rigorous, which contributed to the high standards of the journal. Also contributing to those high standards were our regular columnists on the law reports, new legislation and specific aspects of practice. All of them maintained their standards and met demanding deadlines despite their own work pressures.

The LexisNexis Butterworths Prize for the Best Article in *De Rebus* by a Legal Practitioner in 2005 was awarded to Johannesburg attorney Alick Costa for his article 'He loves me not: And what was it worth?' which appeared in 2005 (Sept) *DR* 17.

In 2006 *De Rebus* introduced two new short-term columns – one a 'primer' on competition law, an important new area of practice for attorneys, and the other on town planning, a knowledge of which is an important part of the armoury on the well-rounded property lawyer. During 2006 we also ran a regular *Pro Bono* slot highlighting the profession's response to the increasing emphasis on lawyers' social responsibilities.

The lively 'Letters to the Editor' and 'Opinions' sections continued to receive a large number of contributions from practitioners – including black practitioners and candidate attorneys. Another focal point was the journal's comprehensive news coverage of professional affairs.

De Rebus's website – a full-text publication of each month's issue with a searchable archive of all issues from 1998 – remains popular, receiving many hits from countries in the rest of Africa and abroad.

Another measure of *De Rebus*'s popularity was that, in addition to its free circulation to the profession and all judges of the high courts, the Supreme Court of Appeal and the Constitutional Court, there were, by December 2006, 1 210 paid subscriptions. These included a bulk subscription of 372 by the Law Society of Namibia for its members. Including complimentary copies, monthly circulation reached more than 23 000 copies by the end of the year, making *De Rebus* by far the largest circulation legal journal in Southern Africa.

Advertising income showed a dramatic improvement, with net advertising sales for the year exceeding R3,4-million, some R1,1-million ahead of budget. This was in no small measure due to increased recruitment advertising by overseas firms and the popularity of the 'Yellow pages' classified advertising supplement.

Printing costs were kept in check by continuing efforts to limit the size of the journal as much as possible and by the continued use of computer-to-plate (CTP) technology in the production of the journal. Printing costs for the year were in the order of R2,6-million, a saving of R237 000 on budget.

The substantial cost of distributing *De Rebus* free of charge to all practising and candidate attorneys was paid, as before, by the Attorneys Fidelity Fund. By the December issue, there were nearly 21 400 members of the profession in all on the Law Society of South Africa's (LSSA's) database (16 637 practitioners and 4 701 candidate attorneys).

Notwithstanding additional advertising income and savings on printing costs, the budgeted cost to the Fidelity Fund will again increase in 2007, as a result of the increasing numbers of members of the profession. In 2007 it will cost an estimated R198,01 to produce, package and post 11 copies of *De Rebus* (including the monthly classified advertising supplement and two admission supplements) to each member of the profession. Although this in fact represents a small decrease on the budgeted cost of R203,60 per free 'subscription' in 2006, the total cost to the Fidelity Fund in 2006 will nevertheless be more than R4,3-million.

The six members of the Editorial Committee (four full and two consultant members) once again made a very important contribution. They met eleven times during the year and read voluminous bundles of documents before and between meetings, to evaluate in detail each and every outside contribution, and to help edit those accepted for publication. In addition they stood solidly behind the editorial staff, providing much-valued support.

We welcome the increased involvement in Editorial Committee meetings and the journal's activities by the LSSA's new Chief Executive Officer, Raj Daya. We are particularly

encouraged by his declared intention to write a CEO's column for the journal, a proposal which the Editorial Committee approved soon after he took office in July 2006.

We wish to pay special tribute to the editorial staff for their professionalism, loyalty and dedication to *De Rebus* and the LSSA during 2006. We were sad at the end of November to lose the talents of Barbara Whittle, the Deputy Editor, who left the staff after nearly 20 years' valuable service. She was especially responsible for the development of the comprehensive professional news service to which I have referred above. Fortunately this is not a final farewell, as she will continue to provide a regular column on Law Society News in her new position as the LSSA's Communication Manager. However, her overall contribution to the journal will be sorely missed.

Ed Southey, *Chairman, Editorial Committee*
Philip van der Merwe, *Editor*

E-COMMERCE

The E-Commerce Committee made written submission on the Asymmetric Digital Subscriber Line (ADSL) regulations and those regulations have now been promulgated. We approached them from a consumer viewpoint and the regulations now do try to deal with most of the issues we raised. The Independent Communication Authority of South Africa (ICASA) has a capacity problem in implementing them as well as other matters, and we will try and contact information technology (IT) practitioners who may be able to offer some support (through the IT association mentioned further on in this report).

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

The committee submitted a formal response on behalf of LSSA to the draft Protection of Personal Privacy Bill and the Chairman attended a workshop in Durban. There were very few attorneys at that workshop which is disturbing as the Act which will be passed



will change behaviour and attitudes regarding privacy significantly, and the profession must be involved as much as possible. We have direct contact with the researcher and some of the drafters responsible for the draft Bill and the Chairman participated in some seminars with the researcher during the past year

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 been useful in providing access to relevant information.

We now have access to the Department of Justice's trial programmes on video courts (for juvenile witnesses, especially in sexual abuse cases) and online courts in Durban. The officials involved were surprised that we were interested and we will try to develop this contact in the months ahead.

The committee has been working with LEAD to improve e-competence, and it provides input on courses as well as suggestions for improvement of LEAD's Schools for Legal Practice's equipment and the use of IT generally.

The Chairman gave four e-confidence sessions on successive Saturdays in November at the University of Natal (Durban) (where he represented LEAD). Each session lasted some three hours and involved as much hands-on practice as possible for the participants. These sessions were given at the request of various Durban attorneys from the generation that missed out on computer use, and arose as a result of the seminar on data protection and personal privacy referred to below.

The sessions appeared to work well and were pitched at a level to help participants and not baffle them. The Director of the Durban School for Legal Practice sat in on the sessions and thought them so useful that she is arranging for various similar e-competence sessions to be included in LEAD's training sessions this year. (These will draw on the KwaZulu-Natal Law Society's skilled personnel as presenters since the Chairman will not have the time to do more sessions.)

Ideally, such sessions should be available to practitioners throughout the country as there is a very clear need for such assistance.

The Chairman is involved in a locally developed online service provision website that is being developed. If it works properly, it will allow attorneys to produce documents without having expensive software or particularly sophisticated hardware in their offices. It will be beneficial for small practices. The developers have had the usual development problems, but the concept of an online product is one of the so-called hot issues for 2007 internationally. There is and will be no obligation on the LSSA to approve or endorse the idea, nor are there any cost implications for the LSSA.

“ People are keen to be able to share information and ideas and also seem prepared to give us e-cases which can be made accessible through the E-Commerce Committee's site within the LSSA website. ”

The Chairman was involved in and was the lead presenter for workshops on data protection and the forthcoming personal privacy legislation which were delivered on behalf of LEAD in Durban, Johannesburg (twice), Port Elizabeth, East London, Cape Town and Bloemfontein. They were aimed at making colleagues aware of the heavy responsibilities we have and will have. We had a good response from our audiences.

Committee member Peppy Kekane chaired the recent inaugural workshop of the South African IT Practitioners Association and led some panel discussions. It appears to have been a successful workshop and we will be working with the principals to arrange an online forum on the LSSA website. People are keen to be able to share information and ideas and also seem prepared to give us e-cases which can be made accessible through the E-Commerce Committee's site within the LSSA website.

We have started to develop our own mini website within the main LSSA site at the instance of Tony Pillay, and are gathering relevant e-legislation, resources and links. The Chairman has contacted various local e-practitioners to ask them to send relevant case reports. He has also been able to gather some cases and background information.

In conjunction with LEAD and others, the committee was able to explore more effective and cheaper ways for LEAD and the profession as a whole to deliver information to attorneys: CDs, DVDs, SMS, RSS and voice-enabled websites, discussion groups, a Voice over Internet Protocol (VoIP) call centre and so on.

The committee assists and advises the LSSA's IT staff and any other committee whenever requested to do so.

The fire at the LSSA's offices in December 2006 and the loss of data that has resulted, indicate a need to improve data security and backup facilities. The LSSA must be protected and also leads in this area. The recent fire is a reminder to all of us about the need for suitable processes.

The committee is working with the LSSA and the other formal structures to implement a national shared database. This process has started and will gain momentum during 2007. There are also thoughts about a service bureau which would initially be an add-on to the Reform Audit Support System (RASS) project.

As part of the database sharing, we will investigate the possibility of extending the existing KwaZulu-Natal Law Society's electronic library service into a national one for all practitioners. This will be done in conjunction with all law societies as access to well-maintained legal resources is important for practitioners. The KwaZulu-Natal Law Society has set up 'thin' clients in its Durban library which draw all information from its Pietermaritzburg server. This concept would work in any other centre as information can be distributed easily.

The committee works with the business development and practice support managers at the law societies to spread ideas and provide assistance as widely as possible.

It provides reports or comments on behalf of LSSA when necessary, especially in respect of developing legislation such as the forthcoming privacy Act.

The committee engages government proactively and contributes to development of South Africa as a modern IT-based society,

What the committee would like to achieve

- The committee would like to encourage the participation of women practitioners.
- New practitioners often cannot afford so-called market standard programs such as Microsoft Office. We would like to see LEAD and the law societies more involved and providing CDs/flash drives/ portable media players with useful free software to all new practitioners and candidate attorneys.
- We would like to involve as many black attorneys as possible and help deal with their information and e-business needs. This process has been and will be helped by the involvement of Peppy Kekane who has good contacts within the Black Lawyers Association and generally.

Gavin McLachlan

Chairman, E-Commerce Committee

FAMILY LAW

Committee meetings

The first and only meeting of the Committee on Family Law was held on 27 September 2006.

Despite the fact that there was only one meeting, the committee has managed to accomplish a great deal throughout the year; and there is constant communication and feedback via e-mail.

Committee members attend the Miller Du Toit Family Law Conference in Cape Town in January each year 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 profession, government officials, social workers and psychologists who attend. The firm Miller

Du Toit, whose member Zenobia du Toit sits on this committee, must be acknowledged for its ongoing contribution to the development of this field of law.

The matters under discussion for the committee were, inter alia, the following:

- **Provincial family law committees:** each statutory law society is to ensure it has a functioning family law committee. At present only the Cape Law Society has a functioning committee and great credit must be given to that committee for the extraordinary amount of work it does to ensure that all legislation is commented on and that there are people to attend important parliamentary and other hearings.
- **Comments made on legislation:** The Children's Bill and Civil Union Bill.
- **Pro Bono:** The Cape Law Society is still the only one which has legislated for *pro bono* work and whose members report back regularly on the work they perform as a service to the community, which is often far more than that which they are obliged to do.

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, on Women's Day and during the 16 Days of Activism Against Violence Against Women and Children Campaign.

The committee agrees that there is a need to organise structurally and uniformly in all the provinces.

- **Issues affecting people obtaining divorces:**
 - Transfer duty on matrimonial property: There has finally been legislation promulgated in respect of divorces that exempts transfers of immovable property from the payment of transfer duty. This was achieved largely through the efforts of the Cape Law Society and kudos goes to them.
 - Division of pension benefits: This is an ongoing battle and the committee is working with an NGO which is preparing a class action so that those spouses who have an endorsement against a pension/provident fund will receive the same growth benefits



from the fund as the members. The committee will continue its efforts through the legislature as well.

- Rule 43 proceedings: This remains an ongoing issue and will be taken up once the Rules Board is constituted. The committee intends to meet with the Director-General of the Department of Justice to canvass various issues, including the failure to constitute the Rules Board which is hampering the course of justice and access to justice.
- Family advocates: The committee continues to communicate regularly with the Office of the Family Advocate to resolve the numerous problems which still occur.
- **Courts:** The committee remains dedicated to pursuing a separate specialised Family Court structure as recommended in numerous reports and studies both local and international.

Inter-country adoptions

The Hague Convention will come into effect only when the Children's Act comes into effect.

Inter-country placements of children, therefore, remain a problem. Although no legislation or regulations are currently in place, the Department of Social Development has authorised certain social workers and agencies to enter into adoption working agreements in terms of The Hague Protocol, but will not allow agencies that are comprised of lawyers and social workers to be so accredited (despite provision in the articles of The Hague for 'training and/or experience' to be the criteria for such accreditation).

Briefings by the Department of Social Development officials *inter alia* to the Social Development Portfolio Committee have inaccurately conveyed the current status of High Court sole guardianship and sole custody orders by incorrectly stating that a recent Witwatersrand Local Division decision has put an end to the 'improper' practice of approaching the High Court that has jurisdiction in such matters.

The correct position is that the decision in the matter of *De Gree* has been taken

on appeal in respect of both the law and the facts, and the judgment in the court *quo* has, therefore, been suspended pending final determination. (The Supreme Court of Appeal is expected to hear the matter in May 2007.)

Social workers who work with attorneys on adoption matters in the Children's Court have been berated for their association with lawyers. The attitude of the Department of Social Development remains that the inter-country placement of children is the sole prerogative of social workers.

The inability of lawyers to enter into working agreements is prejudicial to lawyers and to the children they are attempting to assist.

Further meetings should be held as soon as possible with the Department of Justice and the Department of Social Development to ensure cooperation between the departments and to determine the applicable criteria for accreditation of lawyers in order to protect the best interests of children properly.

Children's Act 38 of 2005

The Children's Act was signed by the President on 8 June 2005, but has still not come into operation. We are informed that it is expected to do so in April 2007.

Members of the committee have met with L.E.A.D. and are planning seminars for the profession around the country in September or October 2007.

Civil Union Act 17 of 2006

This legislation came into effect from 30 November 2006. There was and continues to be, a great deal of controversy surrounding this legislation. The committee made both written and oral submissions on behalf of the profession.

Maintenance Task Team

The Chairman of the committee represents 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.

Activities planned for the year ahead

- Comment on any relevant legislation. Place pressure on the legislature to promulgate the stalking legislation and to draft domestic partnership legislation. Both of these very important social issues 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 pension benefits, 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, Domestic Violence Courts, Divorce Courts and the lower courts.
- Endeavour to facilitate greater communication and cooperation with other LSSA committees and with the LSSA itself, and provide regular feedback through *De Rebus* and the statutory law societies.
- Participate in the annual LSSA projects.
- Establish links with international organisations. Justice Yvonne Mokgoro of the Constitutional Court is establishing a branch of the International Federation of Women Lawyers (FIDA) in South Africa. The Chairman has been appointed as the Vice-Chairman of the Women's Interest Group of the International Bar Association.

Succession and committee composition

Current composition: five statutory members, two BLA members and one Nadel member.

This is a specialised area of law. In addition to committee members, interested people should be allowed to participate to allow for transfer of skills. This will also lead to an increase in numbers. The committee will also work in cooperation with L.E.A.D. to transfer skills.

The committee should have at least four meetings per 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.

The committee has reaffirmed its support for the present Chairman, Susan Abro. Ms Abro will be available again in 2007 to serve on and chair the committee, subject to the approval of the LSSA Manco.

Susan Abro

Chairman, Committee on Family Law

GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

Composition of the GATS Committee

At the LSSA annual general meeting in March 2005, the Standing Committee on GATS was reconstituted by the LSSA Council with the following members:

Esmé du Plessis (Chairman), Iqbal Ganie, Mvusi Edward Ngubane, Nosidima Ndlovu and Silas Nkanunu. Peter Levenberg of the Johannesburg Bar, and representing the General Council of the Bar, 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 *Ad hoc* Committee on Foreign Qualifications comprised of the following members:

Emil Boshoff, Thinus Grobler, Chris Petty and LSSA Director of Legal Education and Development, Nic Swart.

In addition, both the Department of Trade and Industry (DTI) and the Department of Justice and Constitutional Development were represented at committee meetings.

Broad mandate

The committee was given the broad mandate to

- make a study of the General Agreement on Trade in Services (the GATS agreement) of the World Trade Organisation (WTO);
- determine and monitor the progress by the DTI in preparing for, in formulating a position in regard to, and in presenting such position in the course of the negotiations regarding GATS (insofar as it applies to legal services) in the context of the WTO negotiations;

- meet with representatives of the DTI and other government departments (such as the Department of Justice and Constitutional Development) and other stakeholders (such as the GCB), and to participate in the formulation of an official position in regard to legal services;
- study the requests for commitments 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 *Ad hoc* Committee on Foreign Qualifications, to consider requests from foreign governments and/or persons or societies for the recognition of foreign qualifications for purposes of exemption under the Attorneys Act 53 of 1979; and
- to report to the LSSA Council on these matters.

“...the Committee should focus on discussions and consultation with the Justice Department in defining the ideal and legally justifiable dispensation on access to legal practice in South Africa to be incorporated in the legal practice legislation”

The work programme for 2006

Substantial progress was made with the mandate during 2004 and 2005 (see *Annual Reports* for 2004 and 2005). A comprehensive document had been drafted by the committee, approved by the LSSA Council and submitted to the DTI to serve as a basis for the GATS negotiations at the WTO Ministerial Meeting in Hong Kong at the end of 2005. What remained to be finalised during 2006 was to take cognisance of the outcome of the deliberations at the 6th Ministerial Meeting of the WTO which took place in Hong Kong during December 2005; to inform the LSSA Council; to determine a further course of action and to submit a recommendation to the LSSA Council; and to monitor further developments and recommend further action.

This entailed the following:

- A meeting of the committee was held on 21 February 2006, when I reported on the Hong Kong meeting and approaches made by the Law Society of England and Wales and the American Bar Association regarding liberalisation of legal practice in South Africa.
- A report on the Hong Kong meeting was prepared for *De Rebus* in February 2006 (see 2006 (Mar) DR 14).
- I attended a briefing meeting with Kobus du Plooy of the DTI on 23 March 2006, when he discussed with me the outcome of the Hong Kong meeting, ie that GATS negotiations had not been concluded and would be continued. He also informed me of a plurilateral request received by the DTI at the end of February 2006, from Australia on behalf of nine countries which had formed the Friends of Legal Services group.
- I addressed the LSSA AGM in Cape Town during March 2006, and reported fully on the Hong Kong meeting of the WTO, and on the plurilateral request received from the nine countries constituting the Friends of Legal Services.
- A meeting of the committee took place on 12 May 2006.
- I was invited to attend a meeting of the LSSA Council on 27 July 2006 to report on the current status of negotiations and to prepare for the visit by the United Kingdom delegation to discuss liberalisation of access to legal practice.
- A delegation from the UK, led by the British Parliamentary Under-Secretary for Constitutional Affairs, Baroness Ashton of Upholland, requested a meeting with LSSA councillors and the GATS Committee in Cape Town on 13 August 2006. I attended the meeting with the LSSA Co-Chairpersons and a number of other designated representatives (see 2006 (Oct) DR 10).

The outcome of this meeting was an exchange of letters with the Under-Secretary; the most recent letter was received from her on 24 January 2007.

John Moorhouse, the CEO of the Attorneys Fidelity Fund and a member of the committee, Kobus du Plooy, a DTI representative on the committee, and Iqbal Ganie, the LSSA



representative on the International Bar Association (IBA) Council and a member of the committee, have been particularly active in acquiring and providing information in regard to the approach to and activities regarding GATS issues by other organisations and in other countries. This has enabled the committee to assess the various options on an informed basis.

The SADC Lawyers Association invited me to address its annual conference and AGM in November 2006 on GATS and its implications.

A request was received in December 2006 from the Department of Justice and Constitutional Development for information on the current statutory position in respect of practising attorneys in Swaziland and their access to legal practice in South Africa. I prepared a memorandum and this was submitted to the Justice Department in December 2006.

Conclusion

From the above it is evident that the committee has had a busy year. From the reports we received from the DTI and Justice Department, the cooperation of the LSSA with the government departments was viewed as constructive, positive and of great assistance in enabling Government to define and present its position on legal services in the context of the WTO/GATS negotiations.

I believe that, in 2007, the committee should focus on discussions and consultation with the Justice Department in defining the ideal and legally justifiable dispensation on access to legal practice in South Africa to be incorporated in the legal practice legislation. It is evident that there is much interest in this issue from the side of other countries, while the interests of South African practitioners, the South African public, and institutions such as the Attorneys Fidelity Fund, the statutory law societies and the law faculties/universities should be taken into account. It is important that a balanced dispensation be structured and implemented.

Esmé du Plessis

Chairman, Committee on GATS

HIGH COURT MATTERS

The Committee on High Court Matters continues to involve itself with all aspects of civil court practice in the higher courts. The committee is privileged to consist of practitioners with vast experience in the applicable fields and is rendering valuable assistance to the LSSA Council, the constituent members and to the profession as a whole.

The committee also continues to

- liaise with the judiciary through the LSSA Co-Chairpersons;
- liaise with the constituent members;
- attend to enquiries and complaints by constituent members and practising attorneys;
- consider and comment on proposed new applicable legislation and amendments to existing legislation, as well as rules of court and practice directives; and
- liaise with the Board for Sheriffs to endeavour to ensure a better standard of service.

The committee specifically involved itself in the debate to determine a simplified, flexible tariff structure for attorneys' fees. There can be little doubt that the current system of preparing lengthy and detailed bills of cost for taxation is cumbersome, complex and rigid and needs to be overhauled. Any new proposed tariff structure should be sufficiently dynamic to accommodate change and inflation easily. It should also promote access to justice by being simple in form and content. This should, inter alia, enable litigants to ascertain with some degree of certainty what cost they would be liable for at the conclusion of the litigation process. Vagueness, uncertainty, complexity and rigidity are characteristics to be avoided in a tariff.

Input from constituent members will be most welcome and is, in fact, essential. The committee appeals to constituent members to make their input on this important matter for due consideration.

CP Fourie

Chairman, Committee on High Court Matters

IMMIGRATION AND REFUGEE LAW

During the year under review the *Ad Hoc* Immigration and Refugee Law Committee had a particularly active year on many fronts. The committee met on an ad hoc basis when it was deemed necessary.

Firstly, on the media front, we have generated much publicity for the LSSA through our committee spokespersons being quoted in print on an ongoing basis in a broad spectrum of both local and international media on immigration and refugee law matters.

In addition, committee member Chris Watters has been interviewed on television on numerous occasions to comment on various issues falling within the ambit of the committee's operation. The comments have been broadcast on news broadcasts, the programme *Know Your Rights* and various others.

Radio broadcast media is, however, where the bulk of our success has been focused as a committee with our voice heard on a broad spectrum of radio programmes. I have been interviewed on an ongoing basis on Radio 702, Radio Sonder Grense and various other radio stations, both local and international, on issues that were topical from time to time.

The committee prepared input to the Parliamentary Portfolio Committee on Home Affairs on the Draft Immigration Bill when it was circulated for comment. In addition, when further comment was elicited by the Department of Home Affairs, the committee made further input to the Department.

Another area where the committee has made its mark has been through *De Rebus* by means of a monthly column on issues relating to immigration, nationality and refugee law matters of practical interest to attorneys. Articles have been published in *De Rebus*, the statutory law society newsletters and elsewhere.

Mr Watters has been writing a regular column in *Business Day* on immigration, nationality and refugee law affairs, and contributes *ad hoc* articles to various other media publications.



I have been a contributor for a period of more than five years to South Africa's human resource publication, *HR Future*, and write articles for various other local and overseas media publications on matters falling within the ambit of the committee's operation.

The reason for mentioning the media articles is not to put a feather in the cap of any individual, but rather to state that in every instance this is done under the banner of the LSSA, and it has done much to boost the image of the organised legal profession within this area of operation.

A further interesting development in the year under review was a seminar conducted under the umbrella of the LSSA's Legal Education and Development (LEAD) department and involving committee members, and which dealt with the Immigration Amendment Act and regulations which had come into force, as well as the proposed amendment Act which, at the time, was in the pipeline. The seminar was presented by Mr Watters and me, with guest speakers Rachelle Reyneke from the Head Office of the Department of Home Affairs, and Marianne Combrink from the Department of Trade and Industry who dealt with business permits.

One of the more frustrating elements of the year under review has been the inability to interface effectively with the Department of Home Affairs at management level. Numerous meetings were arranged with the Director-General, and provincial and regional managers of the department. Although the meetings had been scheduled well in advance, only one of the many that were scheduled actually took place. This has been a source of constant frustration for attorneys who are experiencing possibly the lowest levels of service delivery from a government department in many years. I do not wish to detract from the fact that there are sterling civil servants operating in the Department of Home Affairs who strive for levels of excellence, however, these small pockets of people are outnumbered by those who do not have similar goals. The problem appears to be one of human resource undercapacitation and lack of adequate training, with high levels of corruption within the department compounding the problems.

One of the matters being canvassed by our committee in the current year is that of the

inroads being made into the area of specialist legal practice of immigration law. 'Street agents' abound around Home Affairs offices, and the recent expose on various programmes, including *Special Assignment*, have created a good understanding of the ease with which fraudulent identity documents and passports can be obtained.

While regulated in the strict sense in the regulations, and enabled by the Immigration Act 43 of 1953, immigration practitioners are not being controlled in any way due to laxity on the part of the Department of Home Affairs. All of this has become a tremendous source of concern as we believe the legal profession is far better geared to deal with these matters than lay persons who write a one-hour examination without any prior qualifications, and are then registered as immigration practitioners. The committee will be looking into this aspect in the coming year, as we regard this inroad to be as serious as those inroads being made into the fields of MVA claims and conveyancing.

“ The committee will be looking into this aspect in the coming year, as we regard this inroad to be as serious as those inroads being made into the fields of MVA claims and conveyancing. ”

On more than one occasion our committee members have made offers to the Director-General to provide training for departmental officials, but this offer has never been taken up.

In the coming year attorneys face many challenges within the field of immigration and refugee law, and with the Immigration Amendment Bill having been passed recently and new immigration regulations in the pipeline, I believe that we have great challenges ahead.

The committee will continue to meet as and when necessary in order to pursue its aims and will strive to be a beacon of some hope to persuade attorneys that 'alles sal regkom'. We need to persevere, engage the Department wherever possible and try to resolve issues constructively.

I thank the LSSA Secretariat, particularly Arno Botha and Kris Devan, for all the logistical assistance that they have given us making it possible for us to operate effectively as a committee. The committee takes this opportunity to wish Arno well in his retirement.

I also wish to thank Messrs Watters, Mthembu, Kerfoot and Mnisi for their input and contributions, and for giving up their valuable time to assist with the activities of the committee.

Julian Pokroy

Chairman, Ad Hoc Committee on Immigration and Refugee Law

INTELLECTUAL PROPERTY

Composition of the committee

At the LSSA AGM in March 2005 the *Ad hoc* Committee on Intellectual Property was reconstituted by the LSSA Council and the following members were appointed:

Esmé du Plessis (Chairman), Dr Tim Burrell, Dr Owen Dean, Pumzile Majeke, Madoda Nxumalo, André van der Merwe and Yvonne Mbatha.

The committee members were informed by letter dated 14 April 2005, that the committee had been classified by Council as an *ad hoc* committee. It is understood that an *ad hoc* committee needs to convene meetings only when issues arise which need to be addressed. Furthermore, an *ad hoc* committee can perform its task by way of telephone conferences or by correspondence.

Broad mandate

In the past, the mandate of the committee was determined. In the absence of contrary directives from Council, the committee conducted its affairs also during 2006 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, with a view to assessing their effect 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 the Registry of Intellectual Property;
- 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

In line with the LSSA policy that budgetary constraints should be kept in mind, the committee decided to meet only if and when required. Information was exchanged and consultation took place by letter or telephone.

It was decided by the committee that it would be important to arrange a meeting with the Minister of Trade and Industry, Mandisi Mpahlwa, to introduce the committee to the Minister and to set up a channel of communication. Arno Botha, the LSSA Director of Professional Affairs, was requested to arrange such a meeting.

The committee noted that there were severe delays with the drafting and publication of legislative and regulatory amendments, and that interested parties were generally afforded very short periods for response. These were issues to be discussed with the new Minister.

To date the LSSA has not been able to secure a meeting. I have also attempted, at different times, to obtain a meeting date with the Minister, without success.

The Department of Trade and Industry has indicated that legislation in other areas (such as consumer protection, company law, close corporations, etc) has been prioritised for updating; the area of intellectual property (IP) law would be addressed late in 2006 or in 2007.

It is our understanding that a comprehensive IP amendment Bill has been prepared to provide for the protection of traditional knowledge. This Bill has not yet

been published or distributed to outside parties on an informal basis. Once this Bill becomes available, the committee will have to consider its implications, and recommend to the LSSA Council how to respond.

Monitoring of legislative developments

Only one IP amendment Bill, the Patents Amendment Bill, 2005, was processed through Parliament during 2005. The committee did submit comments when the Bill was initially published in 2004 (see *Annual Report* for 2004). When the Bill was finally passed by Parliament in November 2005, the problem issues pointed out in the comments had been addressed.

The Patents Amendment Act 20 of 2005 provides for patent applicants to disclose any use made for purposes of the invention as claimed, of indigenous biological or genetic resources, or traditional knowledge or use.

Future work

The Department of Trade and Industry has indicated that the following projects will be promoted, which would require the attention of the committee:

- Amendment of the Copyright Act 98 of 1978, the Trade Marks Act 194 of 1993 and the Designs Act 195 of 1993 to provide for the protection of traditional knowledge.
- Amendment of the Trade Marks Act to implement the Madrid Protocol for international trade mark applications.
- Amendment of the Designs Act to implement The Hague Agreement on International Registration of Designs.
- Amendment of the Patents Act to introduce the Doha model of compulsory licences for pharmaceutical products.

Once the above anticipated IP Bills become available for comment, the committee will submit recommendations to the LSSA Council. The work of the IP Committee will, therefore, continue to entail a monitoring and assessment function.

Esmé du Plessis

Chairman, Ad hoc Committee on Intellectual Property

INSOLVENCY AND LIQUIDATION

This report covers the activities of the *Ad Hoc* Committee on Insolvency and Liquidation Matters for the twelve months to December 2006.

Although the amount of work being undertaken by professionals in insolvency, liquidation and related matters remains low, there was some activity by the committee in interfacing with the Office of the Chief Master of the High Court.

The committee was invited to attend a *lekgotla* organised by the Office of the Chief Master in September 2006. The purpose of the meeting was to enable the committee to furnish feedback to the various Master's offices regarding service delivery and related issues.

I traveled to Polokwane to attend a most useful meeting at which there was interaction between myself and numerous attendees from the various offices of the Master of the High Court. One of the issues raised as a concern from their side was the fact that the personnel of the various Master's offices spend a considerable amount of time in assisting unskilled creditors (very often staff previously employed by a now insolvent or liquidated employer), or other creditors who are not aware of the processes or procedures to be followed. It was reported that in many cases it was simply not possible to refer the person making the enquiry to the liquidator or trustee concerned either because of logistical difficulties where the practitioner was not situated in the centre concerned, or because the explanations which were forthcoming from the practitioner were too technical in nature.

“ This was something which has been taken to the committee so that it can consider the establishment of panels of practitioners sufficiently skilled in insolvency matters to be able to advise these creditors as to their rights on a *pro bono* basis. ”

This was something which has been taken to the committee so that it can consider the establishment of panels of practitioners sufficiently skilled in insolvency matters to be able to advise these creditors as to their rights on a *pro bono* basis.

This issue has been referred to the Committee on *Pro Bono*, but is still something which this committee wishes to explore.

We have also interfaced with the Office of the Chief Master regarding the policy directive which the Chief Master intends issuing relating to matters such as minimum qualifications for practitioners, regulation of the profession, the basis on which appointments are to be made and so on.

It is instructive to note that one of the proposals contained in the policy directive is that all insolvency practitioners should be admitted attorneys, admitted advocates or chartered accountants. This is with a view to 'professionalising' the practice of insolvency and related matters.

We furnished written comment on the draft directive and also attended a meeting in Pretoria on 7 December 2006. Input was also received from committee members regarding concerns raised by black insolvency practitioners who are aggrieved that they receive an inappropriate share of the work available. I would like to thank, in particular, Mr Choonilall in this regard.

2007 will be a busy year in the insolvency profession. In this regard

- it is anticipated that the policy directive will be finalised and implemented;
- the international conference of the International Association of Restructuring, Insolvency and Bankruptcy Professionals (INSOL) – the umbrella body to which many insolvency organisations around the world belong – will be held in Cape Town in March 2007 (the committee will be involved through myself as technical co-chairperson of the conference);
- it is widely anticipated that the draft legislation relating to the consolidation of the insolvency provisions in the Companies Act 61 of 1973, Close Corporations Act 69 of 1984 and Insolvency Act 135 of 1998 will be launched in the parliamentary process; and



- it is also anticipated that the additional provisions in the Companies Act relating to business rescue will commence the parliamentary process.

My thanks, in conclusion, to those who have been of assistance to the committee, in particular to Arno Botha and Kris Devan. We look forward to working with Nosipo Matanzima during what will doubtlessly be interesting and challenging times.

Adam Harris

Chairman, Ad Hoc Committee on Insolvency and Liquidation Matters

JOINT COMMITTEE OF ATTORNEYS AND ACCOUNTANTS

The members of the Joint Committee of Attorneys and Accountants representing the LSSA are

Julian von Klemperer (Chairman)
Nico Coetzer
Clem Druker
Iqbal Ganie
Gavin John
Andries Landman
Nano Matlala

Ex officio members:

Arno Botha (LSSA)
Andrew Stansfield (Attorneys Fidelity Fund)
Frank Dorey (Cape Law Society)
Almé Stanton (Law Society of the Free State)
Johan van Staden (Law Society of Northern Provinces)
Dirk Vercuil (KwaZulu-Natal Law Society).

One meeting was held with the accountants on 7 August 2006.

The matters covered were the same matters which have occupied the committee for the last few years, in particular the question of the trust audit, the form of the audit report and developments in respect of trust audits, particularly the KwaZulu-Natal Law Society's Reform Audit Support System (RASS) pilot project which involves self-certification.

The meeting was a more constructive one following a fair amount of tension between

“ The need, however, to try to obtain standard bookkeeping rules at the four statutory provincial law societies is apparent to all, and is of particular importance to the accountants who are trying to get uniform accounting practice in respect of trust audits. ”

the accountants and the attorneys at the 2005 meeting. Many of the issues which had caused problems were discussed. The need, however, to try to obtain standard bookkeeping rules at the four statutory provincial law societies is apparent to all, and is of particular importance to the accountants who are trying to get uniform accounting practice in respect of trust audits.

The committee notes with regret the retirement of Arno Botha from the LSSA and, as Chairman, I wish to express the thanks of the committee, and myself especially, to him for all he has done to facilitate the workings of this committee. He will be greatly missed.

Julian von Klemperer

Chairman, Joint Committee of Attorneys and Accountants

LEGAL AID

The Committee on Legal Aid functioned far more efficiently during 2006 than was the case in 2005. In my report last year, I was somewhat critical of the fact that the committee was not able to meet at all, but I can say that there has been progress this year.

I am aware that it is difficult to get people together who are usually in court every day and have to travel long distances to attend committee meetings. I would thank the members of my committee for their contribution in 2006.

Committees cannot function without active, regular contributions from their members. A chairman of any committee must depend on information that comes in from the other

areas so that if submissions are to be made, for example, to the South African Police Service, the Director of Public Prosecutions or the Department of Justice, it can be done as a combined effort from all provinces.

During early 2006, the Committee on Legal Aid met with representatives of the Legal Aid Board (LAB), and its Legal Development Executive, Patrick Hundermark. The aim of the discussions was to look at the issue of more work being made available to attorneys in the private sector. We are all well aware that originally attorneys dealt with all legal aid work. This work was primarily of a criminal law nature. When the LAB's Justice Centres were created, a number of criminal law practitioners had to close their offices. We have been striving for more work to be allocated to judicare, hence our constant contact with the LAB.

The system in place at the moment is referred to as the accreditation system. There seems to have been great difficulty in the implementation of the system. The LAB has sent representatives to engage the profession in all the provinces, but there has been a lack of willingness by private practitioners to take on legal aid work. The contact between our committee and the LAB must ensure that if more legal aid work is allocated, that attorneys are encouraged to take on this work. The concern from the side of attorneys is, and always has been, the low fee structure; but the LAB has increased its tariff and is dealing with the issue of speedy payment. The latter needs to be addressed immediately and accounts must be paid at least within 30 days of submission. In the spirit of *pro bono*, attorneys must be encouraged to take on legal aid work, even if the fees are regarded as low.

The Chairman and the rest of the committee members will continue discussions with the LAB. I attended the LAB conference held at Gallagher Estate, Gauteng, where constructive discussions were held with the LAB.

Another area of concern is the lack of legal aid instructions to attorneys who are willing to take on work in the High Court. This needs to be addressed. Traditionally, many more attorneys were being instructed to do legal aid work. The situation at present is that legal aid work for High Court matters seems to go to



“ In the spirit of *pro bono*, attorneys must be encouraged to take on legal aid work, even if the fees are regarded as low. ”

the advocates' profession, both to the Bar and to independent advocates.

The issue of independent advocates has also been discussed with the LAB and our concerns regarding the independent advocates' organisation have been made very clear to the LAB.

William Booth

Chairman, Committee on Legal Aid

LEGAL EDUCATION AND DEVELOPMENT

The Legal Education and Development (L.E.A.D) division continued with its training and development activities for the profession at both pre and post admission level.

Location

L.E.A.D 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

It appears that there has been a substantial saving on the 2006 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: L.E.A.D has made a significant input into complying with the LSSA's Employment Equity Plan. The committee believes that staff is committed and equipped to render a high standard of service to the profession.

L.E.A.D staff in Pretoria: Anthony Mathimbe, Dudu Sibanyoni, Diane Angelopulo, Gail Mason, Glenrose Manzini, Imtiaz Mohammed, John Makumo, Lolita Pieterse, Maria Mokwape, Martha Mokweba, Nic Swart, Ogilvie Ramoshaba, Ria Mahlangu, Selina Ramano, Tasha Roestoff, William Khunou, Scebile Mokano, Hlophe Mofokeng, Beverley Chueu, Portia Kadi, Nosipo Matanzima (promoted to LSSA Professional Affairs Manager), Amanda Kibido and Lillian Jacobs.

Bloemfontein: Willem Spangenberg and Marietjie van der Westhuizen.

Cape Town*: Gail Kemp, Melanie Boltman, Ian Yuill and Estelle Pieters.

Durban*: Mohini Murugasen, Nadira Sewnarain and two vacant positions.

East London: Bongzi Nkohl, Sue Donovan, Sina Mbutuma and Thandi Ncukuna.

Johannesburg: Nohlanga Motaung, Lynda Lawlor (resigned), Titus Mbatha, Connie Malinga Louisa Madikoe and Roeline Foescher (from 2 October 2006).

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

Pretoria: Yvonne Sinclair, Maggie Ballakistan and Zuki Kala.

Potchefstroom*: Andrew Morathi and Mampou Maarohanye.

Port Elizabeth*: Vaneetha Dhanjee (from July 2006), Anita Strydom and Raj Daya (until 30 June 2006).

LSSA-Unisa Distance Learning School: Simla Budhu and Parma Govender.

* Coordinators at these centres are appointed by universities.

General developments in 2006

Commercial law training:

51 attorneys received training in commercial law at courses in Pretoria and Cape Town by Irish and South African lawyers. The Safety and Security Seta (SASSETA) and the Law Society of Ireland both provided a grant of R250 000.

Training for legal bookkeepers and office administrators:

60 persons from attorneys', sheriffs' and paralegal offices completed training in bookkeeping and office administration in Pretoria. The SASSETA sponsored the training.

Assessment for entry:

A task team was appointed to investigate the implementation of the LSSA Council's approval of a new assessment system for entry to the profession. Assessment by principals is the first stage, to be tested on a pilot basis.

Legal education task team and the LLB:

In March, the LSSA Council appointed a four-member task team to consider various matters. The task team met with stakeholders such as the SASSETA and Legal Aid Board (LAB). The task team reached consensus with the General Council of the Bar and the Association of University Legal Aid Institutions (AULAI), and then consulted with the South African Law Deans Association. A joint statement was issued in October 2006.

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 SASSETA, which approved a budget of R7-million.

Tax courses:

Two new certificate courses were launched in cooperation with the University of KwaZulu-Natal.

Cross-border trade conference:

71 persons attended the conference at the Reserve Bank Conference Centre in Pretoria on 27 November 2006. The conference will be followed by in-depth workshops in 2007.

Introductory training in judicial skills:

60 attorneys attended three courses of five days each at Midrand, Durban and East London. New material was developed and handed to Deputy Chief Justice Dikgang Moseneke. Eight judges and two regional magistrates provided the training, which was rated as extremely successful.

Sponsorship of seminars:

Two of L.E.A.D's seminars were sponsored by external organisations.



Mandatory practice management training:

The amendments to the Act were approved by Parliament and now await signature by the President.

Staff situation:

The matter of staff remuneration received the attention of the LSSA's Management Committee (Manco) and Remuneration Committee (Remco).

Learnerships:

The SASSETA has approved the 'two-year articles' learnership.

LSSA-Unisa Distance Learning School:

83 persons attended the second programme. This is more than had been anticipated.

Potchefstroom School for Legal Practice:

This school continued under the auspices of the LSSA in cooperation with the University of North-West law faculty. 29 persons attended; this is more than had been anticipated.

International Client Counselling Competition:

Due to cost considerations L.E.A.D withdrew from the international competition. Instead, the SADC competition was launched. Unfortunately, due to a lack of response from other SADC countries, the competition did not continue as planned.

Training provided to the LAB:

Extensive training was offered in criminal law practice to legal staff of the LAB. 251 persons attended. The training was rated as extremely successful. Other projects are being undertaken.

Pro bono work:

A programme was offered by the School for Legal Practice in Pretoria in conjunction with law firms in Mamelodi. It is envisaged that all schools will commence with this programme in 2007/2008.

New insolvency course:

An agreement was renewed to offer an

insolvency certificate with the University of Pretoria from 2006.

Education and development activities

Conveyancing and notarial training:

853 persons participated in 2006.

Seminars:

There was a substantial increase in attendance and 2 453 persons attended seminars in 2006.

The following topics were offered:

Mediation
Firearm legislation
Conveyancing
Labour law
Pensions law
Constitutional litigation
Heads of arguments
Evidence
Immigration law
Information security
Debt collection
High Court litigation
Practising for profit and fraud prevention
Criminal law
One-hour updates

L.E.A.D experienced certain constraints due to its efforts not to duplicate the activities of other LSSA constituent members.

A major success again this year was the High Court training where practitioners received intensive drafting training. This was followed a week later with trial advocacy training offered by the Black Lawyers Association.

Course for candidate attorneys (25 days):

This course was offered at 10 centres throughout the country. With the exception of one, all the programmes are offered on university campuses. The course is offered part-time, full-time and, at one centre, after hours. 1 248 candidate attorneys attended in 2006.

Instructors and presenters involved in L.E.A.D activities:

More than 500 practitioners and other experts were involved in the activities of L.E.A.D in 2006. Instructors receive guidance from L.E.A.D in training and assessment techniques, and are 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 at Bloemfontein, Cape Town, Durban, East London, Johannesburg, Polokwane, Pretoria, Potchefstroom and Port Elizabeth. The administration of the LSSA-Unisa Distance Learning School is also based in Pretoria.

All learners attending the School sign a declaration of professional responsibility before they complete the programme.

The School ran a new competency-based assessment process which is aimed at testing the individual's ability to perform tasks, demonstrate skills or achieve outcomes.

1 021 persons attended the day and night programmes in 2006.

Statistical information:

L.E.A.D collected statistics 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 LLBs, and what the trends are with regard to admission and practice.

Placement information:

L.E.A.D maintains a database of persons who are searching for articles or for placement as professional assistants. Currently there are 336 names on the database.

Selling of documentation:

L.E.A.D has sold a substantial number of its publications in print and electronic format in 2006. These publications included *PLT manuals*, conveyancing and notarial manuals, *Consulta* and *e-PLT* (CD-ROM).

Distance education programmes:

L.E.A.D offered diploma and certificate programmes in conjunction with the University of South Africa, the University of KwaZulu-Natal and the University of North-West in labour law, corporate law, administration of estates, tax and insolvency. 168 persons enrolled for these programmes in 2006. An insolvency certificate course was offered for the first time in conjunction with the University of Pretoria from 2006.

“ There was a substantial increase in attendance and 2 453 persons attended seminars in 2006. ”



Course for conveyancing assistants:

L.E.A.D presented successful courses in Pretoria and Johannesburg which were attended by 57 people.

Summary of attendance of all L.E.A.D core programmes	2006	2005
School for Legal Practice	1 021	950
Conveyancing and notarial training	853	830
25-day courses for candidate attorneys	1 248	1 120
Diplomas and certificates (distance)	168	83
Practice management training	132	121
Seminars	2 453	2 060
Trade seminar (71), Legal Aid Board courses (251), Conveyancing assistants and bookkeepers (60); Judicial skills (60) and Commercial law (51)	493	183
Total	6 368	5 347

Emil Boshoff

*Chairman, Standing Committee
on Legal Education*

Nic Swart

Director, L.E.A.D



LIQUOR MATTERS

It is a matter of grave concern to the *Ad Hoc* Committee on Liquor Matters that the administration of the national and provincial (where in existence) liquor legislation leaves much to be desired.

Delays are the order of the day. In the Western Cape for instance, new applications can take 11 months to be considered. In the Free State, a moratorium has been placed on the consideration of certain applications. As the Free State does not have its own Liquor Act as yet, it is not clear what authority the provincial MEC has to suspend the operation of national legislation.

In the Eastern Cape regular meetings of the provincial liquor board are not held. Where the board has sat and approved applications, written conditional approval is not being provided. In the few instances where these approvals have been provided, there are invariably errors in the certificate.

The provinces where provincial liquor Acts are in place are experiencing legal challenges to some of the provisions in the legislation as the drafting of these leaves much to be desired.

Although in several provinces the attorneys have offered their services to the provincial liquor boards to assist them in drafting the liquor legislation, such offers have not been responded to, save for the Western Cape where Solly Epstein is actively involved in the drafting of the province's new Act.

A further common complaint is that applications are not considered in the order in which they have been lodged. At best this is due to administrative incompetence and at worst favouritism.

“ This raises the question whether the focus of certain liquor boards has shifted from dealing with applications expeditiously and timeously to providing consultancy services. ”

The attitude of some of the personnel at certain liquor boards leaves attorneys with the distinct impression that the public is being dissuaded from making use of attorneys' services. This raises the question whether the focus of certain liquor boards has shifted from dealing with applications expeditiously and timeously to providing consultancy services.

For obvious reasons, any delay in the process of considering an application holds great financial exposure for the applicants and it is clear that the interest of the public is not being served.

If this report sounds like a cry of despair, it most certainly is.

I believe that the attorneys' profession has lost the respected position it held at the liquor boards where, in the past, our input had been welcomed and respected. It is common knowledge that the quality of applications has deteriorated as the high standard demanded by the previous National Liquor Board and honed by competition among attorneys is no longer present.

The liquor boards seem to have lost sight of the fact that any Liquor Act is an Act which falls to be interpreted and administered by legally trained people and the only way I see to get this message across will be for us to market our services actively to the public and convince the liquor boards that we have a valuable contribution to make.

I wish to thank the members of my committee who have kept me informed of developments, or the lack thereof, in their various reports.

Barry Cloete

Chairman, Ad Hoc Committee on Liquor Matters

MVA

The developments that took place after March 2006 in the MVA Committee's field occurred at a slow pace, and did not necessitate the committee's meeting in the early months of the year.

The members of the committee, however, kept the committee updated on whatever developments they would pick up on the Internet and in the media. For this my heartfelt thanks to Susan Abro, Monique Woods, Jacquie Sohn and Ronald Bobroff.

Of significance to note at this stage is the following:

We are still awaiting the Constitutional Court's judgment in the appeal matter of *Renier Albertus Hermanus Engelbrecht v Road Accident Fund and Minister of Transport* (Case no CCT 57/06).

This case is the appeal against the judgment of Allie J in *RAH Engelbrecht v RAF and Minister of Transport* (Case no 3701/03 (C)). The court was not persuaded that reg 2(1)(c) of the Road Accident Fund Act 56 of 1996 was unconstitutional and unjustifiable, nor that it constituted a limitation of the right to access to the courts.

In the meantime it is worthwhile for attorneys to take note of further developments regarding the interpretation of reg 2(1)(c) on the submission of an affidavit within 14 days of the accident to the police by the claimant. In the *Feerus* case (Case no 9219/03 (W)), Satchwell J stated that there is no indication that the affidavit should be one deposed to by the claimant himself or herself.

Rabie J in the *KM Blankenfell v Road Accident Fund* (Case no 5043/04 (W)), citing the *Feerus* judgment with approval, stated that 'the purpose to the regulation is to place the police and by implication the defendant, in possession of all the necessary facts concerning the incident as soon as possible in order to minimise the opportunity for fraud and to enable the defendant to investigate the incident while the evidence is still fresh and available'.

In casu the statements that were held to satisfy the requirements of reg 2(1)(c) were statements by the police officers who were at the scene of the accident immediately after the accident had taken place. See also *Strauss v Road Accident Fund* 2006 (1) SA 70 (T) and *Road Accident Fund v Smith* 2007 (1) SA 172 (SCA) in this regard.



On 23 August 2006 the Public Service Select Committee had a meeting where board members of the Road Accident Fund (RAF) were present. The restructuring of the RAF, the combating of corruption and payments to beneficiaries were to be discussed. Going through the minutes of this meeting one realises how ill-informed some board members are about the issues that are plaguing the RAF.

On 8 September 2006, GN1315 of 2006 was published which deals with 'the strategy for the restructuring of the RAF as compulsory social insurance in relation to the comprehensive social security system'. Some of the observations made in this document are far-reaching, for example, the notion that unlicensed drivers or drivers with a certain number of demerits points in the proposed amendment to the Administrative Adjudication of Road Traffic Offences Act, will be excluded from benefits. A person could, therefore, be punished for a traffic offence committed years ago and far from the place of the accident.

Draft regulations to the Road Accident Fund Act 56 of 1996 were gazetted for comment on 15 December 2006 in GN1830 of 2006.

The committee convened a meeting as a matter of urgency to discuss the profession's response, as comments had to be submitted by 31 January 2007. It was decided at this meeting that senior council should be briefed to prepare an opinion on the areas for possible constitutional challenge to enable the profession to be prepared for a constitutional challenge when the time comes.

We also requested Jacqui Sohn – a tireless and dedicated committee member – to prepare a comment for the LSSA. She drafted an extensive comment which was submitted timeously. Our thanks to Ms Sohn and Mr Bobroff who assisted her. The comment is available on request from the LSSA's Professional Affairs Manager.

At the time of writing this report several issues are ongoing – *aluta continua*.

My thanks to the great team on the committee and to Raj Daya and his staff at the LSSA office who were willing to help the committee at short notice. To the Co-

Chairpersons: Your presence at our meeting made us feel part of the LSSA, you are indeed a special team.

Vincent Matsepe

Chairman, MVA Committee

PRO BONO

This report provides an overview of the activities of the *Pro Bono* Committee during 2006. We were fortunate to have, more often than not, the full attendance of our members at our meetings scheduled every second month.

Progress in the provinces

All our statutory law societies have embraced the rendering of *pro bono* services in one form or another; with the Cape and Free State law societies having adopted an obligatory rule, the KwaZulu-Natal Law Society having formalised *pro bono* services in terms of its rules, and debating the obligatory aspect thereof, and the Law Society of the Northern Provinces implementing a voluntary *pro bono* programme with no rules at this stage. There is a desperate need for the practical implementation of *pro bono* to be facilitated, managed and coordinated nationally and provincially. To this end, our committee resolved to request all the statutory law societies to employ a *pro bono*

“ If we are serious about embracing our professional, moral and ethical obligation to facilitate access to justice for the poor and to contribute towards an efficient administration of justice, we as a profession need to invest energy and resources into the establishment of the necessary national and provincial capacity and infrastructure to ensure the successful facilitation and coordination of this initiative on a sustainable basis. ”

coordinator at provincial level. Our committee participated in a process to investigate the establishment of a national *pro bono* clearing house/*pro bono* institute with consultants who were appointed by the Cape Law Society. This process explored the most appropriate structure for the effective implementation of *pro bono* nationally and the establishment of a business plan for such an initiative.

In this regard we interacted with two funders and two NGOs. It was strongly recommended that the profession take responsibility for the funding of the national and provincial clearing houses, with the NGOs expressing the view that the funding be directed to the NGO community rather than the profession. This comment might be motivated by self-interest, and sustainable funding must be secured. The statutory law societies are, therefore, encouraged to employ *pro bono* coordinators at provincial level to give practical effect to the facilitation of *pro bono* services to the poor:

If we are serious about embracing our professional, moral and ethical obligation to facilitate access to justice for the poor and to contribute towards an efficient administration of justice, we as a profession need to invest energy and resources into the establishment of the necessary national and provincial capacity and infrastructure to ensure the successful facilitation and coordination of this initiative on a sustainable basis.

The concept of a national clearing house/institute for *pro bono* services

The model put forward by the consultants is a lean one, aimed to function optimally and sustainably. In essence there would be a national body to perform a range of services relating to *pro bono*, and provincial representatives to coordinate the mechanics of providing *pro bono* services at each of the statutory law societies. *Inter alia*, the national body would

- represent the profession nationally and internationally;
- raise the profile of *pro bono* work in South Africa and abroad;
- foster research on best practice in *pro bono* systems;
- investigate income streams for the institute; and
- develop policies and programmes.



The provincial coordinators would engage at a more hands-on level with the mechanics of *pro bono* provision by, inter alia,

- maintaining databases of attorneys and areas of *pro bono* interests and specialisation;
- matching clients to attorneys;
- assisting with capacity building in community structures;
- advocating recognised structures; and
- relaying data on provincial *pro bono* work to the national structure.

The establishment of a national institute is not only a professional but a proactive initiative, dealing with *pro bono* in a way that does the profession proud, and not waiting for Government to prescribe core values to us. Failing to act in this way would be an unfortunate indictment on the profession, reflecting an inability to organise ourselves efficiently.

Our proposal

In view of the urgency of the matter, we propose that the directorate be mandated to recommend the most appropriate model and structure to achieve a sustainable *pro bono* structure and to seek funding, and that this be considered by the LSSA Council. The directorate may benefit from the work done by the committee thus far:

Conclusion

It is an encouraging, inspirational and proud moment for us all that our *pro bono* initiative has been embraced nationally. This commitment must be taken to a new level of implementation in the year 2007, with the building of the appropriate coordinating structure which can bring coherence. For this we seek a mandate from the LSSA Council to proceed, and we require the collaboration and support of the directorate. We also need the commitment and support of local, national and international donor communities to enable this initiative to succeed as a world-class example of a profession embracing its ethical, moral and professional obligations of, among other things, facilitating access to justice for the poor.

Taswell Papier

Chairman, Pro Bono Committee.



OTHER COMMITTEES

OTHER STANDING AND AD HOC COMMITTEES

<i>Ad hoc</i> Alternative Dispute Resolution Committee
<i>Ad hoc</i> Committee on Company Matters
Competition Committee
<i>Ad hoc</i> Committee on Constitutional Affairs and Human Rights
<i>Ad hoc</i> Committee on Environmental Affairs
Ethics Committee
Examinations Committee
<i>Ad hoc</i> Committee on Exchange Control and Tax Matters
<i>Ad hoc</i> Financial Intelligence Centre Act Committee
Committee on Gender Equality
Committee on Labour Law
Committee on Magistrates' Courts
Committee on Property Law
Committee on Small Claims Courts
<i>Ad hoc</i> Contingency Fees Committee
Transformation Committee
<i>Ad hoc</i> Committee on Foreign Qualifications

GOVERNANCE COMMITTEES

Finance and Audit Committee
Management Committee
Communication Committee
Legal Provident Fund Committee
SASSETA Committee
Committee on Empowerment



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