



LAW SOCIETY
OF SOUTH AFRICA



PROFESSIONAL
AFFAIRS

DE REBUS

2022/2023

Annual Report

**Committed to Building a
BETTER Legal Profession for ALL**



LAW SOCIETY
OF SOUTH AFRICA



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ANNUAL REPORT
April 2022 to March 2023

***Committed to Building a BETTER
Legal Profession for ALL***

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The background of the slide is an abstract composition of overlapping, semi-transparent blue triangles and polygons. These shapes create a complex, crystalline pattern that resembles a low-poly mesh or a stylized, faceted surface. The colors range from very light, almost white blues to deeper, more saturated blues, giving the background a sense of depth and movement. The overall effect is modern and professional, typical of corporate or academic presentation design.

MISSION, AIMS AND OBJECTIVES

The Law Society of South Africa

The Law Society of South Africa (LSSA) has adopted the Governance Risk and Compliance (GRC) model of the OCEG (a non-profit think tank) Framework that invented principled performance and GRC. This links the LSSA governance charter under King IV and the combined risk assurance model of King IV.

The model seeks to integrate governance, strategy, performance management, risk management, compliance management, internal audit, information and communication technology, and other departments in a value chain that adds to a connected organisation that is resilient, agile working in an ethical and common culture that adds value to the legal profession and to the broader society. This is under the direction of the House of Constituents (HoC).

The HoC is the apex body of the LSSA and ensures compliance with the LSSA's constitution.

Principled performance consists of the following building blocks:

- **Principled purpose**

The purpose via mission, vision, and values of the LSSA guide everything that the organisation does.

- **Principled people**

Leadership via the LSSA's HoC, the employees and extended organisation (expert committee members, instructors, constituent members) are comprised of principled people who have strong character, and who consistently direct their energies toward a principled purpose.

LSSA MISSION:

To represent the attorneys' profession, safeguard the rule of law via efficient and fair administration of justice.

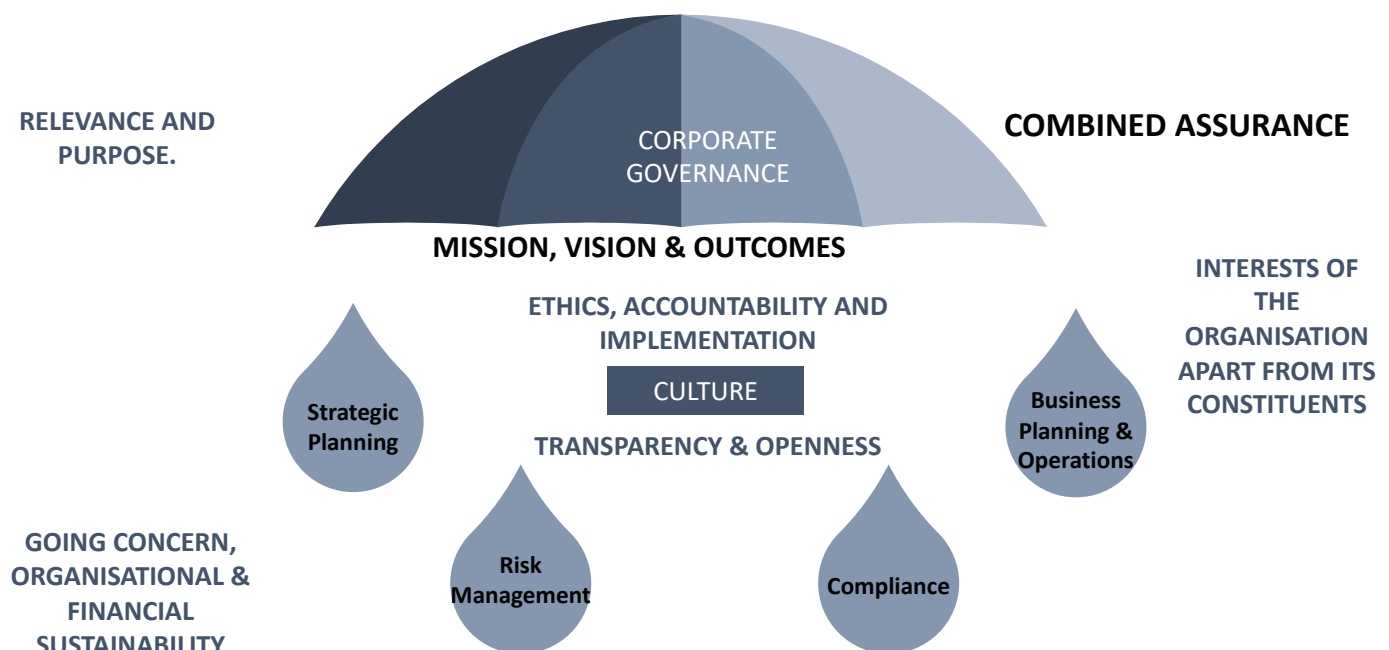
LSSA VISION:

To empower attorneys to provide excellent legal services to the community in an ethical, professional, considerate, and competent manner.

- **Principled pathway**

The LSSA has moved to a lateral structure comprising of teams where all employees are respected and make input to break down silos and leverage common capabilities in every key system that is geared to a common purpose of adding value to all organisational objectives including governance, strategic management, performance management, risk management, compliance management and audit management systems. This must be supported by HoC leadership, committee members, constituents etcetera, in our common purpose to serve the profession and our social contract with communities.

LSSA CORPORATE GOVERNANCE FRAMEWORK



Law Society of South Africa (LSSA) integrated reporting logic



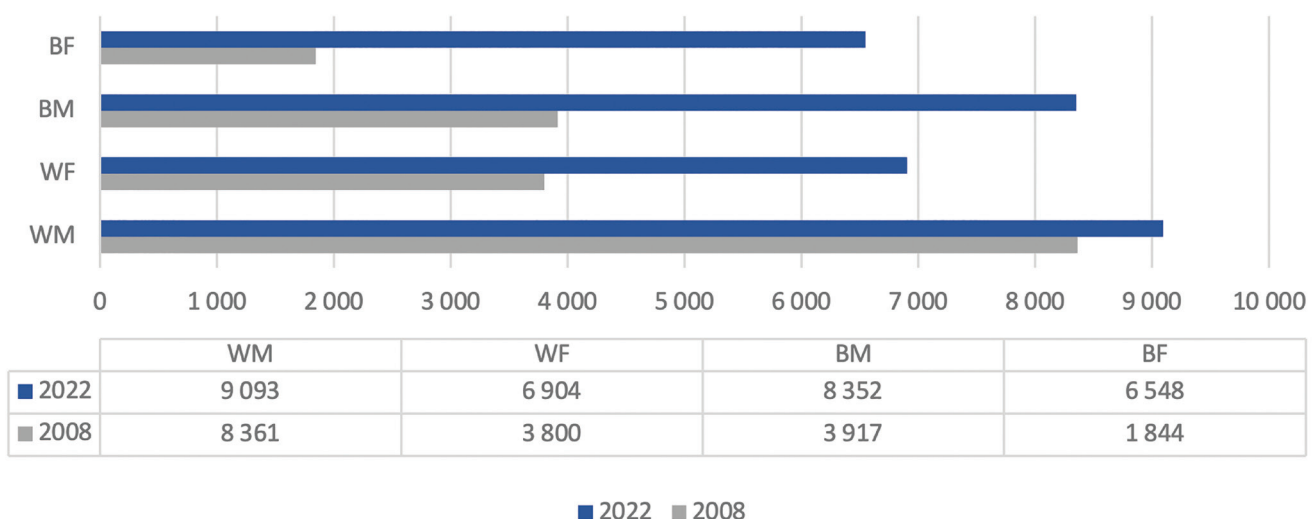
AN OVERVIEW OF THE ATTORNEYS' PROFESSION

Statistics of the legal profession

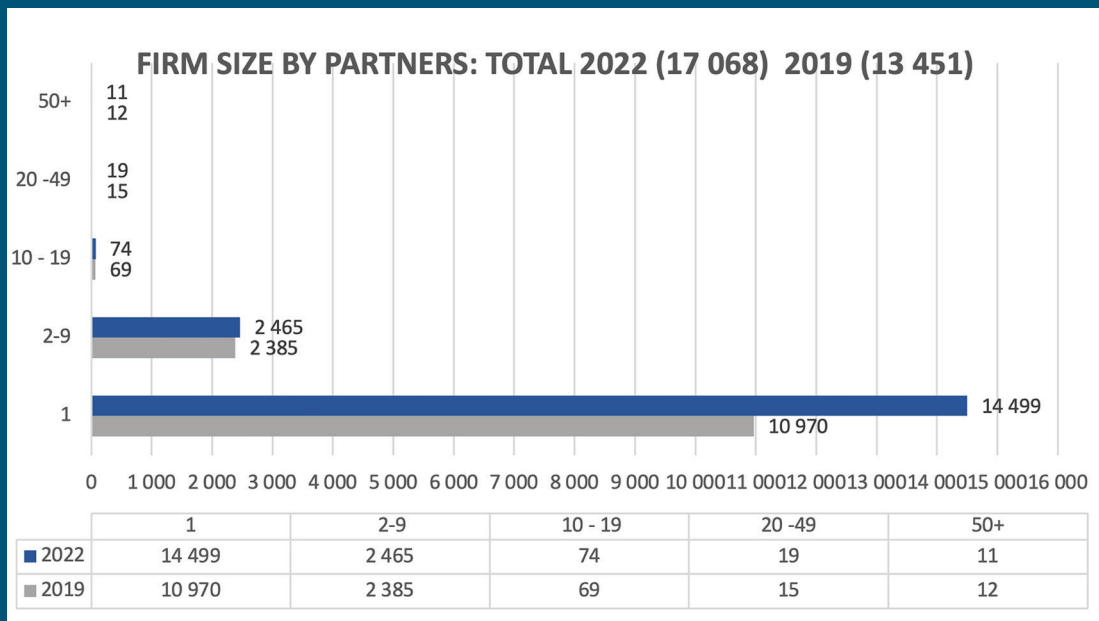
The LSSA continuously monitors the statistics of the profession, including demographics.

The current report indicates the upward curve of female practitioners on our journey for gender equity, which is more than just numbers. It talks about substantive issues like work allocation, time for family and equal opportunities, et cetera, which are addressed in the LSSA Women's Task Team report. The impact of COVID-19 and the economic distress is visible in the increase in the number of sole practitioners as compared to the past two years.

Attorneys 2022 (30 897) vs 2008 (17 922)



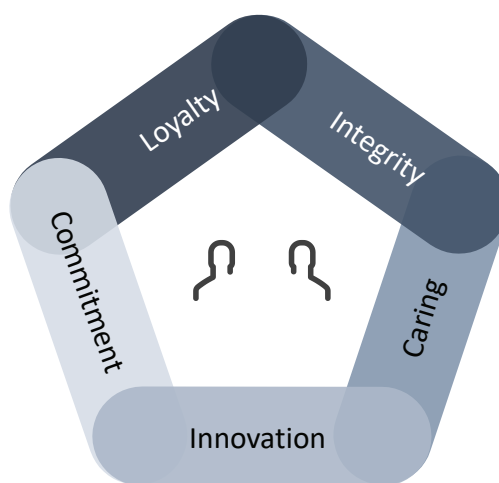
Black includes Coloured and Indian. Historically some of the provincial law societies used black for this group of data.



LSSA CORPORATE VALUES

Working collaboratively with employees, partners, members, suppliers, and clients to solve problems and achieve goals.

Dedicated to the success of our objectives, constituents, partners, employees, stakeholders and communities.



That makes a difference.

Exhibit honesty and integrity at all times.

Maintain respectful relations with members, clients, partners, suppliers, employees and communities.



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REPORT BY THE PRESIDENT

CHANGE AND THE SUSTAINABILITY OF OUR PROFESSION

For the year under review, many firms were still recovering from the impact of COVID. The economic impact was severe, and many firms closed, impacting their lives, staff, and extended families.

The lessons learned during COVID must be kept, including the use of technology that is changing the face of the profession like so many other industries. We are in a constantly changing world, which requires firms to be *resilient and agile*. These are not mere fads or meaningless words, the firms that survived and those that prospered may not have used these words, but they lived them.

We are not yet out of the woods. Indications for 2023 continue to hold headwinds that *will* impact all practitioners.

The major economies are facing an economic slump, which will impact our country, including inflation, and adversely affect practitioners. Myriad factors contribute to uncertain economic conditions that significantly restrict growth and opportunity and ultimately impact fees. The continuing threat of cyberattacks and cyber theft has found the legal profession in South Africa soft targets with ever-increasing regulatory demands and compliance costs, eroding firms' ability to focus on practice. Many practitioners are in a continuous crisis response mode, fight or flight.

The LSSA President and Vice-Presidents are a formidable team of female practitioners who have been championing the profession's transformation, which includes more than just demographics. A key objective of the President's subcommittee is gender and youth as a strategic intervention linked to transformation.

STRATEGY

The new strategy for the LSSA was approved, noting that the strategy is a living document that must be continuously reviewed and adjusted, given the ongoing changes affecting the profession, the country, and socio-economic changes, with climate changes impacting our country and the world. Financial sustainability was central to the strategy, and the two documents were combined into one document to guide all implementation.

The high-level strategy of the LSSA is included in the annual report.

With legal education as a focal point, all sections support the Education,

VISION: To ensure the rule of law and the legal system benefits all citizens in South Africa in a free and just society through innovative, professional and responsive service to attorneys and the community.

MISSION: To empower attorneys to provide excellent legal services to the community in an ethical, professional, competent, and caring manner

Outcome/achievement of objectives: linked to Vision and Mission

Measured by ethical conduct, professional and competent practitioners and engaged candidate legal practitioners, acting in the interests of clients and society in pursuit of the Rule of Law and its broader objectives of an independent Judiciary and profession. The transformation and development of sustainable practices of all legal practitioners.



Mabaeng Denise Lenyai
President of the Law Society of South Africa

Training, Development and enhancement and maintenance of Professional Standards, Ethics and Competence of legal practitioners, including actions encouraging compliance with rules and regulations. This fundamental objective informs all activities of the LSSA via ethical and principled Corporate governance under the direction of the LSSA House of Constituents.

LEGAL PRACTITIONERS FIDELITY FUND (LPFF)

In South Africa, we are fortunate to have the LPFF and its professional indemnity insurance company, the Legal Practitioners Indemnity Insurance Fund (LPIIF). The profession established these companies, and we must zealously ensure that they remain sustainable as they reduce the costs of practice. The increased costs, claims and the economic impact of COVID-19 have affected their reserves, which are essential for sustainability (including compliance with legislation affecting insurance companies) and their ability to pay claims. When the LSSA engages the profession in international fora, the profession in other countries has always admired these unique entities, which form a dual role of protecting the public and ensuring that the education and regulatory environment are financially assisted. This is over and above creating an environment that allows practitioners to practice in an environment knowing that their clients have fidelity cover.

LPFF ENGAGEMENT

The first item was the recent limit imposed on theft cover of R 5 million per claim (previously, there was no limit). The LSSA did submit that the cap should be R 25 million. The LPFF advised that the average claim was

between R 800k to R 1 million and that the Minister approved the cap in 2022, and this was under consideration since the Legal Practice Act 28 of 2014 came into effect. It was not an arbitrary amount but informed by the claim trends.

The cap was to ensure the fund's sustainability in the interest of both the public and the profession.

The LPFF advised that the 50% recovery for professional indemnity insurance will be collected during the next application for a Fidelity Fund Certificate in terms of the LPA. There will be an exemption for practitioners in practice for two years or less.

The LSSA implored the Fund not to apply this for the next application, as most practices are in financial distress. The engagement will continue, and the LPFF agreed to share their s 73(1) report to the Minister, which includes actuarial analysis of the Fund's sustainability.

The LSSA viewed this as a severe barrier to access, negatively impacting access to justice as many small practices will fold. Their lower rates assist many clients in having legal representation.

The LSSA noted that many sole practitioners could not afford the levies to the Legal Practice Council (LPC).

The LSSA received six bursaries from SASSETA for a Management Development Programme to upgrade business skills for those senior staff who did not study or had limited business skills. The market cost for the executive management training courses was R 50k for each participant.

The LPFF approved the LSSA's utilisation of unused funds from 2018. The LSSA utilised these funds to implement activities and programmes aligned with the funding agreement with the LPFF.

A series of joint webinars between the LSSA, LPFF and LPIIF were rolled out in 2022. This is expected to continue in 2023, whereby the LSSA will facilitate engagement with all legal practitioners.

The LPFF chair advised that the sustainability of the LPFF was a priority.

PROVINCIAL ASSOCIATIONS

The LSSA continued to engage provincial associations, many of which were inactive.

A programme of projects has been agreed upon, and commitment has been obtained that the Provincial Associations will work for the interest of their members, including engaging and working with circles and town associations where these are active.

The LSSA held provincial association meetings as follows:

1. **Free State Task Team – 31 January 2023**
2. **Mpumalanga Task Team – 2 February 2023**
3. **Polokwane LP Provincial Association – 7 February 2023**
4. **Kzn LP Provincial Association – 9 February 2023**
5. **Eastern Cape LP Association – 21 February 2023**

Meetings of the following Provinces will be held shortly once the Association agrees on the dates:

6. Northern Cape LP Provincial Association
7. Western Cape LP Provincial Association
8. North West Provincial Association
9. The Gauteng Attorneys Association is well-functioning and effectively represents members on the ground.

The funding model was established, and the proposal was a subscription of R 300 per member per annum with a split between the LSSA and the Provincial Association: 60 : 40

This will be subject to engagement with all stakeholders and associations.

The LSSA has now published its members benefit handbook and members are urged to download a copy from the LSSA website.

UNIVERSITY FOR LEGAL EDUCATION

The House of Constituents (HoC) agreed to continue investigations for establishing a Legal Education University, with a task team of six members established to drive this initiative.

DIVERSIFICATION OF INSTRUCTORS AND PRESENTERS

The LSSA aims to increase the representations of African instructors/trainers etcetera, and to contribute to the diverse and younger pool of practitioners, noting the gender and youth focus of the LSSA.

LSSA JUDICIAL SERVICE COMMISSION (JSC) POLICY

The LSSA has a rotational policy for the representatives of the attorneys' profession to serve on the JSC. However, upon reviewing the policies in the long term, it would like a situation where constituency-based appointments would no longer be necessary.

INTERNATIONAL ENGAGEMENT

This is an ongoing issue, with engagement between the Audit and Risk Committee (ARC) and the Sustainability Implementation Committee

The LSSA HoC recently approved travel to the Commonwealth Lawyers Association (CLA) of the President and the LSSA Council member on the CLA.

There will be further engagement as the LSSA has international obligations. Other obligations include -

- ❖ IBA BIC meeting – May 2023;
- ❖ Pan African Lawyers Union (PALU) annual meeting – Zambia, June 2023; and
- ❖ SADC Lawyers Association (SADC LA) annual general meeting – Angola September 2023.

During the year in review, the LSSA conducted a series of webinars in collaboration with the IBA, PALU and SADC LA. The LSSA and PALU agreed to establish a Rule of Law Trust.

The LSSA's representative on the SADC LA Council, Noxolo Maduba, was successfully nominated to the Executive Committee. Zincedile Tiya was appointed to the SADC LA Council.

BRICS LEGAL FORUM 2023

The HoC approved the LSSA as the host country for the BRICS Legal Forum. The BRICS countries meeting is scheduled for Johannesburg from 22 to 24 August 2023. The LSSA's plan is to have the Forum meeting immediately afterwards. This will be discussed with the other partner Bar Associations, including the additional countries that want to join and the concept is now known as BRICS+. This will need discussion with members countries of the BRICS Legal Forum.

FINANCIAL SUSTAINABILITY

The LSSA's Financial Sustainability Implementation Committee has start-



The first all-female Presidents Committee elected: from left, Joanne Anthony-Gooden (Vice-President), Mabaeng Lenyai (President), Eunice Masipa (Vice-President).

ed working on implementing the process approved by the LSSA to have a lifespan beyond the current projected three years. **The process is outlined in the annual report.**

APPOINTMENT OF CHIEF JUSTICE AND DEPUTY CHIEF JUSTICE

The LSSA welcomes the appointment of Justice Raymond Zondo to the Office of Chief Justice. It noted that the President of the Republic of South Africa augmented the process for the nomination of the Chief Justice by accepting nominations from the public and having an independent committee to shortlist the candidates. The LSSA supports this initiative in the interest of transparency.

The LSSA is also pleased with the appointment of Justice Mandisa Maya as Deputy Chief Justice. We are confident that she will serve the country with distinction.

LEGAL PROVIDENT FUND (LPF)

New nominations are required by the end of March 2023, and constituents have been requested to submit names. The annual report of the LPF is included in the annual report.

LEAD STUDY MATERIAL

The HoC agreed that the copyright of LEAD material must be vigorously protected, despite the increased number of requests by other training providers to utilise the material.

NEW RISK MANAGEMENT FRAMEWORK AND POLICY

The LSSA adopted a new policy and framework developed by the ARC via the Internal Audit Subcommittee (IAS) based on King IV and tailored it to the LSSA's unique structure and nature. It is agile for use within a changing environment with limited adjustment. The vital elements are the responsibilities and assurance provided by Management, who established the control environment and accountability to ensure adequate and comprehensive implementation, with the HoC accountable for Risk Management. Willie Scholtz, the independent risk specialist, presented the policy for approval at the HoC, highlighting critical issues. More details are included in the Risk Management section of the annual report.

GOVERNANCE

The LSSA held a special induction meeting for all HoC members. Professor

William Gumede presented a high-level view on corporate governance. He highlighted HoC members' responsibility to the ARC's recommendations. In addition, the LSSA has its own reason to exist (*raison d'être*) with its own objectives separate from its constituents. Members must be guided by this principle when considering issues at HoC.

The induction is part of the Risk framework included in the annual report.

ATTORNEYS' ADMISSION EXAMINATION

The LSSA noted the comment at the Legal Education Forum that the orals were too expensive and should be discontinued. The LSSA agreed to advocate retaining the orals. For example, the exam pass rate for November 2021 increased from 31% to 58% after considering orals. The orals did indicate that candidates understood the principles and that the question papers should be clear and straightforward, as the objective was to test the candidates' knowledge of practice.

The Legal Practice Council (LPC) had raised concerns about the money spent on education, yet the pass rate remained low. The LSSA and other stakeholders at the Legal Education Forum contended that the effectiveness of the admission exams had to be linked to the training, and there would need to be a review of the entire process. The two could not be equated, given that training had been reduced and moved to online due to budget constraints. Any legal education changes require research, investigation, modelling and to consider risks and unintended consequences and must be carefully considered to avoid creating confusion and impeding access to the profession.

The LSSA has called on the LPC to have a legal education colloquium to address these issues and ensure meaningful engagement.

ENGAGEMENT BETWEEN THE LSSA AND LPC EXECUTIVE COMMITTEES MEETING

A number of key items were discussed that were in the interest of the regulator, society (broader than public interest) and the profession. The nature and responsibilities of both bodies ensure that the relationship between the LSSA and the LPC is both complimentary and conflictual.

It is complimentary, especially concerning legal education, which benefits candidates. There is a need to invest money and effort to improve the services offered by the LSSA so that, at the end of the day, the services, benefits and outcomes created out of these services speak for themselves and leaves a legacy for young practitioners and society.

Some of the key items:

- ❖ Access to the profession:
 - Reduced ability to absorb graduates due to economic slowdown.
 - The number of graduates from universities cannot be absorbed.
- ❖ The LSSA is prepared to work with the LPC on the design of PPD (CPD) for the profession. As with all professions, CPD is essential to maintain and enhance the standards of practitioners in the interest of the public, the profession and assists the LPFF and the LPIIF to mitigate claims.

The LSSA management tabled a draft model to assist the LPC in engaging the Minister on implementing PPD.
- ❖ Debt collectors Bill:
 - The LSSA has previously discussed this with the LPC and remains concerned about several initiatives to regulate the profession via other legislation. This is not in the interest of the profession and the LPC. To deal with this, there should be greater focus jointly, including other stakeholders.
- ❖ The Legal Sector Code including challenges identified by the profession.
- ❖ Suspension and discipline:
 - The LSSA found it proper to advocate introducing a benchmarked diversion programme that considers restorative justice, rehabilitation, and alternate forms of sanction that consider all factors, including proportionality of the offence or negligence, as applied in other countries.
- ❖ Curatorship:
 - The delays in finalising the files at the LPC Provincial offices prejudiced members, who suffered when their files were under curatorship. The delays and the loss of income from work already performed seem to be a double sanction.

The LSSA has proposed that the LPC engages seasoned practitioners in practice to assist and deal efficiently and professionally with the files.

LEGAL SERVICES OMBUD

The LSSA participated in the launch of the 'Laypersons meetings' to serve on the LPC Appeals Committees (Centurion and Cape Town).

The LSSA Ethics Committee chairperson spoke on the ethical requirements of legal practitioners.

The LPC circulated an appeal for additional applications to serve as laypersons.

The LSSA also engaged with the Ombud's office on PPD (post professional development), and a significantly updated PPD proposal was submitted to the LPC following the engagement.

As of the report's date, the enabling legislation for the laypersons has not been effected. The LPC and the Ombud are frustrated that appeals cannot be heard, and practitioners continue to be prejudiced by this delay.

WOMEN'S TASK TEAM

The Women's Task Team has been reactivated with the aim of ensuring that female representation in the hierarchies of the legal profession reflects the profession's female demographics, competency, and economy. The President and Vice-Presidents are *ex-officio* members. The task team facilitated two webinars considering Women's Month in August to give female legal practitioners the floor to discuss issues pertinent to their practice in law. Following the webinars, the task team conducted a survey of challenges experienced by female practitioners. The task team is now considering the survey results and preparing a strategy based on the results.

LEGAL SERVICES LIBERALISATION UNDER THE AFCFTA

The African Continental Free Trade Area Agreement (AfCFTA) was signed

in 2015, and the government can enter into agreements with countries regarding goods and services. This year, negotiations are taking place concerning professional services, which include legal services.

The Department of Trade, Industry and Competition sent the LSSA its final offer, which contains significant implications for legal services in South Africa and goes beyond commitments in the World Trade Organisation to liberalise cross-border trade, consumption abroad and commercial presence/establishment.

Uncertainties, including risks, must be clarified before the LSSA can support the offer. The LSSA previously provided the Department with its position paper on cross-border practice rights, available on the LSSA's website. Engagements are now taking place between the Department, the LSSA and the LPC (as a regulatory body) to thrash out the issues.

The LSSA is aware of the serious consequences of the Constitutional Court decision in *Rafoneke and Another v Minister of Justice and Correctional Services and Others* 2022 (6) SA 27 (CC).

This impacts South Africa's obligations to Africa; however, foreign-qualified lawyers have a different route to practice in South Africa, via the Minister per s 24 (3).

SA LAW REFORM COMMISSION'S (SALRC) INVESTIGATION INTO LEGAL FEES, INCLUDING ACCESS TO JUSTICE

As previously reported, s 35 of the Legal Practice Act mandates the SALRC to conduct an investigation into legal fees, including access to justice, and make recommendations to the Minister of Justice and Correctional Services. During the course of its investigation, the SALRC published an Issue Paper and a Discussion Paper for comment. The LSSA made substantive submissions. During the period under review, the SALRC concluded its investigation and submitted its report and recommendations to the Minister. The report was published and, albeit not for comment, the LSSA thought it prudent to make submissions to the Minister. It noted, regretfully, that many of the key issues raised by the LSSA and other stakeholders were omitted in formulating the final report.

PVT SCHOOLS – CHANGE OF STATUS

The LSSA has been engaging university-based Schools. The LSSA is legally responsible for its Schools.

The previous constitutions were assumed to create a joint venture. However, following engagement with Sars and legal opinion, universities have been given notice that the Schools will revert to LSSA Schools, albeit based on university premises. (Some Schools were moved off university premises due to increased university general intake of students.) A new operational model was developed and implemented, with universities having legal staff and Law Deans on the schools' oversight committees (advisory committees).

STAFF

The LSSA has finalised and resolved several staff risks.

Contract Employees

Since 2012, due to the uncertainty of the LSSA continuing in the new dispensation of the LPA, all new appointments were contract staff (limited duration employees). Due to the length of time of these appointments as per legal advice, the LSSA faced potential unfair labour practice, including contravention of labour legislation if an employee is compensated under the legal threshold (currently being R 205 433.30 per year), labour law limits such a period to three months. In addition, some employees were on contract for over 12-years and many others for several years.

All contract employees were converted to permanent appointments, with a net adjustment of 2 % as approved by the LSSA's Audit and Risk Committee.

Acting appointments

The two senior appointments were confirmed per the labour law recom-

mentations that the acting appointments for approximately five years deemed the employees in the post.

- ❖ Senior Finance Manager
- ❖ Executive Director

Mandatory retirement age

The labour law opinion was that the LSSA's consistent implementation of mandatory retirement of 65 years was legal and can be formalised in a policy, with the new concept that you 'cannot turn back the clock'.

Salary increase

The LSSA ARC approved the financial impact of the staff salary adjustment.

The LSSA's Exco and the HOC approved the increase of 10%, given that staff received no increase for the past two years.

Succession planning for senior management

This matter is currently at the HR Committee. Exco acknowledged the request by the President's subcommittee that this was a severe risk and was a strategic consideration in terms of Corporate Governance. This is the responsibility of the HOC/Exco.

Management will recommend an interim continuity plan.

ADVOCACY AND LOBBYING

During the period under review, the LSSA made several submissions on behalf of the profession on issues that affect the profession, justice administration, and the rule of law. Listed below are some of the issues dealt with. Many of these submissions and engagements are dealt with comprehensively in the committees' reports elsewhere in this annual report.

- ❖ Submissions to the Minister of Justice on the Report by the SALRC (s 35 of the LPA).
- ❖ Submissions to the Department of Trade, Industry and Competition on the Legal Sector Code of Good Practice on Broad-Based Black Economic Empowerment.
- ❖ Comments on the suitability or otherwise of candidates shortlisted by the JSC for appointment to the Bench. The LSSA has established a task team to scrutinise the candidates' applications and make recommendations.
- ❖ Submissions to the JSC on the criteria and guidelines when considering candidates for judicial appointment.
- ❖ A submission to the Minister of Justice on guidelines for the appointment of acting judicial officers (judges and magistrates). The LSSA proposed a procedure that would be transparent and fair.
- ❖ Engagement with the Companies and Intellectual Property Commission on its migration to a new E-Registration platform and change in payment method. Following the LSSA's engagement with CIPC, the process was rolled back.
- ❖ Submissions relating to Road Accident Fund (RAF) issues, including the terms and conditions for lodgment of claims and the RAF medical tariff.
- ❖ Meetings with the Chief Master on the current state of affairs at the Masters' offices.
- ❖ Various submissions to the Rules Board for Courts of Law on the Magistrates' Courts and High Court Rules, including on proposed amendments to Uniform Rule 70(a)(4).
- ❖ Other submissions and engagements on draft legislation and policy documents, including on the SALRC's Discussion Paper on Medico-

Legal Claims, the Non-Profit Organisation Amendment Bill, the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill.

LITIGATION

- ❖ *Stellenbosch Law Clinic and Others v Bayport Securitisation and Others CC* (unreported case no CCT368/21, 11-2-2022) (Kollapen J, Madlanga J, Majiedt J, Mathopo J, Mhlantla J, Mlambo AJ, Theron J, Tshiqi J and Unterhalter AJ) – The LSSA was a respondent in this matter, dealing with the interpretation of certain provisions of the National Credit Act 34 of 2005. The High Court found in favour of Stellenbosch Law Clinic. The LSSA appealed the judgment and order and the Supreme Court of Appeal upheld the appeal. An application for leave to appeal to the Constitutional Court was dismissed.
- ❖ *National Council for and of Persons with Disabilities and Another v Minister of Transport and Others GJ* (unreported case no 039100/2022, 15-12-2022) (Tolmay J) – The LSSA is an applicant in this matter, which is a constitutional challenge to the medical tariffs promulgated by the Minister of Transport. On 15 December 2022 the Gauteng Division of the High Court granted an interim interdict pending the outcome of review proceedings to set aside the tariff and awarded a punitive cost order against the RAF. The RAF filed an application for leave to appeal against the interim interdict, which was dismissed with costs. The review application is expected to be heard in May 2023.
- ❖ *Fenyane v Ndengane (GJ)* (case no 22/19397, 1-3-2022) – the LSSA is a respondent in this matter, which deals with the appearance by a practicing attorney before a taxing master. The matter is pending.

MEMBER BENEFITS HANDBOOK

The LSSA has indicated the value-add and services to practitioners in the members' handbook, which can be downloaded from the LSSA website.

COMMONWEALTH LAWYERS ASSOCIATION [CLA] CONFERENCE - GOA, INDIA, MARCH 2023

The LSSA President and CLA Council member D Bekker attended the conference.

COMMONWEALTH BAR LEADER'S DECLARATION ON PRESERVING AND STRENGTHENING THE INDEPENDENCE OF THE JUDICIARY AND ON ENSURING THE INDEPENDENCE OF THE LEGAL PROFESSION

The declaration reemphasises the importance of the rule of law of a functioning independent Judiciary, adequately funded and comprised of appropriately appointed judges. In addition, an independent legal profession is critical to democracy, enabling government and public entities to be held accountable.

The experience of lawyers being pressurised and intimidated for representing unpopular clients and judges being controlled by meagre salaries and time-limited appointments, the Bar Leaders resolved unanimously to approve and adopt the declaration on preserving and strengthening the independence of the Judiciary and on securing the independence of the legal profession.

It reaffirms the importance of democracy and the protection of the rights of individuals, of independent legal representation and of being heard before an independent court."

The new CLA President, Peter Maynard from the Bahamas, is a friend of South Africa and the Continent and will engage the profession on how we work together in solidarity with the Continent.

The full declaration is available on the LSSA website

The background of the entire page is an abstract, low-poly geometric pattern in various shades of blue. The pattern consists of numerous overlapping triangles and polygons of different sizes, creating a complex, crystalline effect. The colors range from very light, almost white, to deep, saturated blues. The overall impression is one of modernity and structure.

THE HOUSE OF CONSTITUENTS

House of Constituents Member	Constituency	Meeting attended **
Jan Janse Van Rensburg	Former President- IC	25,
Mvuso Notyesi	Former Vice President - NADEL	25,
Mabaeng Denise Lenyai *	President (BLA)	05,04,25
Joanne Anthony-Gooden *	Vice President (IC)	25, 05,04,25
Eunice Masipa*	Vice President (NADEL)	25, 05,04,25
Clive Hendricks	BLA	05, 04, 25
Asanda Pakade *	BLA	25, 05,04,25
Monise Ponoane	BLA	25, 05, 04,25
Rabbi Mashabela	BLA	25, 05, 04,25
Matshego Ramagaga*	BLA	25,
Mojau Ramathe	BLA	25, ,25
Sibani Nzimande	BLA	05,04,25
Chwaro Eugene Kgotlagomang	BLA	25,05,04
Kabelo Seabi - Alternate	BLA	25, 05, 04
Diana Mabasa Replaced by C Hendricks	BLA	25
David Bekker*	IC- Free State	25, 05, 04
Ettienne Barnard*	IC-Western Cape	25, 05, 04
Tiaan Joubert	IC-Gauteng	25,05, 04
Elvira le Roux	IC-Limpopo	25,05, 04
Umesh Jivan	IC-Kwazulu Natal	25, 05, 04
Albert Jacobs	IC- NorthWest	04,25
Peter Horn	IC- Northern Cape	25
Dave Bennett	IC-Mpumalanga	05, 04
Elzaan van Wyk - Alternate	IC-Eastern Cape	05, 04
Paula de Azevedo - Alternate	IC- Eastern Cape	25,
Mfana Gwala*	NADEL	25, 05, 04, 25
Ugeshnee Naicker*	NADEL	05, 04,25
Krish Govender	NADEL	25, 05, 04,25
Carol Selepe	NADEL	25,05, 04,25
Sinawo Makangela	NADEL	25, 05,04,25
Magda le Roux	NADEL	
Simon Tshehla	NADEL	25, 05,04,25
Zincedile Tiya - alternate	NADEL	25

*Member of Executive Committee

Key:

25 – February

23 – March

29 – July

05 – August special meeting

04 – November special meeting

25 – November

BLA – Black Lawyers Association

IC – Independent Constituency

NADEL – National Association for Democratic Lawyers

**Meetings attended after the 2022 AGM to the 28 February 2023

1. Ms Danielle du Plessis is an alternate for the IC – Free State
2. Mr David Geard is an alternate for the IC – Eastern Cape
3. Ms Paula de Azevedo is an alternate Eastern Cape and Chairperson of the Provincial Association
4. Mr Martus De Wet is an alternate for IC – Free State
5. Mr Kabelo Seabi is an alternate for BLA
6. Mr Zincedile Tiya is an alternate for NADEL
7. Ms Elzaan van Wyk is an alternate for the IC – Northern Cape



ANNUAL FINANCIAL REPORT

Statement by the LSSA's Audit and Risk Committee (ARC) on the LSSA's financial statements prepared in accordance with IFRS for SMME's

The Audit Committee reports to the House of Constituents (HoC) and, between meetings to the Executive Committee (Exco), the following statement to the HoC for consideration for its approval of the Annual Financial Statement (AFS). The ARC and its subcommittees consider the LSSA Financial statements and the underlying management reports, accounting policies, Risk management and finance functions.

The following statement has been communicated to the HoC members prior to their approval of the Annual Report and the financial statements for the financial year ended 31 December 2022:

The AFS includes the Statement of Financial Position (Balance Sheet), Income Statement, Cash Flow Statement and Notes to the AFS.

The committee, therefore, reports on the AFS as follows:

- ❖ That the accounting records are appropriately maintained and reasonably reflect the operational records of the various divisions of the LSSA.
- ❖ That the Financial Statements are free of misstatements and reporting errors.
- ❖ That the Income Statement correctly reflects the net results of the LSSA
- ❖ That the Cash flow statement indicates the efficient use of cash resources.
- ❖ That the notes to the AFS provide the policy and basis of the AFS, including details of key disclosures.

The ARC, therefore, reports on the implementation of its key objectives, including the new Combined Risk Assurance Framework and Policy in terms of King IV, recommended by the ARC and approved by the HoC LSSA in 2022:

- ❖ Designated MNB (CA) SA as external auditors, reviewed their audit planning process, examined and discussed their reports, and in particular their independent Auditor's Report.
- ❖ Noted that the opinion of MNB (CA) SA on the Audited Financial Statements of the LSSA for the year ended 31 December 2022 is unqualified.
- ❖ Convened regularly with the LSSA Management on:
 - ✓ Financial Control, Management Reports; and
 - ✓ Risk Management and related controls to mitigate risk, Transaction Monitoring and Compliance.

- ❖ At all its meetings, discussed and reviewed the reports of the Internal Audit Subcommittee (IAS) and studied the documents that it deemed necessary to examine in the discharge of its duties.
- ❖ Received assurance from Management concerning the effectiveness of the internal control structure and internal administration.
- ❖ Reported regularly to the Executive Committee and the HoC on the various risks and action items to address risks.
- ❖ The approval of peer review internal audit as part of the new Combined Assurance.
- ❖ To note that the HoC, as the apex structure of the LSSA, is accountable for Risk Management, Strategy and Corporate Governance.
- ❖ Has engaged with the Governance structures on the financial sustainability risks in the medium term, including engagement with the committee established to implement the strategy to mitigate and reduce the financial sustainability risks since adopting the financial sustainability report at the AGM in April 2021.

And considering:

- ❖ The financial statements for the financial year ended 31 December 2022 and tabled to the LSSA AGM of 24 March 2023.
- ❖ That the preceding provides a reasonable basis for its statement and,

To the best of its knowledge and judgement:

- ❖ Confirms that the activities of the LSSA are appropriately conducted, especially oversight of risk management analysis, monitoring and action.
- ❖ Has substantiated that the operations of the LSSA have been appropriately conducted, and its accounting records have been properly recorded. Therefore, it confirms that the LSSA's operations have complied with the LSSA finance and other control policies and according to the LSSA's Corporate Governance requirements.
- ❖ Confirms that the AFS provide an accurate and fair view of the financial position of the LSSA as of 31 December 2022 and the results of its operations and its cash flows for the year then ended; in accordance with the LSSA financial policies and IFRS reporting standards.

AUDIT AND RISK COMMITTEE MEMBERS

A Trikamjee (Chairperson), A De Lange (Vice Chair), I Klynsmith (IAS Chair), M Ntanga, PC Mogale, R Barnard (SAICA Nominee) and W Scholtz (Independent Risk Expert).

A Trikamjee
Chairperson

LSSA COMBINED RISK ASSURANCE FRAMEWORK AND POLICY ADOPTED IN 2022

The LSSA Risk Management Policy (the 'Policy') incorporates a risk management framework that creates a platform for participation by all levels of management, including the House of Constituents. Once implemented, the policy will positively impact the ability of the LSSA to realise its strategic business goals. It will also contribute to achieving business goals and targets by LSSA business units and support functions.

The Policy regulates risk governance and management in the LSSA and has the following primary objectives:

- ❖ To proactively identify business continuity threats, business delivery failures, and financial misappropriation, including fraud and corruption.
- ❖ Ensure effective risk identification, mitigation, monitoring, and reporting through a common and transparent framework for risk management.
- ❖ For prioritising risks and directly linking assurance providers to identified risks.
- ❖ To Increase risk awareness across all business units in the LSSA.
- ❖ Improve the integrity of internal and external reporting.

The risk-based combined assurance approach will:

- ❖ Provide the HoC with adequate and effective control over all LSSA business activities through a coordinated multi-level assurance system

consisting of internal and external assurance providers and corporate oversight mechanisms.

- ❖ Place a spotlight on high-impact business areas that, if they should fail, will lead to business failure or reputational damage to the LSSA.
- ❖ Enable all levels of governance in the LSSA to discharge their fiduciary duties, proactively identify business exposures and oversee risk management strategies and mitigation actions.
- ❖ Risk avoidance and reduction interventions become an integral part of the daily duties of employees and managers.
- ❖ Mitigating actions, effectiveness, assessments and process check-points become part of the operational business processes of all business units of the LSSA.
- ❖ The attention of senior management, middle management, and oversight bodies are continuously focused on High risks for the success of business units and the LSSA in general.
- ❖ Risks are prioritised, actions made visible to the entire organisation and resources applied where they are most needed.

The House of Constituents

The HoC, as governing and accountable body, has delegated the design and implementation of the LSSA risk management framework to the LSSA ARC Committee, including:

- ❖ Oversight of all related assurance activities.
- ❖ Management of outcomes.
- ❖ Certification that the framework and Policy outcomes provide adequate assurance that the 'LSSA's control environment is effective and supports its internal and external reporting integrity'.

The following schematics highlight the implementation, processes and governance principles underpinned by this policy.

The graphic representation of Combined Assurance:



Have direct responsibility for the management and control of risks within business teams under supervision.

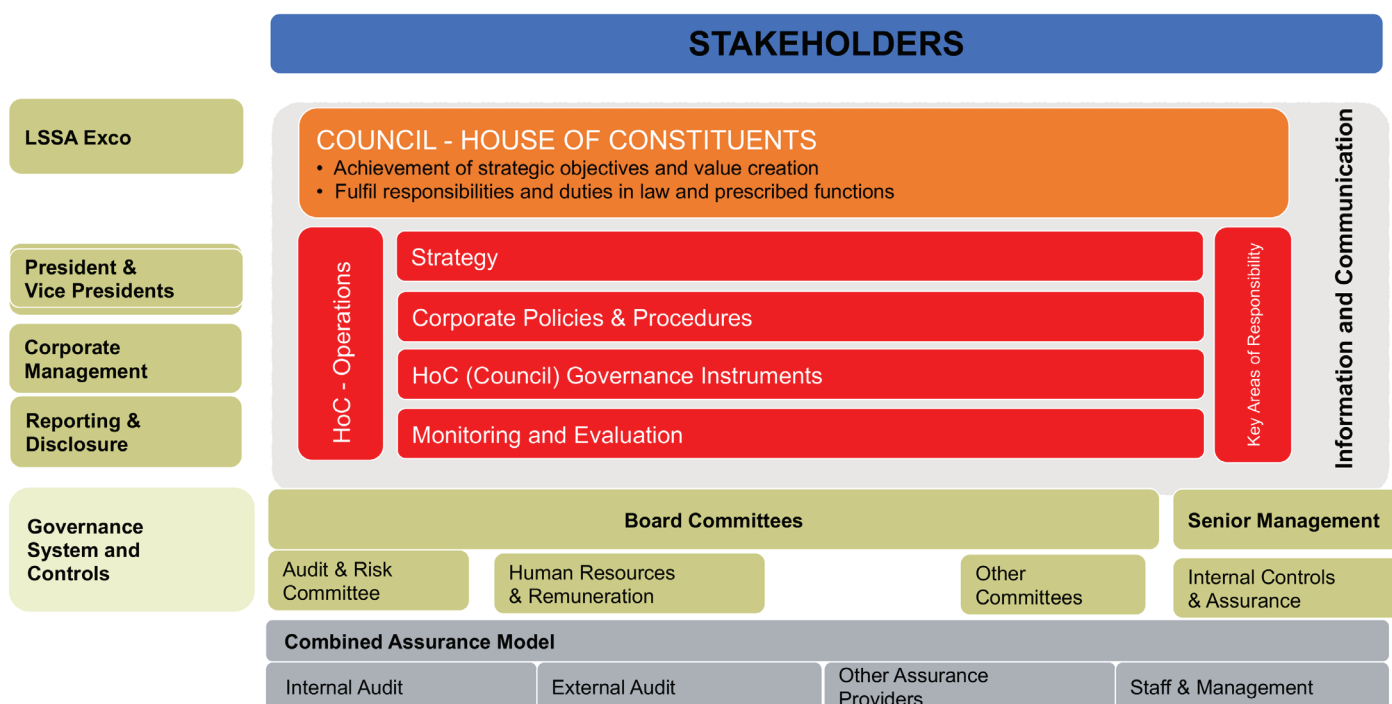
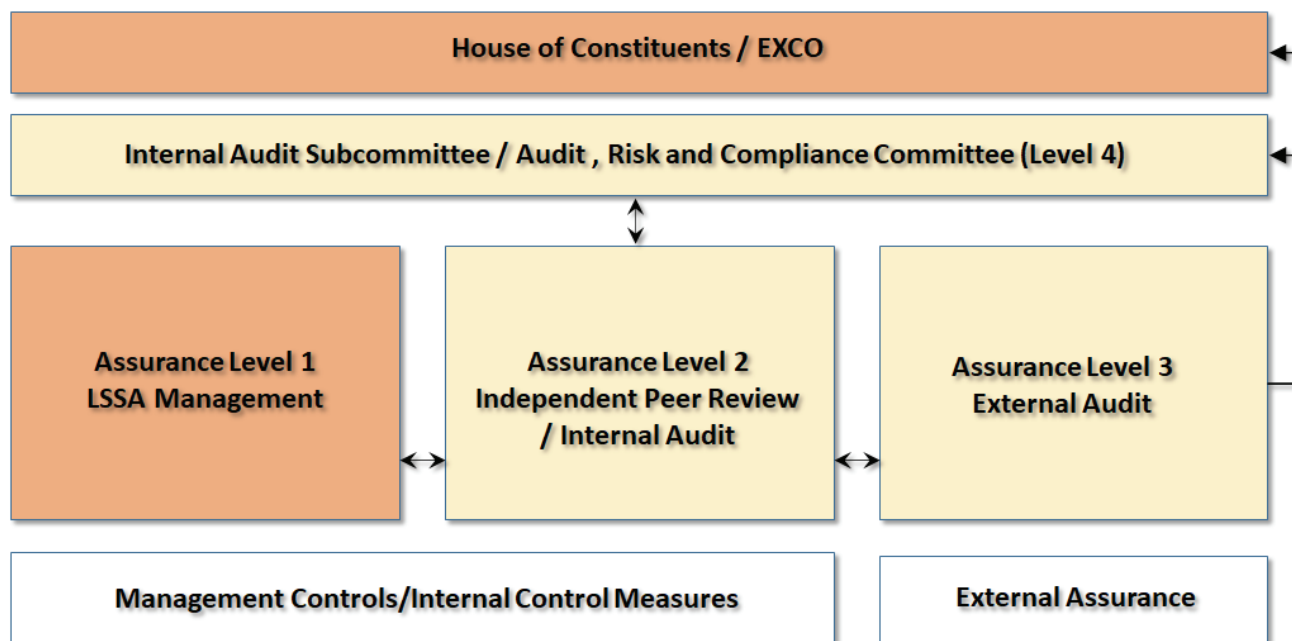


Coordinate, facilitate and oversee the effectiveness of the risk framework and report to the governance risk committees (IAS and ARC).

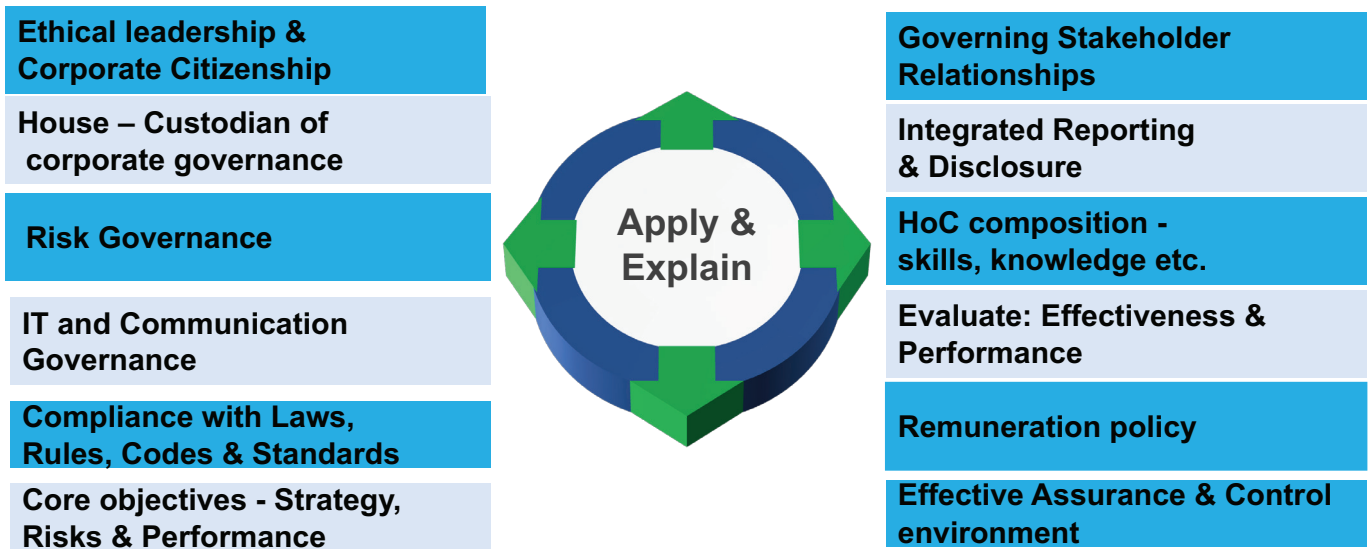


Senior Management who are also in the second line provides independent assurance across all business functions on the integrity and effectiveness of the framework and its implementation.

LSSA Combined Assurance Model

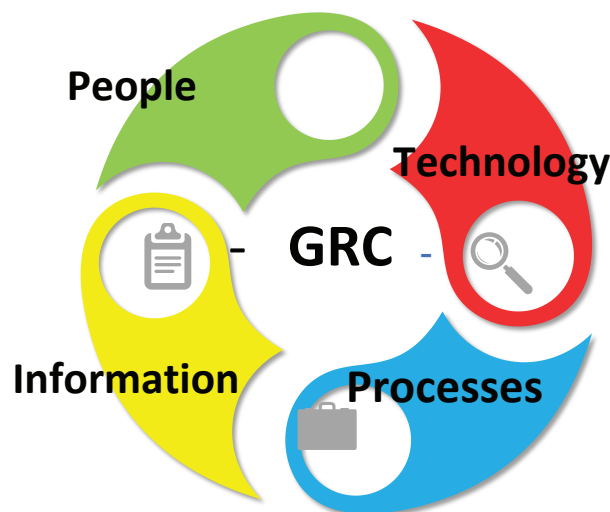


KING IV ELEMENTS



GRC: Governance, Risk [Management] & Compliance

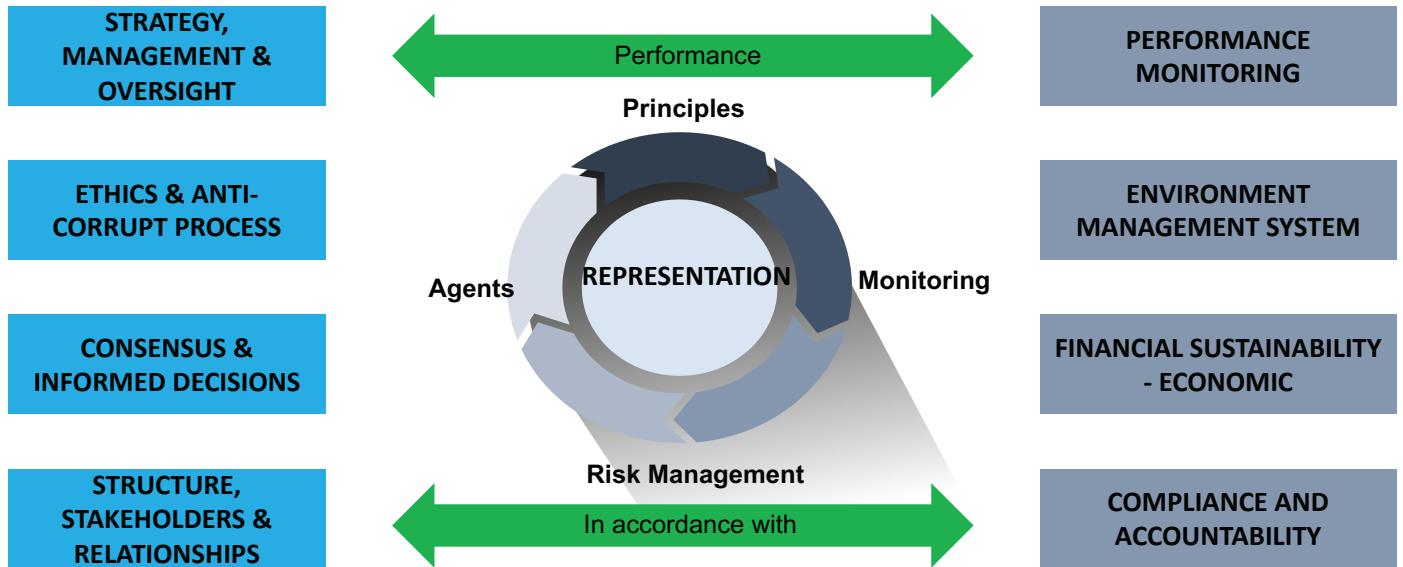
Principled Performance is achieved when an organization reliably achieves **objectives**, addresses **uncertainty** and acts with **integrity**.



Oversight: provide direction, decision-making criteria for performance. Setting the mission, vision, values and risk appetite, tolerances. To ensure capacity, **ethical** guidelines, and high-level goals and objectives.

LSSA PRINCIPLES

TASK FRAMEWORK OF THE CORPORATE GOVERNANCE



LSSA KEY-SYSTEMS & INFORMATION

STAKEHOLDER MANAGEMENT	MANAGEMENT FRAMEWORK	FINANCE MANAGEMENT & FRAUD PREVENTION
RISK MANAGEMENT & STEWARDSHIP	ETHICS & CULTURE	SUPPLIER MANAGEMENT
HUMAN RESOURCES, PERFORMANCE, CONDUCT & REMUNERATION & PAYROLL	MANAGEMENT ACCOUNTABILITY & RESPONSIBILITY	POLICY MANAGEMENT
DISCLOSURE & INTEGRATED REPORTING	INTERNAL & EXTERNAL AUDITING & ASSURANCE	ICT & TECHNOLOGY MANAGEMENT
INFORMATION MANAGEMENT	INTEGRATED REPORTING INCLUDING FINANCIAL & SUSTAINABILITY	CLIENT MANAGEMENT



Law Society of South Africa Senior Management

Seated: Anthony Pillay, Executive Director; and Nkhensane Nthane, Senior Manager: Human Resources.
Standing: Ogilvie Ramoshaba, Senior Manager: Legal Education and Development; Lizette Burger, Senior Manager: Professional Affairs; Mapula Oliphant, Editor: *De Rebus* and Communications Manager; and Zimasa Mtwecu, Senior Finance Manager.

OPERATIONAL REPORTS BY MANAGEMENT

Communications, Marketing and Publications

The success of the Law Society South Africa (LSSA) lies in its ability to communicate regularly with legal practitioners. Legal practitioners need to be regularly updated on all the functions performed by the LSSA on behalf of the profession. Practitioners also need to be sent information on recent developments in the legal profession and on any changes in the legal ecosystem.

During the year in review, the LSSA went through a process of developing a marketing strategy. In order to understand the target market of the LSSA, a number of surveys were sent out to legal practitioners. One glaring result of the survey was that the LSSA brand strength was poor, unclear and unknown. To deal with this problem, the LSSA has been communicating to legal practitioners more regularly with a focus on ensuring that legal practitioners are informed on the functions performed by the LSSA. This also included taking advantage of the available social media platforms to disseminate information.

The LSSA provides regular advisories, electronic newsletters, and the Legalbrief LSSA Weekly on Friday mornings to practitioners. During the year in review, the LSSA issued 5 press releases, 38 advisories and articles. As part of its mandate to educate legal practitioners, the LSSA offered 22 free webinars in collaboration with other stakeholders.

FREE WELLNESS PROGRAMME FOR LEGAL PRACTITIONERS

The year 2022 saw the continuation of the Free Wellness Programme for Legal Practitioners. The wellness programme offers free professional telephonic counselling service available to legal practitioners 24 hours a day, seven days a week. This wellness offering has been implemented since August 2021.

One of the effects of the COVID-19 pandemic is the economic downturn faced the world over, which has affected many industries, the legal profession is not exempt. The LSSA is aware that many legal practitioners are overwhelmed and are dealing with anxiety, fear and even resilience fatigue. The LSSA collaborated with mutual financial services company, PPS, and the Reality Wellness Group to offer telephonic counselling and support.

LSSA NATIONAL WILLS WEEK

The total number of attorneys who participated in the LSSA National Wills Week that took place from 12 to 16 September 2022 was 852. During the National Wills Week, the LSSA received media coverage that included, 6 radio interviews, 1 television interview, 1 free webinar and 11 published articles.

The LSSA National Wills Week is now an established highlight among the profession's social outreach and access to justice initiatives. This is thanks to the thousands of attorneys who participate by giving generously of their time and skills. The aim of the LSSA National Wills Week campaign is twofold –

- ❖ to position attorneys as the premier providers of wills and estates services to the public, and to improve the image of the profession generally; and
- ❖ to encourage members of the public who would not normally make use of the services of an attorney, or who may hesitate to approach an attorney, to consult an attorney to have a basic will drafted.

MARKETING STRATEGY

A brand reputation audit revealed that the LSSA brand is in crisis. The research study, through surveys, shows that the target market is unable to distinguish between the regulatory body and the LSSA. The research also indicates that the LSSA child brands (LEAD and *De Rebus*) are significantly stronger than the LSSA brand. That is why it was resolved that the LSSA brand should be displayed with the child brands. The market strategy team developed a brand strategy to position the LSSA as a careful support service that aims to ensure that members aspire to and achieve best practice.

SA LAWYER PUBLICATION

The first issue of the *SA Lawyer*, which is a supplement of *De Rebus*, was published in September 2022. The supplement, like the *De Rebus*, is a publication that belongs to legal practitioners and will be filled with content that is of importance to the legal profession. The supplement will be published twice a year and all legal practitioners are requested to submit articles and information on events that are of importance to the profession.

DE REBUS PUBLICATION

Editorial Committee: Mohamed Randerer, Peter Horn and Wen-zile Zama.

In digital format, the *De Rebus* journal continues to be the attorney's journal. Legal practitioners continue to support and read the journal, this can be seen by the quality of the submitted articles for publication and the number of readers that constantly visit the *De Rebus* website. Some readers still continue to subscribe to the printed version of the journal for a fee.

Since the journal is digital, readers are able to conduct research

on the journal at ease, which is one of the primary reasons why the journal is published, to provide legal education. During the 2022 marketing strategy research, respondents to the surveys revealed that legal practitioners spend a considerable amount of time on research. It goes without saying that time is how legal practitioners earn a living, therefore research should not take the amount of time it currently does for most legal practitioners.










Through all its columns, the journal continues to fulfil its mandate of providing legal education to the profession. While imparting knowledge to the legal profession, the journal did not shy away from publishing articles that tackled controversial issues and published thought-provoking articles for the benefit of the profession.

The economic downturn has negatively impacted on the advertising sales income of the journal. Unfortunately, this meant that the journal was not able to meet its budgetary requirement for its income.

OBJECTIVES






- ❖ The mandate of *De Rebus* is to be an educational tool for the profession, while it informs legal practitioners of the latest developments in the profession.
- ❖ The journal aims to provide legal practitioners, with a platform to discuss and share opinions on matters relating to the profession.
- ❖ The journal plays a pivotal role in the profession as its content is authoritative, credible and enables practitioners to practise more efficiently and effectively. It also reinforces collegiality in the profession, which in turn promotes the maintenance of high professional standards.

OUTPUT COMPARISON TABLES




DE REBUS		As at December 2021	As at December 2022
	Income	R 1 294 301 (unaudited figure)	R 1 175 447 (unaudited figure)
	Print subscribers	75	75
	Website subscribers	11 306	13 581
	Website unique browsers	49 094	55 726
	Mailing list	18 747	60 189
	App downloads	8 391	9 729
	Facebook	3 056	3 956
	LinkedIn	18 876	22 315
	Twitter	9 816	10 987



LAW SOCIETY OF SOUTH AFRICA

	Platform	As at December 2021	As at December 2022
	Facebook	10 046	12 671
	Instagram	4 064	8 056
	LinkedIn	35 339	44 996
	Twitter	25 315	31 251
	Newsletter mailing list	36 500	55 607

LEGAL EDUCATION AND DEVELOPMENT

	Platform	As at December 2021	As at December 2022
	Facebook	8 091	9 188
	LinkedIn	13 137	17 656
	Newsletter mailing list	58 445	56 592

TOP TEN PAGES FROM THE LSSA WEBSITE – 2022

	Article/page	Unique page views
1	Professional Examinations	174 711
2	LSSA homepage	63 996
3	Becoming a legal practitioner	27 401
4	LSSA National Wills Week 2022	25 786
5	Getting Legal Assistance	24 541
6	Candidate Attorneys	24 368
7	Complaints	21 101
8	Contact us	18 931
9	Frequently Asked Questions	17 975
10	Your Rights as a Client	17 143

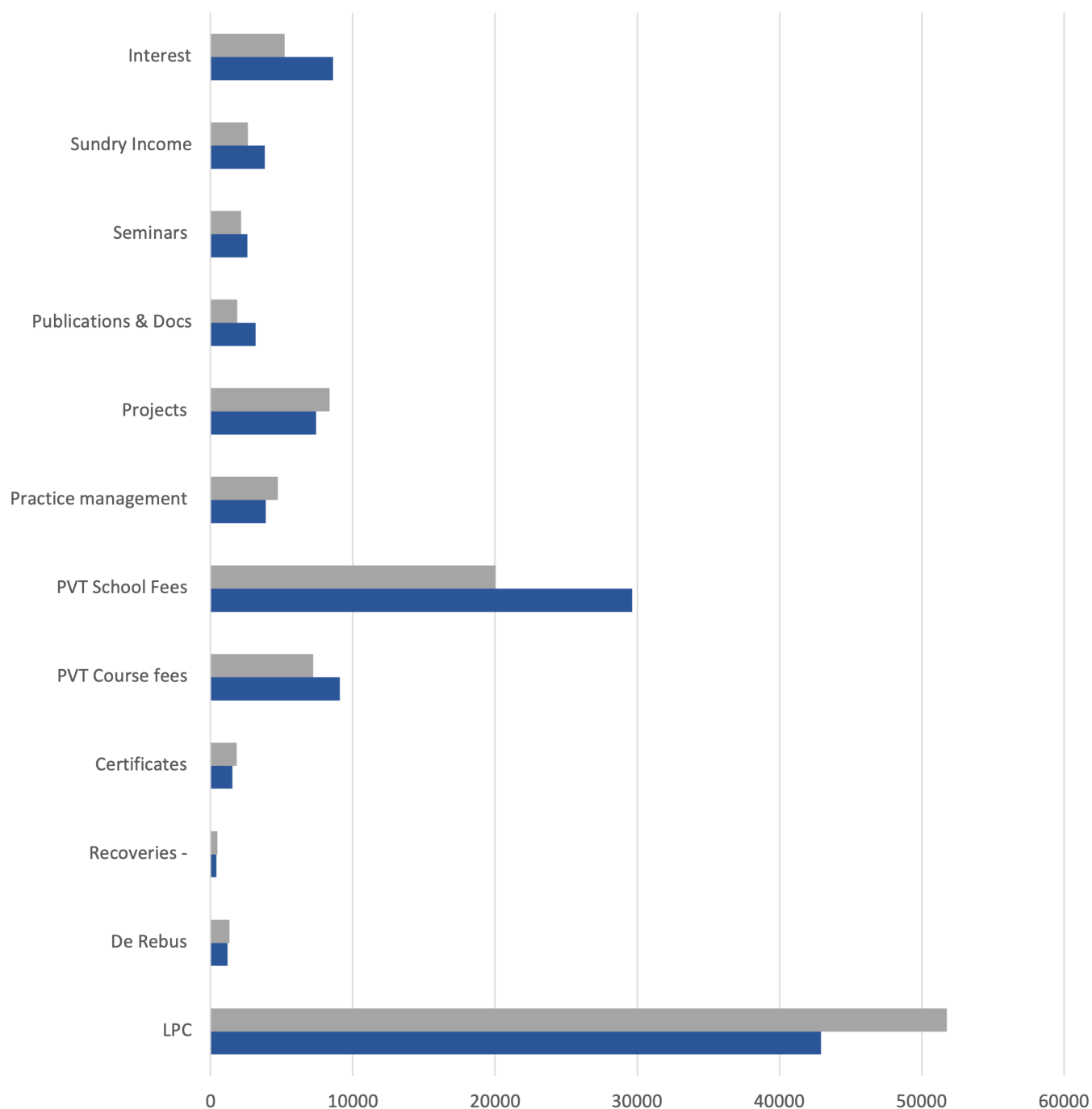
TOP TEN PAGES FROM THE DE REBUS WEBSITE – 2022

	Article/page	Unique page views
1	De Rebus homepage	78 168
2	PDF download page	24 463
3	Default judgment	15 297
4	LPC Notices	11 363
5	Classifieds vacancies	9 986
6	Poor Board Examination results – a matter of concern for the LPC and its stakeholders (SA Lawyer)	8 524
7	Classifieds – Candidates CVs	8 053
8	Classifieds	8 001
9	The difference between a non-profit company and a non-profit organisation	7 770
10	Step-by-step guide to residential housing eviction proceedings in the magistrate's court	7 298

TOP TEN PAGES FROM THE LEAD WEBSITE – 2022

	Article/page	Unique page views
1	Competency Based Admission Examination – Previous papers	121 145
2	LSSA LEAD homepage	106 112
3	Competency Based Admission Examination – Memorandums	103 841
4	Practical Vocational Training School for Legal Practice	74 338
5	Previous Examination Papers	62 368
6	Training Calendar	40 313
7	Compulsory Practical Vocational Training for Candidate Legal Practitioners	31 937
8	Conveyancing and Notarial Courses	21 134
9	Conveyancing Practice Admission Examination – Previous papers	20 607
10	Contact details for the centres of the School for Legal Practice	16 185

LSSA Income 2022 [R 114, 24 million]
2021 [R 107,61 million]



	LPC	De Rebus	Recoveries -	Certificates	PVT Course fees	PVT School Fees	Practice management	Projects	Publications & Docs	Seminars	Sundry Income	Interest
2021	51767	1 314	478	1 837	7 201	20 028	4 717	8 378	1 885	2 159	2626	5225
2022	42922	1 205	400	1 545	9 073	29 627	3 894	7 412	3 169	2 572	3826	8597

■ 2021 ■ 2022

Human resources

STAFF NUMBERS

Consolidated staff Numbers	Total Actual as at 31/12/2021	Budget 2021	Less Terminations and transfers out	Add Appointments and transfers in	Total as at 31/12/2021
LSSA	25	33	2	0	23
<i>De Rebus</i>	6	6	0	0	6
LEAD	57	60	3	8	62
Total:	88	99	5	8	91

NEW APPOINTEES 2022

NAME	SECTION	POST	DATE	Equity
Merlin September	New Business Development	Senior Training Coordinator Internal Transfer	1 August 2022	C/F
Ridhwaan Mahomed	Johannesburg School for Legal Practice	Night School Administrator	1 June 2022	I/M
Isaac Noge	Johannesburg School for Legal Practice	Receptionist	1 August 2022	A/M
Yolanda Singh	New Business Development	Training Coordinator	29 August 2022	C/F
Vuyo Morobane	Bloemfontein School for Legal Practice	School Principal	1 April 2022	A/M
Thakgalo Moloko	Venda School for Legal Practice	Night School Administrator	1 April 2022	A/M

All 50 staff members on contract employment were confirmed to permanent positions on 1 December 2022.

TERMINATIONS 2022

NAME	SECTION	POST	DATE	REASON FOR TERMINATION
Drinnette Du Randt	Bloemfontein PVT School for Legal Practice	School Principal	31 January 2022	Resigned to pursue other interests.
Nomfundo Jele	Communications	Acting Communications Manager	1 February 2022	Resigned to pursue other interests.
Titus Mbatha	Johannesburg PVT School for Legal Practice	Night School Administrator	30 April 2022	End of contract.
Ridhwaan Mahomed	Johannesburg PVT School for Legal Practice	Night School Administrator	1 June 2022	Transfer internal.
Phionah Luthada	New Business Development	Senior Training Coordinator	2 June 2022	Resigned to pursue other interests.
Merlin September	New Business Development	Senior Training Coordinator	1 August 2022	Transfer internal.
Fauzia Arendse	Finance	Finance Officer	22 November 2022	Passed on due to ill health.

STAFF TRAINING 2022

The LSSA invested R 150 000 for the development and skilling of staff. In addition, to management recommendations, the staff training committee recommends the various types and nature of training requirements.

CRITICAL EMPLOYEE MATTERS – 2022

- ❖ All contract staff members of the LSSA were converted to permanent appointments backdated to the date of the initial appointment in the LSSA.
- ❖ All acting positions were converted to permanent positions.
- ❖ After two years without salary adjustments (increases) for staff mem-

bers, on 1 December 2022, a 10% salary increase was effected for all staff members. An additional 2% will go towards the provident fund contributions for all recently converted contract staff members.

The HR committee members are Ms C Selepe, T Joubert and R Mashabela. Mr J Whyte, a Labour Law Specialist is a consultant member of the committee.

OBJECTIVES FOR 2023

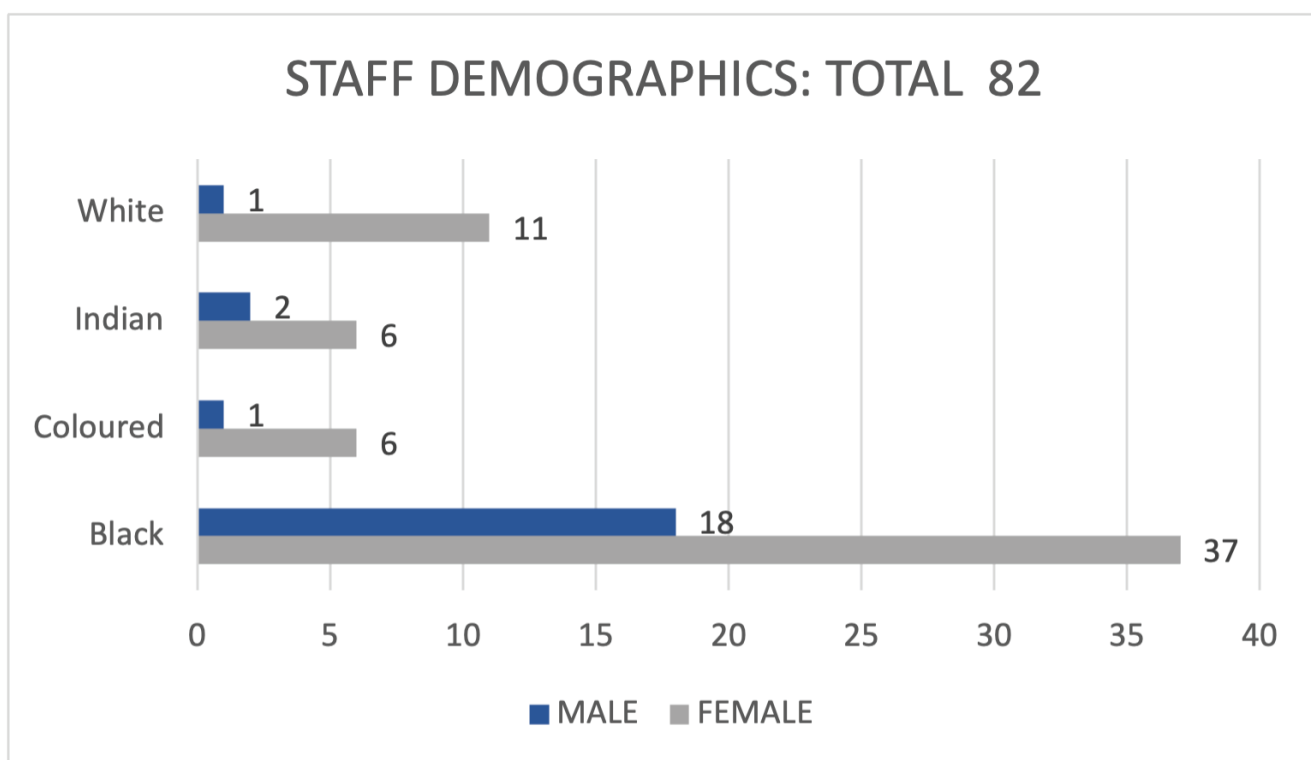
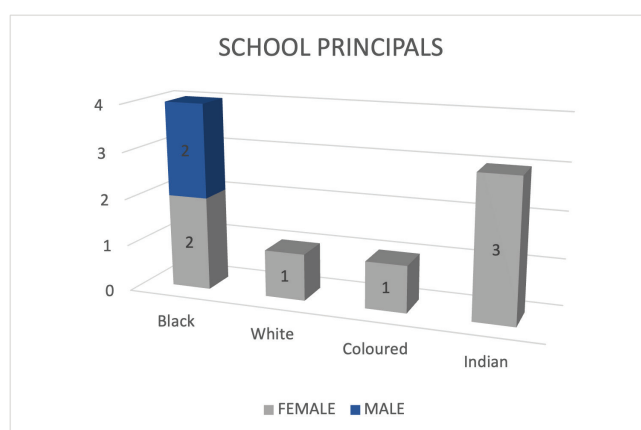
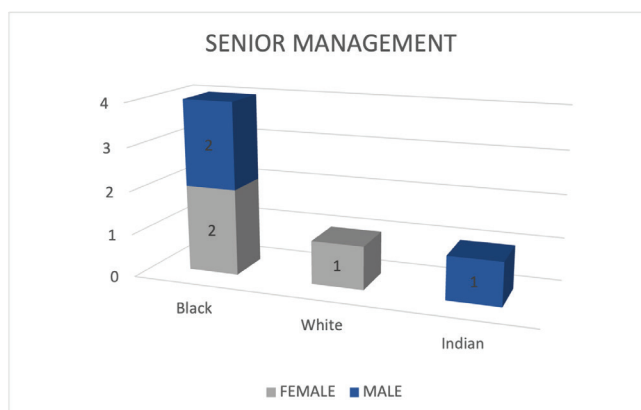
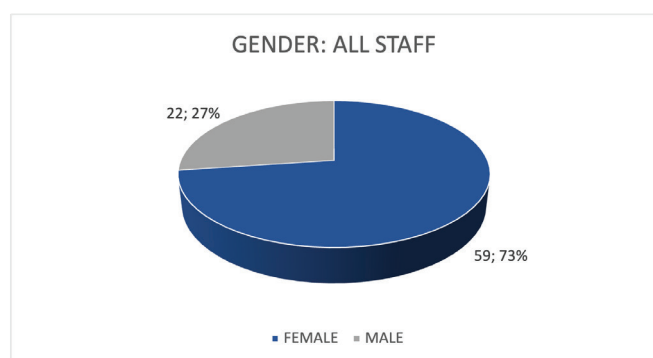
- ❖ Provide all necessary support to staff through the sustainability process, which is projected to be completed at the end of June 2023.
- ❖ Staff on university payrolls is subject to negotiations with Universities where Schools are based on changes proposed on the basis that the Schools are not subject to joint ventures as previously agreed, but the responsibility of the LSSA.

- ❖ We will ensure that our staff members are challenged, learn new things, and continue to grow and take ownership of what they do.
- ❖ Senior and middle management will be accountable for the overall performance of the various sections.
- ❖ All current Human Resource policies and procedures will be reviewed and updated to align with current legislation.
- ❖ Greater effort will be geared towards risk awareness and management by all accountable managers and supervisors.

EMPLOYMENT EQUITY

The following statistics are from the confirmed employment equity report submitted by the LSSA for the 12 month period ended 30 September 2022.

DEMOGRAPHICS



Legal Education and Development

The administration and management of legal education are charged to employees with extensive years of service to the legal profession. The standards and benchmark of admission exams is a unique skill that has been honed and specialised by the Law Society of South Africa (LSSA), albeit in the new dispensation under the direction of the Legal Practice Council (LPC).

The constituent members of the LSSA have at its core the development of a transformed profession that will ensure that professional standards are enhanced and maintained in an increasingly changing profession driven by technology, client demands and socio-economic dynamics in continuous flux.

The risk to the profession and its institutions that protect the public and make the regulation relevant and affordable is an essential element that is directly part of education, training, information and advocacy.

The Schools offer skills transfer while the Practical Vocational Training (PVT) short course offers limited skills transfer. Based on anecdotal reports by candidates, the School's admission pass rate is estimated to be between 55% to 65%. The LSSA has previously proposed to the LPC that we allow empirical tracking of candidates' progression into the profession via the LPC database on registrations and examination results (alternatively, the LPC can track the same).

The LSSA represents all legal practitioners and therefore is fully committed to the development of ethical, professional, competent, independent and critical-thinking practitioners who act in their client's interest, and the broader community in a social contract with society – this is, therefore, not mere training but in order to ensure that the training and development of candidate legal practitioners is holistic and complementary to the normative skills required of practitioners, viz – the skills required by the profession to deliver its professional *promise and mandate* in the interest of the community.

Standing Committee on Legal Education

As at the end of February 2023, the committee met four times. The committee requested that the LSSA Council should not change the composition and structure of the Standing Committee on Legal Education (SCLE) due to the importance of the work undertaken.

The restrictions that were imposed in 2021 due to COVID-19 and the resultant changes in the mode of delivery continue to impact training activities.

The SCLE has embarked on a programme to ensure that professional legal ethics be part of the university curriculum. A programme to advocate this change will be launched.

Funding

- ❖ Reduced funding by the LPC remains a concern, with the funding cap in 2021 and 2022 at the same level. This has a negative impact on the quality of the training offered.
- ❖ Planning is limited as the funding is usually agreed upon in March during the same funding year from January to December. This is not ideal and limits planning and impacts negatively the training objectives.

Highlights

- ❖ LEAD's accreditation remains valid until the end of 2024.
- ❖ More than 11 000 persons enrolled for LEAD programmes in 2022.
- ❖ Development and implementation of an Arbitration training programme that is benchmarked to international standards, thereby allowing practitioners to act as arbiters on international panels.

LPC legal education forum July 2022

The SCLE made inputs to the forum hosted by the LPC. Examiners, instructors, and markers made input to the forum. The poor pass rate of the admission and specialist assessments dominated the discussion. A call was made to change the education model as it was too expensive:

- ❖ The LSSA placed on record that any model should be thoroughly researched, tested and canvassed at a legal colloquium.
- ❖ The LSSA also expressed concerns about the idea of removing orals due to the cost and argued that this was an important mechanism that has, over many years, positively impacted the pass rate.
- ❖ The LSSA noted that it has embarked on a project to ensure the demographics of instructors reflected the profession, noting that the fees payable to instructors were a limiting factor.

Following these engagements, the LPC has advised that the transition to a new legal education model has been approved by its Council. The LPC will shortly roll out engagement and consultation with all stakeholders.

PVT Training – PVT Schools and PVT Short Courses.

• Advocate Training

A record number of candidates assisted in the regulation seven programmes (highest intake of 45 for 2023 for the first group) and have developed material in terms of the reading list for Advocates.

• Other bespoke training

We have a cooperation agreement with South African Revenue Service (Sars) as well as the SA Military School/SANDF for offering both structured coursework in terms of reg 6 and 7 to both institutions. The PVT contract is then to be served with other private service providers/advocates or with the National Prosecuting Authority (in respect of Sars).

Candidates

The profession is unable to absorb all the graduates from universities. The number of graduates at the school is largely those who cannot find PVT contracts (the recent estimate is 25%). There is a high rate of unemployment among law graduates and young practitioners. Law firms have reduced the number of candidates they have been employing since 2020 due to the impact of COVID and the poor economic climate. A new career guide has been developed indicating other areas of work. A joint project

has been mooted with the LPFF to roll this out as an information and advocacy programme.

Challenges

Virtual and remote learning at universities has changed the way law graduates learn. They have become reliant on open-book assessments and find it difficult to participate in closed-book summative assessments successfully. This negatively impacts candidates writing the formal admission examinations (assessments). In addition, learning skills risks reduce the ability of candidates to think analytically and result in poor performance in assessments.

LEAD needs to have a new Learner Management System to replace the SAKAI free version that was provided by the University of South Africa (Unisa) when the LSSA established Schools. The costs are prohibitive, but the team is testing various options. The LSSA will pay per usage SaaS (software as a service). The licence fee will be reduced as the LSSA will work on concurrent licences and not per candidate.

Summary of attendance of all LSSA-LEAD programmes for 2022

	2020	2021	2022
School for Legal Practice	1 609	2 172	2 570
23-Day courses for candidate attorneys	2 011	2 441	1 829
Arbitration	0	0	48
Conveyancing and notarial	380	441	544
Diplomas and certificates	125	201	225
Legal Accounts management	0	29	0
Mediation	179	201	108
Practice Management Training	1 662	2 293	1 733
Seminars	1 035	1 581	1 026
E-Learning	499	476	345
SUB-TOTAL	7 500	9 835	8 428
Business Development – LSSA Corporate	1 727	3 784	3 076
Training division			
TOTAL	9 227	13 619	11 504

Legal Practitioners' Fidelity Fund

These funds were started by the profession to allow practitioners to have cover for theft from trust accounts and to ensure a base level of professional indemnity (PI) cover was in place for negligence. These, therefore, provided a level of comfort and confidence for clients. The claim trends has over the years eroded the ability of the funds to continue providing the same level of comfort due to significant increase in reinsurance premiums. The recent capping of theft claims to R 5 million per claim and the growth of professional indemnity premiums from an initial R 40 million to R 180 million, thereby prompting the LPIIF to impose premiums on practitioners spread over five-years to recover the premiums.

For the future of practitioners, the level of negligence and theft impacts negatively and prejudices the majority of practitioners who practice responsibly in ensuring that negligence is at an absolute minimum level and their honesty is impeccable.

This, therefore, calls on practitioners to protect these institutions for both practice and the interests of our clients and society.

LPFF CLAIMS STATS AS AT 31 DECEMBER 2022

Comparative analysis: Numbers and values of claims notified

Note 1: The claims type 'Other' is made up of administrations, collections, criminal, matrimonial and sequestrations/ liquidations.
CLAIMS R 000's

Type	#	2017	#	2018	#	2019	#	2020	#	2021	#	2022
Other	68	R5 611	75	R59 187	53	R14 558	37	R4 067	50	R35 521	81	R32 548
B/F	7	R8 140	15	R14 323	5	R19 434	11	R34 262	9	R10 106	3	R7 018
Com	19	R8 542	20	R32 858	10	R34 699	12	R46 614	16	R16 965	10	R38 656
Conv	365	R139 761	477	R207 992	428	R181 214	576	R312 303	608	R275 389	674	R240 324
Est	129	R53 055	126	R48 992	94	R45 917	81	R47 332	118	R69 939	134	R68 153
Inv	10	R1 988	7	R5 125	1	R80	2	R2 130	4	R2 858	2	R1 835
Lit	72	R14 759	104	R28 289	61	R17 282	55	R17 431	91	R12 098	91	R33 090
RAF	221	R77 471	201	R78 708	219	R107 992	162	R92 139	246	R173 024	215	R141 685
Tot	891	R309 331	1025	R475 477	871	R421 180	936	R556 280	1142	R595 903	1 210	R563 312

Professional Affairs

The functions of the Professional Affairs department include coordinating and supporting the activities of the LSSA's specialist committees, ad hoc committees and task teams; advocacy and lobbying; coordinating members' benefit initiatives; and supervising the LSSA's litigation.

The work of the department continues to increase significantly, and not only did we attend to the normal committee meetings and activities, but many legislative and policy documents, review papers and initiatives by the government and other organisations required input of the profession. Most of the LSSA's submissions can be accessed on its website.

During the period under review, the committees and task teams had 57 normal meetings, mostly virtually. In addition, they met with various stakeholders to address issues of mutual concern, including with the South African Revenue Service, the Road Accident Fund (RAF), the Chief Master of the High Court and the South African Board for Sheriffs.

The extensive work done by the respective committees are highlighted in the Specialist Committee Reports section in this annual report. Key issues attended to include:

- ❖ The South African Law Reform Commission's investigation into legal fees pursuant to s 35 of the Legal Practice Act.
- ❖ The Legal Sector Code published by the Department of Trade, Industry and Competition.
- ❖ Issues around the RAF.

- ❖ The service delivery of many government departments.
- ❖ The issue of cross-border practice rights.
- ❖ The Electronic Deeds Registration System project.

Practitioners are urged to follow the developments on these issues, as they will greatly impact on the profession.

Various specialist committees participated in the production of educational videos, brochures and guidance documents to assist attorneys and ensure that they keep abreast of developments relating to legislation and other issues affecting the profession. We also regularly communicate via our social media platforms, newsletters and advisories.

On the litigation front, the LSSA is currently involved in a matter dealing with the appearance of attorneys without appearance certificates before a taxing master. The LSSA is also a co-applicant in an application to have the RAF medical tariff promulgated by the Minister of Health reviewed and set aside.

A special word of appreciation is due to the committee members, who voluntarily commit their expert knowledge and service for the benefit of the profession and the public. I am also grateful to the Professional Affairs team of Ricardo Wyngaard (Senior Legal Officer), Kris Devan (Personal Assistant), Nonhlanhla Chanza (Parliamentary Liaison Officer) and Selinah Sekano (Committee Secretary) for their continued commitment and dedication.

Legal Provident Fund

The attorneys' profession created the Legal Provident Fund (the Fund) to help legal practitioners meet their retirement savings and death and disability benefits needs. It is a standalone umbrella retirement fund regulated by the Pension Funds Act 24 of 1956. The LSSA is a sponsor and key stakeholder of the Fund.

The Fund has increased its membership during 2022 and has more than 3,800 active (in-service) members and over 300 participating employers throughout South Africa as at 31 December 2022.

Fund Management

The Fund has an independent Principal Officer, Jeanine Astrup, and a Board of Trustees comprising of both Trustees nominated by the LSSA and the General Council of the Bar (as sponsors) and Independent Trustees. The current Trustees are noted below.

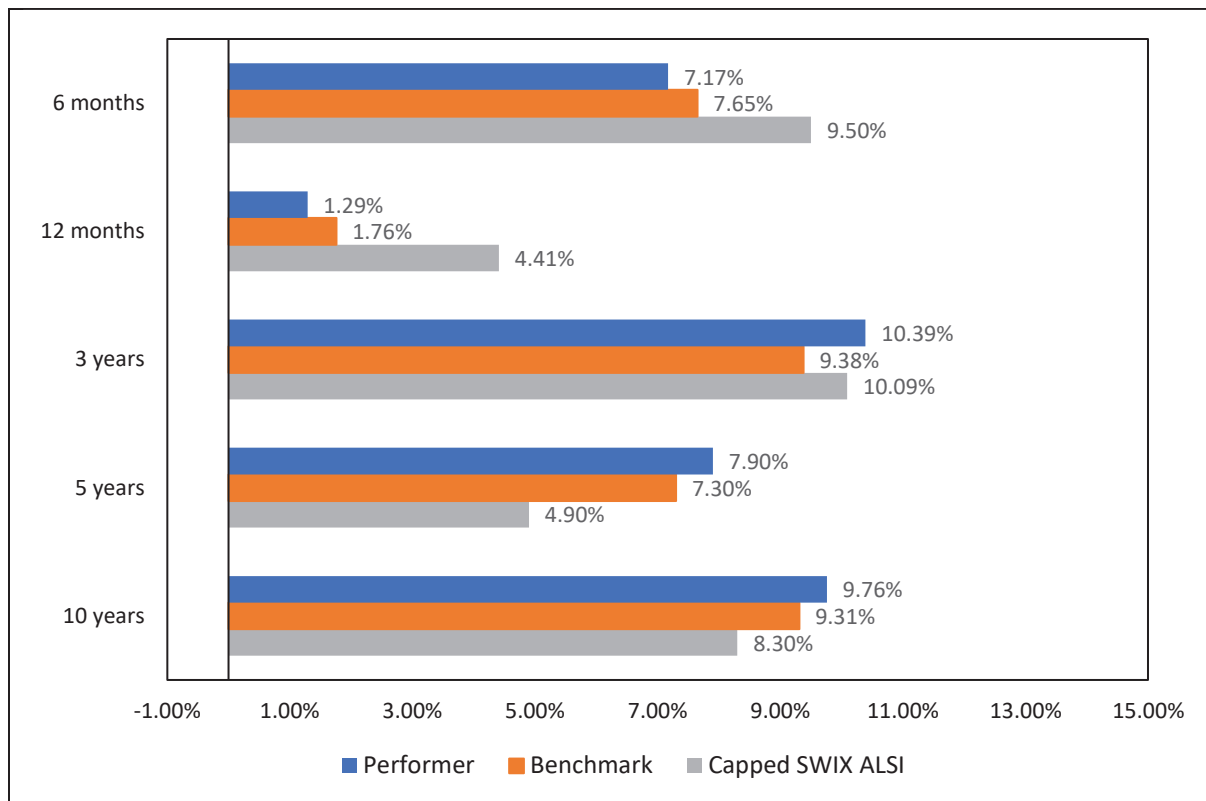
Sponsor Elected Trustees	Independent Trustees
Jacques Malan (GCB)	Iqbal Ganie
Asha Sewpersad (LSSA)	Hannine Drake (Chairman)
David Bekker (LSSA)	Jolly Mokorosi
Zanele Nkosi (LSSA)	Janine Player
Eunice Masipa (LSSA) (alternate)	
Elias Phiyega (GCB) (alternate)	

Trustees have a three-year term of office but may be re-elected. The Fund is considering candidates for Independent Trustees, and the sponsors have been requested to nominate sponsor Trustees for the new Trustee term starting 1 April 2023.

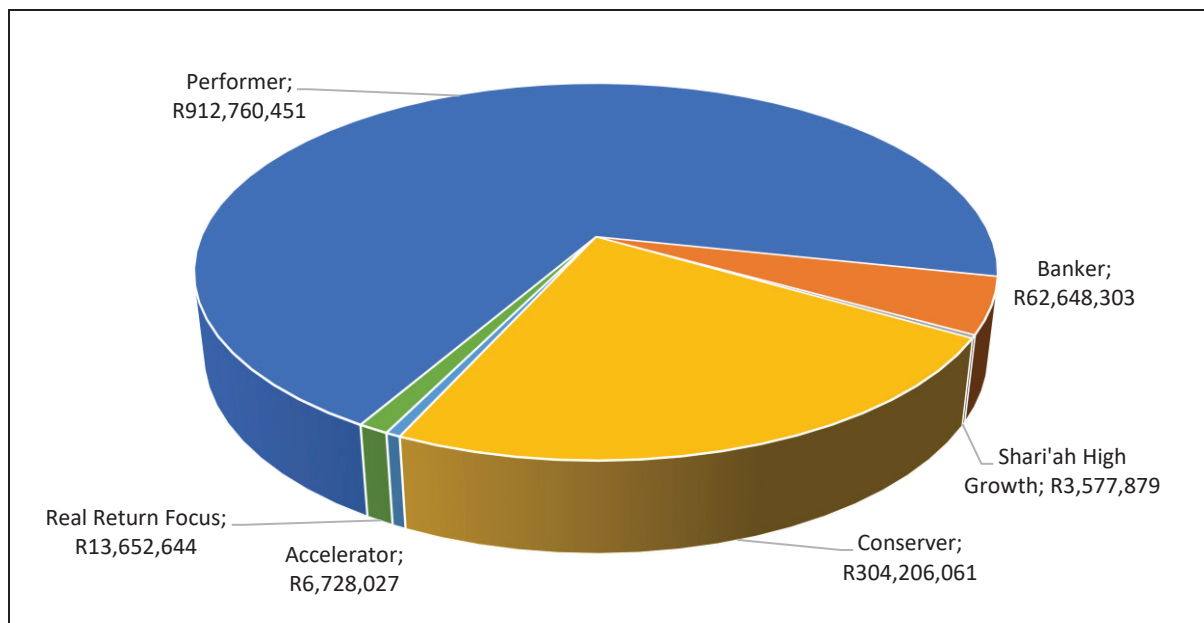
Key Developments

Investment markets all over the world struggled during 2022. The Fund's portfolios were no exception. After a 22,21% return after fees for the year ended 31 December 2021, the Fund achieved a return of only 1,20% after fees for the year ended 31 December 2022. During low-return periods like 2022, it is important to note that the Fund aims to achieve inflation-beating returns over the long term and that retirement savings are a long-term undertaking. Over the last ten years, returns have exceeded Consumer Price Index + 4,5% after fees. The Alexander Forbes Investments (AFI) Performer Portfolio, which is the Fund's primary investment portfolio, continues to beat its benchmark over the long term. The Trustees have recently reviewed its suitability and are satisfied that the AFI Performer Portfolio remains the most appropriate main default investment portfolio for members' funds. However, members are reminded that the Fund permits individual member choice within its approved portfolios.

The graph on the next page shows the AFI Performer Portfolio performance for various periods to the end of December 2022 compared to its benchmark and the Capped SWIX All Share Index (ALSI). The Fund invests in several types of investments, including shares, bonds, property and foreign investments. Therefore, while the ALSI performed better than the Fund in 2022, the Fund has outperformed the ALSI when measured over a three-year, five-year and ten-year period, protected in part by its asset spread.



As at 31 December 2022, the Fund invested more than R 1,3 billion on behalf of its members. The investments across the various investment portfolios the Fund offers are shown below.



Details regarding the historical returns earned on the above portfolios, together with the expenses paid on each portfolio, are indicated in the report. Employers benefit significantly from reduced costs because of the total size of the assets invested by the Fund. For example, an employer with member assets of R 50 million would pay 0.67% base fees compared to the 0.48% paid by the Fund.

Investment performance as at 31 December 2022

Returns only reflect the periods in which the Fund started investing in that portfolio.

Name	1 Month	3 Months	6 Months	YTD	1 Year	3 Years	5 Years	8 Years	10 Years
Accelerator									
Gross of Fees	-1.10%	8.35%	8.11%	-0.16%	-0.16%	11.16%	8.25%		
Net of Fees	-1.14%	8.19%	7.74%	-0.92%	-0.92%	10.32%	7.50%		
Benchmark	-0.94%	8.84%	8.71%	-2.16%	-2.16%	8.77%	6.13%		
Banker									
Gross of Fees	0.72%	2.02%	3.66%	6.53%	6.53%	6.03%	7.11%	7.59%	7.39%
Net of Fees	0.70%	1.95%	3.53%	6.26%	6.26%	5.76%	6.85%	7.32%	7.12%
Benchmark	0.53%	1.53%	2.82%	4.90%	4.90%	4.31%	5.23%	5.70%	5.58%
Conserver									
Gross of Fees	-0.10%	6.27%	7.21%	4.42%	4.42%				
Net of Fees	-0.15%	6.11%	6.90%	3.81%	3.81%				
Benchmark	-0.47%	6.23%	6.96%	2.31%	2.31%				
Performer									
Gross of Fees	-0.49%	7.16%	7.55%	2.08%	2.08%	11.15%	8.62%	8.83%	10.66%
Net of Fees	-0.56%	6.91%	7.17%	1.29%	1.29%	10.39%	7.90%	8.00%	9.76%
Benchmark	-0.90%	7.99%	7.65%	1.76%	1.76%	9.38%	7.30%	7.48%	9.31%
Real Return Focus									
Gross of Fees	0.04%	6.24%	6.82%	4.51%	4.51%	9.12%	7.86%	7.82%	8.71%
Net of Fees	-0.01%	6.08%	6.49%	3.87%	3.87%	8.42%	7.18%	7.08%	7.90%
Benchmark	0.61%	1.73%	5.54%	11.45%	11.45%	9.40%	9.01%	9.25%	9.51%
Shari'ah High Growth									
Gross of Fees	-1.24%	6.05%	7.38%	1.23%	1.23%	11.87%	9.36%		
Net of Fees	-1.33%	5.76%	6.79%	0.12%	0.12%	10.65%	8.17%		
Benchmark	-2.84%	6.97%	5.53%	-4.01%	-4.01%	9.72%	8.41%		

Following a review of the Fund's investments in 2022, the Fund decided to change its 'Lifestage' portfolio to reduce the transitioning period over which members move from a higher-risk, higher-expected return portfolio to a lower-risk, lower-expected return portfolio as they get closer to normal retirement age. From January 2023, members will remain invested in the AFI Performer Portfolio for up to five years (reduced from ten years) before normal retirement age. They will then transition to the AFI Conserver Portfolio every three months and then partially to the AFI Banker Portfolio. This change is expected to increase member returns ten years before the Normal Retirement Age.

Other updates, in brief:

- ❖ During 2022, the Fund focused on communicating with members and the participating employers, including employer information presentations.
- ❖ The Fund revised its Rules to offer increased member flexibility regarding contribution rates payable to the Fund. This allows members to save as much as they can afford. Members can make any additional voluntary contributions, even ad hoc, and are encouraged to do so.

Conclusion

The Fund has set a strategic goal to grow Fund membership and increase assets invested on members' behalf by ensuring that the Fund offers a competitive product, excellent client service and best practice governance.

The Fund continues to offer a retirement fund vehicle that allows tax-efficient savings, simple administration for employers, competitive benefits, and excellent investment returns for its members. We look forward to a prosperous 2023 and thank the profession.

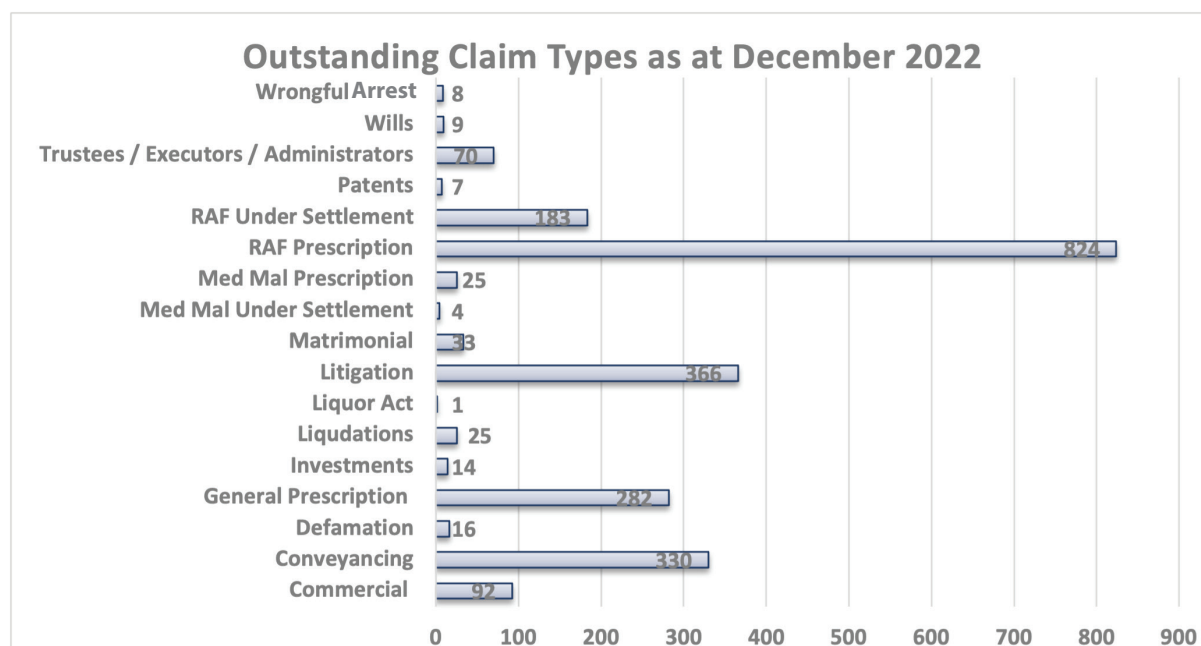
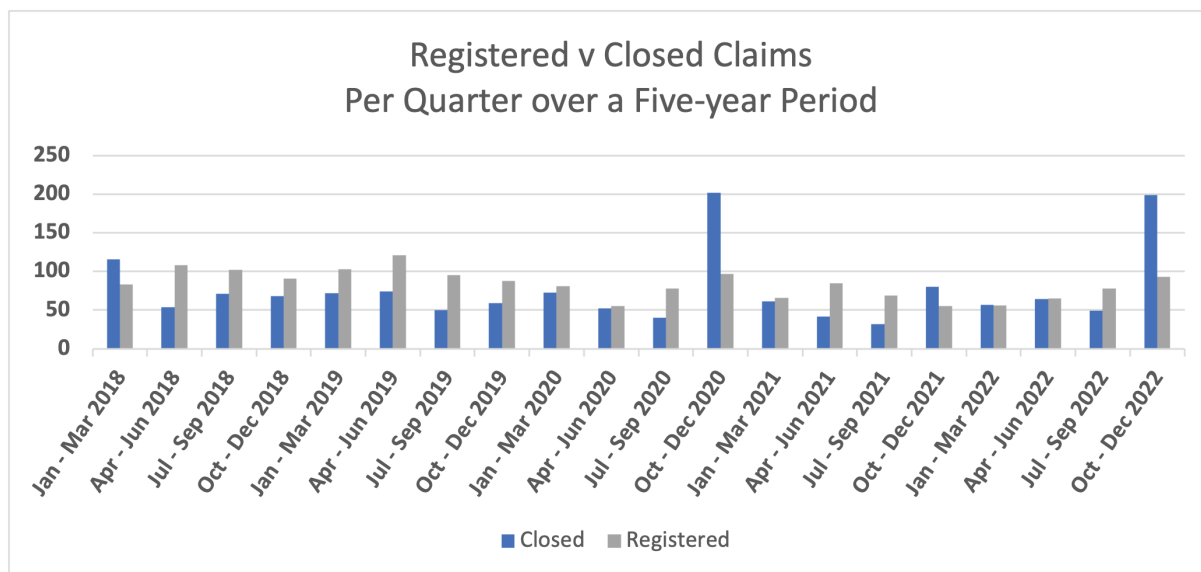
Hannine Drake
Chairperson

www.legalprovidentfund.co.za

Legal Practitioners Indemnity Insurance Fund

LPIIF CAIMS

As per the graphs below, Road Accident Fund (RAF) prescriptions (despite the prescription alert programme made freely available to all practitioners), conveyancing, litigation, and general prescription related claims still form most claims notified to the LPIIF. These areas of practice have, perennially, contributed the highest number of over the five-year period covered in this report.



Cybercrime claims, which, in all cases, manifest themselves in the form of business e-mail compromise fraud, are excluded from the professional indemnity policy with effect from 1 July 2016.

As at the end of December 2022, the total value of these 231 rejected, since 2016 is R 155,6 million.



The background of the page is an abstract composition of overlapping, semi-transparent blue triangles and polygons. These shapes create a complex, crystalline pattern that resembles a low-poly mesh or a stylized, faceted surface. The colors range from very light, almost white, to a deep, saturated blue. The overall effect is modern and dynamic, with a sense of depth and movement.

SPECIALIST COMMITTEES

Alternative Dispute Resolution Committee

Members

John O'Leary (Chairperson), Dumisani Sonamzi, Joanne Anthony-Gooden, Mojau Ramathe, Thembelani Nkele, Ugeeta Pala and Ugeshnee Naicker.

Key developments:

- **Mediation in litigious matters**

It is too early to meaningfully track statistics of formal referrals to mediation either in terms of the Court-Annexed Mediation Rules in the Magistrates' Courts or in terms of r 41A of the High Court Rules. However, the experience of practitioners around the country is that there are a number of judges and magistrates who regularly take the initiative to refer appropriate matters to mediation.

- **Training**

LEAD has offered a number of online training courses in both civil and family mediation, and these are expected to continue in 2023. Accreditations are being renewed and an application to the Safety and Security Sector Education and Training Authority is in progress.

- **ADRP-SA**

Initial directors have been appointed for the non-profit company to be registered under the name and style of 'The Association for ADR Practitioners – South Africa'. Once it is registered, the LSSA can take a view as to how it wishes to relate to the new organisation. A collaborative approach is recommended.

Focus for 2023

The challenges brought about by COVID-19 are vast and many of their effects will only be felt in the coming years. I believe that the ADR Committee could continue to play a role in promoting Alternative Dispute Resolution within the legal profession going forward.

With this report I confirm that it will be my last as I am standing down from all professional committees after a good many years of service in order to focus fully on my practice. I have always appreciated the interaction and will remain in collegial contact.

John O'Leary
Chairperson

Company Law and Liquidation Matters Committee

Members

Peter Veldhuizen (Chairperson), Abigail Reynolds (Deputy Chairperson), Arnold Mohobo, Nolundi Mda, Onesimo Mkumbuzi, Umesh Jivan, Walid Brown, Millie Shantall-Lurie and Lily Teffo (*ex-officio*).

Introduction

The Committee operates to achieve the LSSA's strategic objectives by taking account of the constituency, which the LSSA represents and en-

deavouring to protect its interests while bearing in mind the interests of the public. It does so predominantly by meeting with the officials at the relevant institutions to raise ongoing problems experienced by attorneys and their clients, and by commenting on legislation. The Committee continues to act sustainably and meetings take place virtually where possible. Committee meetings are only held when necessary; in all other cases e-mail engagements are used.

Key developments:

- **Companies Amendment Bill**

A further draft of the Companies Amendment Bill (the Bill) was circulated during 2021. The Committee had extensive discussions in the very short period allowed for comment to discuss the Bill and the comments, which the Committee wished to make. A submission was made timeously, including detailed comments on certain of the sections. The submissions are available on the LSSA's website.

- **General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act 22 of 2022**

The LSSA has submitted comments in relation to the proposed changes to the Trust Property Control Act 57 of 1988. The comments are available on the LSSA's website.

- **Companies and Intellectual Property Commission (CIPC)**

- a. **Business Account Audits**

Previously the question had been considered whether law firms incorporated pursuant to the Companies Act 71 of 2008 should be required to have their financial reports audited under the Companies Act Regulations in circumstances where such law firms hold assets in a fiduciary capacity for persons who are not related to the company, and the aggregate value of such assets held at any time during the financial year exceeds R 5 million. The Committee advised the LSSA that in its view such an audit was not required. A meeting was held with CIPC to discuss the issue. The CIPC was of the view, however, that an audit should be required. This issue was referred by the LSSA to senior counsel, who agreed with the view expressed by the Committee that there was an exemption which could be relied on by incorporated firms. The LSSA is now to decide how to resolve this impasse, whether by way of a declaratory order or further engagement with the CIPC.

- b. **CIPC new e-services platform**

The Committee has engaged with the CIPC new e-services platform (the new platform), which was meant to be implemented on 5 December 2022. This system has proved inoperable by attorney users and discussions with the CIPC and the Commissioner are on-going. Millie Shantall-Lurie is leading this engagement.

The King Committee

Lily Teffo, who is the LSSA's representative on the King Committee, has initiated an online workshop in collaboration with the Institute of Directors of Southern Africa.

Business Rescue Practitioners

The LSSA continues to sit and actively take part in CIPC's Business Rescue Liaison (BRL) Committee together with the representatives of professional bodies. The LSSA representative actively advocates for the interests of legal practitioners in the business rescue industry and comments on any potential regulations proposed by the CIPC.

Focus for 2023

- ❖ The Committee will continue to monitor developments on the Companies Amendment Bill, 2018, the requirement for audit reports for law firms under the Companies Act Regulations, and the CIPC new e-services platform.
- ❖ The Committee will continue to monitor activities at the BRL and advocate for the interests of legal practitioners who are registered as business rescue practitioners.
- ❖ The Committee will continue to monitor any developments in the proposed Insolvency Bill and any effect it may have on legal practitioners operating in the commercial and company law arena.

Peter Veldhuizen
Chairperson

Competition Law Committee

Members:

Paul Coetser (Chairperson), Chris Mamathuntsha, Hussan Goga, Matshego Ramagaga, Gavin Gow and Rebone Mohlahatsa.

Key developments

The Committee considered the competition impact of letters sent by certain South African banks to conveyancers, declaring that the fees of conveyancers on their panels will be reduced by 50% from their normal conveyancing tariff. It was clear that these banks were using this as a marketing tactic to attract more customers and grow their market shares. However, implementation of this arrangement may have a severe prejudicial impact on competition in conveyancing services, in that smaller firms that are dependent on fees from these banks may have difficulty sustaining themselves. These banks clearly have bargaining power *vis-à-vis* conveyancing firms. After debating the matter in the Committee, it was resolved to request meetings with each of the banks in question. Such meetings then took place and these banks undertook to consider the Committee's submissions and revert. Unfortunately, the banks' responses were unhelpful and did not serve to mitigate or resolve the competition concern. In a further meeting with the Property Law Committee, this Committee cautioned that any further action by the LSSA in relation to this matter must be done in such a manner that it does not attract a complaint that competing conveyancers are fixing prices or exchanging competitively sensitive information in contravention of the Competition Act 89 of 1998 (the Competition Act). Rather aggrieved conveyancers should take the matter up individually with the Competition Commission.

The Committee considered and commented on competition characteristics of two important documents during 2022:

- ❖ The Competition Commission's Practice Note on the Promotion of Competition and Inclusion in Supplier Panels of Banks and Insurers, published on 28 February 2022; and
- ❖ South African Law Reform Commission's (SALRC) Final Paper on Investigation into Legal Fees - Including Access to Justice and Other Interventions, released on 30 March 2022.

The Committee asserted that the Practice Note covered how banks should interact with attorneys and other service providers on their panels. It indicates that the banks should not appoint panels for longer than a five-year period and should effectively reopen the bidding process to be on a panel after a five-year period. Even within that five-year period, there should be constant review of the panel to consider if it should be expanded. There was also a process to evaluate the criteria for inclusion on the panel, to ensure that the criteria are fair and inclusive. The Practice Note further states that the banks should consider fixing an upper limit for the amount of work that could be awarded to each supplier. When a supplier has reached the upper limit, the procuring firm should choose the next supplier from the panel. This should hopefully ensure a better and fairer allocation of work among the entire profession and not a handful of firms. Suppliers were also allowed to decline work allocated to them by the bank or insurance industry based on capacity constraints. The Committee expressed the view that the LSSA should educate members on the import of the Practice Note on their rights. For instance, the Practice Note suggests that suppliers should familiarise themselves with the standards and evaluation of the panel selection criteria, engage with the banks, not just accept the banks' decisions and request reasons from the bank when the applications to be on the panel were rejected, make inquiries with the banks about rotating contract opportunities and so forth. The Committee recommended that comments on the Practice Note be collated from other Committees and a task team be set up to meet with the Competition Commission to discuss the practical implication of the Practice Note.

The Committee also considered various competition-related aspects embedded within the SALRC's final Issue Paper on s 35 of the Legal Practice Act (having previously considered various earlier drafts). The Committee noted, with regard to fees between attorney-and-client, that the SALRC recommended three options, for consideration by the Minister of Justice and Constitutional Development.

- ❖ Option one was that the litigious tariff must be set based on particular caps or a maximum payable for certain socio-economic groups (middle-income and low-income people) and those thresholds would be set by the Minister. For magistrates' court work, one could not charge more than that tariff and the user of the service, namely, the client of the attorney could not contract out of that to pay less or more than the tariff set by the Legal Practice Council (LPC). The effect of that seemed to be that the high-income group and corporate clients would not be bound by that recommendation, and therefore, attorneys could charge effectively in the normal course what they wanted to charge.
- ❖ Option three was an entirely flexible option, which stated that the LPC should set out service-based guidelines for attorney-and-client fees after consultation, and the LPC must establish a committee that would be responsible for determining. Such a committee is to consist of members of the legal profession the judiciary, the government and civil society.

The Committee expressed a concern that whoever engaged in this guideline process should be cautious not to be accused of price fixing in contravention of the Competition Act. The LSSA Section 35 Task Team will take

the matter forward.

Focus for 2023

The Committee will continue to offer its support to the task teams dealing with the Competition Commission's Practice Note and the SALRC's Section 35 fee recommendations.

The Committee intends to meet with the new Competition Commissioner, Ms Doris Tshepe.

Finally, the Committee will also consider commenting on new competition law legislation, guidelines and practice notices to the extent that this impacts on the legal profession.

Paul Coetser
Chairperson

Compliance Committee

Members

David Bekker (Chairperson), Mfana Gwala, Greg Duncan, Angela Itzikowitz, Nkosana Mvundlela and Muziwandile Nhlapo.

Key developments:

The compliance spotlight has been on the legal profession during the reporting period. During March 2022, the Financial Intelligence Centre (the FIC) published its 'Assessment of the inherent money laundering and terrorist financing risks' (the Assessment).

The Assessment concludes, among other, that: 'Overall, the inherent risk of money laundering for the legal practitioners sector in South Africa, based on national and international experience, is classified as high and the inherent terrorist financing risk is regarded as low.'

The LSSA hosted two hybrid webinars during November 2022, one in Cape Town and one in Johannesburg aimed at raising awareness amongst legal practitioners of the risks identified globally and locally in relation to the provision of legal services. The events were well attended, and a video recording of the Johannesburg webinar was subsequently made available via the LSSA's online platforms. This intervention represents a momentous joint effort on the part of the LSSA's internal and external stakeholders aimed at protecting the interests of the public and the legal profession.

The General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act 22 of 2022 introduced changes to several laws, including the Financial Intelligence Centre Act 38 of 2001 (FICA), which also had compliance implications on practising attorneys. Pursuant to this, the LSSA published updated guidelines on the Risk and Management Compliance Programme, which law firms are required to have in place.

No doubt, the legal profession will remain in the compliance spotlight as South Africa navigates its way out of its new greylisted status. Given its significant role within the current context, the Committee will continue to vigorously execute its mandate during the next reporting period.

David Bekker
Chairperson

Constitutional Affairs and Human Rights Committee

Members

Daryl Burman (Chairperson), Shamila Singh (Deputy Chairperson), CP Fourie, Sekonyela Moeketsi, Xolile Ntshulana, Mvuzo Notyesi and Eliot Butane.

Introduction

In the aftermath of the effects of the COVID-19 pandemic, 2022 was a somewhat fractured year for the Committee and its members, like the rest of the country beset with health problems. None the less, at all times effect was given to our role in the identifying of, and commenting on, issues affecting and impacting on our constitutional and human rights values.

Terms of reference of this Committee

The purpose and functions of this Committee have now been re-evaluated and re-formulated as being:

'to enhance the protection and application of the Constitution and Bill of Rights in all legislative requirements. Other committees are to refer areas of concern in proposed or existing legislation where the constitutionality of aspects of the legislation is deemed suspect.'

Key developments

Expropriation of Land Bill: The comments of the LSSA and others appear to have made an impact because the Bill again stalled at the Parliamentary level.

Draft regulations relating to the surveillance and control of notifiable conditions: The Committee commented on, in particular, the issue of the proposed banning of the wearing of masks, depriving people the right of choice.

Muslim rights: On 26 June 2022, the Constitutional Court handed down a landmark judgment in a matter regularising the validity of Muslim Marriages and protecting the rights of people who marry according to Muslim rights, especially women and the children born of such marriages.

Care of people with mental health problems: In light of the shocking revelations regarding treatment of such persons, the LSSA commented on the proposed regulations for licensing community mental health day care and residential care for people with mental illness and/or severe or profound intellectual disability.

Human trafficking and gender based violence: The ever-increasing incidents of both these crimes against humanity continues to disturb, to undermine and to unsettle the minds of the majority of people. It is encouraging to note that the Criminal Law (Sexual Offences and Related Matters) Amendment Act 13 of 2021 came into operation on 31 July 2022. The subcurrent situation is being monitored by the Committee.

Evictions: The Committee notes the judgment of the Constitutional Court in the recent matter of *Grobler v Phillips and Others* 2023 (1) SA 321 (CC),

which goes a long way to *prescribing* the factors to be taken into account when determining whether an eviction order is lawful.

Focus for 2023

In the light of the state of the infrastructure in the country, and the corruption as revealed in the report of the Zondo Commission, leading to increasing demands and unhappiness by most of the population, clearing the way for more and more unlawful activities, the role of the Committee becomes ever more relevant. The situation must be monitored for any possible outcomes and determining what measures are needed.

Conclusion

I would like to thank the staff of the LSSA and my Committee for their support and guidance.

Daryl Burman
Chairperson

Costs and Contingency Fees Committee

Members

Asif Essa (Chairperson), Graham Bellairs, Johan le Roux, Yusuf Wadee, Vusumuzi Nsibande, Marinkie Putuka, Xoliswa Bacela, Yandisa Tsipa, Sinawo Makangela and Howard Maimela.

Introduction

The function of the Costs and Contingency Fees Committee is to represent the legal profession in respect of all issues relating to costs, *inter alia*, in respect of statutory tariffs, as well as costs in the context of the Legal Practice Act 28 of 2014 (LPA).

Key Developments:

- **South African Law Reform Commission (SALRC) Investigation into Legal Fees, including Access to Justice**

The Report of the South African Law Commission (SALRC) on Project 142: *Investigation into Legal Fees, Including Access to Justice and Other Interventions*, dated 23 June 2021, was published in March 2022 and submitted to the Minister of Justice and Correctional Services. The SALRC's investigation is prescribed by ss 35(4) and (5) of the LPA. A Task Team, appointed by the LSSA, convened several meetings traversing and deliberating on the aforesaid Report, culminating in a response having been prepared and submitted to the Minister.

The Report contains the SALRC's final recommendations for law reform, including a proposed draft Bill, titled Justice Laws General Amendment

Bill. The Report follows on Issue Paper 36 and Discussion Paper 150, which were published for general information and comment on 7 May 2019 and 18 September 2020 respectively. The LSSA made extensive submissions on both the Issue Paper and the Discussion Paper, which are available on its website.

The Report purported to take into account all the input and comments received from the stakeholders, the community workshops held in all the nine provinces, as well as the International Conference on 'Access to Justice, Legal Costs and Other Interventions' held in November 2018 in Durban.

The Report identifies factors and circumstances giving rise to legal fees that are allegedly unattainable for most people and contains recommendations on the desirability of establishing a mechanism that will be responsible for determining fees and tariffs payable to legal practitioners, the composition of the mechanism and the process it should follow in determining fees and tariffs. The SALRC recommends that the Rules Board must adopt an effective consultative process of all the stakeholders prior to determining legal fees and tariffs. In considering the mechanism for attorney-and-client fees it proposes different options for consideration by the Minister. The SALRC recommends that the Legal Practice Council (LPC), as the regulatory body for the legal profession in the Republic, is the appropriate body to develop service-based attorney-and-client fee guidelines for determine legal fees in respect of all branches of the law. It also contains an in-depth discussion on ss 34 and 35 of the LPA and recommendations in respect of same.

The SALRC, on the subject of the effectiveness and desirability of retaining, with or without amendment, the current scheme of permissible contingency fees agreements in terms of the Contingency Fees Act, 66 of 1997 (CFA), argues for the retention of the scheme of contingency fees agreements on the grounds that it promotes access to justice for the majority of the people who do not have the money to pay for legal fees. This is, however, subject to some qualifications, the key ones of which are:

- ❖ An additional test of 'some foreseeable risk' should be included in the CFA. The Law Society of South Africa (LSSA) noted its opposition to this on various grounds.
- ❖ The amendment of s 1 of the CFA to include a definition of 'success fee'. The LSSA is not in agreement with the proposed definition, as it effectively lumps attorneys' fees and disbursements together.

The issue of Contingency Fees was considered by the Task Team having regard to the views as elucidated by the Contingency Fees Committee. It is further noteworthy that in terms of s 6 of the CFA, the LPC has published rules as per GenN525 GG42739/4-10-2019.

Practitioners are advised to peruse the Report and the LSSA's submissions.

- **Update on the statutory tariffs and proposed dates for increases in terms of CPI as previously contemplated.**

The statutory tariff was increased on 8 July 2022.

Asif Essa
Chairperson

Court Practice Committee

Members

Umesh Jivan (Co-chairperson), Graham Bellairs (Co-chairperson), Zuku Tshutshane (deputy chairperson), Bukky Olowookorun, Asif Essa, Bannicky Mabunda, Dudu Mthimunya-Hluyo, Mvuzo Notyesi, Ntsoafi Maema, Odwa Nyembezi, Adam Pitman and Lebo Ralenala (*ex officio*).

The Committee held a virtual meeting on 14 July 2022. This report deals with matters discussed at that meeting and which were dealt with prior to and after that meeting by e-mail exchanges and telephone conference.

Rules Board Communications and proposed changes to Rules and tariffs

During the year under review the LSSA has received numerous communications from the Rules Board regarding proposed amendments to rules and tariffs of the courts. These proposals received comment by Committee members via exchanges of e-mail and at the Committee meeting. The comments made by the Committee were by and large favourable and supportive of those amendments and were sent in response to the Rules Board. A report back was received from Graham Bellairs on the Rules Board's activities.

Provincial Efficiency and Enhancement Committees

Lizette Burger reported on her attendance at a Gauteng Provincial Efficiency Enhancement Committee (PEEC) meeting where issues relating to the Road Accident Fund (RAF) and the congestion of court rolls with RAF matters were, among others, discussed. A task team has been formed to look into the RAF matters on an ongoing basis and that there will be follow up meetings with the RAF and other stakeholders.

A request has been submitted by the LSSA to the PEEC of each province to provide minutes of their respective meetings for consideration by the Committee.

Umesh Jivan serves on the KwaZulu-Natal PEEC and issues affecting attorneys raised with him are addressed at these meetings. Unfortunately, the Labour Court is the only court in KwaZulu-Natal that has not sent a representative to these meetings, which are held on a quarterly basis.

Transcription of court records

Mr Jivan reported on the setting up of a task team to deal with problems experienced with the transcription of court records. He received a complaint about dysfunctional recording machines in KwaZulu-Natal and had taken the matter up with the regional office of the Department of Justice who undertook to attend to the matter.

Conduct of Financial Institutions Bill

Proposed amendments to the Conduct of Financial Institutions Bill (COFI), which include amendments of the Financial Sector Regulation Act 9 of 2017 (FSRSA) were received by the LSSA. The proposed amendments were considered by the Committee and comments relating specifically to the intended governance of the legal profession over debt collection activities being performed by legal practitioners were made by the LSSA. The LSSA's comments appear on its website.

The LSSA raised a strong objection against the inclusion of legal practitioners engaged in debt recovery matters under the proposed governance structures of FSRSA. The LSSA argued that the existing disciplinary struc-

tures established by the Legal Practice Act 28 of 2014 (LPA) are sufficient to deal with any complaints against its members and it is, therefore, unnecessary to subject the legal profession to any further regulation by the FSRSA.

The comments submitted by the LSSA also recorded its objection to the imposition of further levies on the legal profession intended by the amendments, particularly in the light of the effect the levies would have on the financial viability of small practices.

The proposed subjecting of the legal profession to the new provisions of the FSRSA was clearly based on the abuses highlighted in the decision of *University of Stellenbosch Law Clinic and Others v National Credit Regulator and Others* 2020 (3) SA 307 (WCC). It was pointed out that those abuses had been addressed by way of amendments to the Magistrates' Court Act and furthermore that only one firm of attorneys had been involved in the alleged abuses dealt with in the judgment. The point was made that any further abuses could be adequately dealt with by the Legal Practice Council, which had been established, *inter alia*, to investigate and discipline any members who abused the debt collection processes.

Comment was made in relation to the definition of debt collection services and the manner in which the legislation should be amended to specifically exclude from that definition, the conduct of legal practitioners rendering debt collection services in terms of the magistrates' court and Superior Courts Act 10 of 2013. The definition proposed by the LSSA is that litigation commences with the issuing of formal letters of demand.

Right of appearance of a practising attorney without a right of appearance certificate before a taxing master

The Committee was informed of an application for the review of a Taxing Master's decision to preclude a practising attorney without a right of appearance certificate from appearing before the Taxing Master in the case of *L Fenyane v SN Ndengane NO and Others* (GJ) (case no 22/19397, 1-3-2022). The LSSA is cited as a respondent in the matter. The application was debated at considerable length and ultimately it was decided that the LSSA should support the applicant and to that end, brief counsel and deliver a replying affidavit. The application is ongoing.

Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill 2022

The Committee also commented on the abovementioned Bill and proposed that a substantive review be made of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act) taking into account:

- ❖ Proposals contained in the Amendment Bill to that Act made in 2006.
- ❖ The alignment of the earlier Bill with the objectives under the 2022 Bill.
- ❖ The need to reduce and remove some of the unnecessary complexity embedded within procedural requirements contained under s 4 of the PIE Act and to promote legal consistency and ensure equity and justice.

Invitation from the Judicial Services Commission (JSC) to comment on the criteria and guidelines used by the Commission when considering candidates for judicial appointment

On 27 October 2022, the JSC invited the public and all stakeholders to comment on the criteria used by the JSC for judicial appointments, which

they stated had to be reviewed and updated since the previous criteria were adopted by them in 2010.

The LSSA had, in March 2021, submitted to the Department of Justice and Constitutional Development suggestions for the procedure to be followed in respect of the appointment of acting judicial officers (judges and magistrates). The LSSA proposed a new uniform system that embraces transparency and inclusivity. The Committee submitted these proposals to the JSC, as it was of the view that the JSC can be instrumental in supporting a more transparent and fair process to enable equal opportunities to prospective judicial candidates.

Mr Jivan also made submissions to the JSC in his personal capacity. In his submissions, he pointed out that the existing application procedure needs to be urgently revised to allow for the JSC to cast its net wider and that all applicants be given an equal opportunity to apply for vacancies since the current procedure allowed the Judges President unfettered discretion for acting judicial appointments. He further pointed out that the existing application procedure does not comply with the equality and dignity provisions of the Constitution. In conclusion, he recommended that the JSC application form be amended and the criteria that the JSC had used for the past 27 years be revised as a new procedure would instil more confidence in the appointment of judges.

Composition of the Committee

Jan van Rensburg, who was a long-standing and active member of this Committee, had resigned from the Committee during the reporting period. His invaluable contributions will be sorely missed. We wish him well in his future endeavours.

Umesh Jivan and Graham Bellairs
Co-chairpersons

Criminal Law Committee

Members

William Booth (Chairperson), Llewellyn Curlewis (Deputy Chairperson)
Avinash Maharaj, Zincedile Tiya, Odwa Mgxaji, Amanda Vilakazi and
Tshepo Thusi

Introduction

The Criminal Law Committee met on one occasion, via Zoom, on 14 June 2022. A further meeting was scheduled for 31 October 2022, however, as a result of practical issues, the meeting did not take place.

Gavin McLachlan and Sizwe Snail from the E-Law Committee, as well as Kevin O'Reilly from *De Rebus* also attended the meeting.

During the meeting, the following was highlighted:

The constant problems experienced with regard to the transcription of court records: The question of affordability of court records is of concern. Transcription companies are not willing to negotiate their rates. The Heads of Court have set up a sub-committee dealing with problem areas relating to the transcription of records. It was suggested that this matter be raised at the National Efficiency Enhancement Committee (NEEC) meeting.

The holding of regular meetings of the Regional Efficiency Enhancement Committee, Provincial Efficiency Enhancement Committee and NEEC which has not always been the case: It is important that these meetings

take place on a regular basis and that the LSSA ensures that its attendees have the necessary experience to provide meaningful input.

Corruption cases

The LSSA must be encouraged to provide input and assistance with regard to the cases flowing from the Zondo Commission of Enquiry. Many private legal practitioners would be willing to assist in the prosecution of these cases. This in light of the slow progress in the so-called state capture cases being dealt with in court. It was felt that the National Prosecuting Authority (NPA) did not always have the infrastructure and experience to deal efficiently with all of these cases.

It was reported that correspondence had been sent to the Minister proposing that private legal practitioners provide their expertise and be appointed as prosecutors to expedite the prosecution of all these matters.

Security concerns at courts

Many courts do not have adequate security measures in place to ensure the safety of legal practitioners.

Many courts do not provide parking facilities and legal practitioners have to often walk some distances to get from their vehicle to court. This is a security risk to these practitioners.

The Legal Practice Council (LPC)

The role of the LPC is to represent the interest of legal practitioners and not only regulate the profession was discussed. It is often felt amongst legal practitioners that the LPC does not promote their best interest. Although it is acknowledged that the LPC has a regulatory function, it should also listen to the concerns of legal practitioners and resolve the many problems experienced at court and generally in the profession. Many of the problems impact in any event on the general public.

It was felt that the LSSA has a significant role to play in promoting the interest of legal practitioners and regularly engaging with the LPC and other state organisations to promote not only the interests of legal practitioners, but also of the public.

The LSSA is now in the process of establishing Attorneys' Associations in each province, where each association will be able to delegate practitioners to attend various meetings with other stakeholders and regularly engage with the LPC about important concerns.

Acting appointments in the High Court

It was noted that the LSSA has published a memorandum dealing with the appointment of acting judicial officers (both judges and magistrates in South Africa).

It was felt that various Judges President should on a regular basis inquire from the profession as to suitable appointees for acting position at the various High Court Divisions.

After hours bail applications and the availability of detectives at police stations

There is concern about detectives not being present at police stations to process cases, particularly where this involves minor matters. It was felt that there should be amendments to the Criminal Procedure Act 51 of 1977 (CPA) as well as the Police Act 68 of 1995 to deal with the speedy release of detainees, particularly for misdemeanours.

There have been a number of occasions where prosecutors are not prepared to release an accused stating that the offence does not fall within schedule 7 of the CPA and the police similarly refuse to release. This in

many cases relates to petty offences where it is believed there should not have been an arrest in the first place.

At a previous meeting Brigadier Van Graan, a representative of the Police Legal Services, stated that he would investigate these complaints.

This is an item that has been of the Committee's agenda for a significant period of time and it was felt that the LSSA should take a more pro-active role in solving this problem and engaging with other stakeholders with regard to amendments to the CPA pertaining to the release of arrested persons. It was suggested that this is an aspect to be added to the agenda for the next NEEC meeting.

Cybercrimes Act 19 of 2020

It was noted that SAPS was in the process of preparing standard operating procedures in terms of s 26 of the Act.

The LSSA was actively involved and a number of practitioners have been running workshops on cybercrime. There should be co-operation between practitioners, law enforcement and the NPA to ensure swift prosecution of those who fall foul of the Cybercrimes Act.

Here again, practitioners could provide their experience and expertise to the NPA and assist with prosecutions. Many practitioners assist victims of crime and should be allowed to be more involved in the actual prosecution of cases, including their appointment in appropriate instances as prosecutors.

This system has worked well in other countries, particularly in the United Kingdom.

Financial Intelligence Centre Act (FIC)

Some law firms have requested the LSSA's assistance regarding a risk and compliance program as they have received compliance notices. The FIC expects legal practitioners to have the necessary risk compliance programs in place, as it was now a legal requirement.

Admission of guilt fines

The Minister of Justice and Correctional Services had some time ago stated that he intended to introduce legislation dealing with the issue of admission of guilt fines, particularly with regard to the manner in which it is set out in the CPA.

There was national concern about persons who were 'arrested' for contravening COVID-19 regulations who then would, if paying an admission of guilt fine, receive a criminal record.

Many people are unaware that paying such fines can lead to criminal records. The Minister is requested to urgently amend the relevant sections of the CPA so as to avoid persons being stigmatised with a criminal record.

Senior Counsel Status for all legal practitioners

The Committee was advised that the LPC had agreed that there was a need for all legal practitioners to be treated the same and those that complied with the requirements to be able to achieve Senior Counsel status. Urgent attention must be given to this aspect, as the Legal Practice Act 28 of 2014 intended to place all legal practitioners on equal footing. To allow only certain legal practitioners to apply for Senior Counsel status is discriminatory.

Media and communication

The LSSA regularly communicates with the media and on social media to provide adequate communication to all. Legal practitioners must be

aware of what is taking place when the LSSA and its various committees, as well as the LPC, meet so that all legal practitioners are kept abreast of all new developments.

Closure

Finally, I wish to thank my Deputy Chairperson and other members of the Committee as well as all members of the LSSA, particularly Lizette Burger and Ricardo Wyngaard, for their continued support and input.

William Booth
Chairperson

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E-Law Committee

Members

Brendan Hughes (Chairperson), Gavin McLachlan, Memory Sosibo, Dineo Machedi, Sizwe Snail (*ex-officio*), Mfana Gwala (*ex-officio*).

Overview

Following a very busy 2021, in which Internet-based digital technologies became increasingly commonplace in legal practice as a potential long-term transformative impact of the COVID-19 pandemic, the E-Law Committee was far less active in 2022.

Although the COVID-19 pandemic's grip on the affairs of the country loosened considerably in 2022, conditions for businesses in South Africa, including professional services, remained very challenging including as a result of the country's ongoing and worsening electricity generation and distribution crisis. While many practitioners have embraced new ways of working over the past two years, including by introducing remote working opportunities at many practices, many of the available potential benefits of Internet-based technologies remain untapped as necessary levels of public and private investment into building a future-fit legal services industry remain secondary to solving the most immediately pressing economic and base infrastructure challenges upon which knowledge service industry applications can be built.

Draft Bills and Regulations

The Committee had previously been pleased to note that the Cybercrimes Bill (a bill that the Committee had previously hosted a public event on and submitted written comments for the LSSA on) was enacted as the Cybercrimes Act 19 of 2020 on 1 June 2021. In 2022, the E-Law Committee submitted a further short memorandum of comments on the new Draft Standard Operating Procedures for the Investigation, Search, Access or Seizure of Articles proposed to be promulgated in terms of that Act.

In 2023, the E-Law Committee will also be monitoring the anticipated tabling in parliament of a draft Constitutional Amendment Bill that proposes to amend Chapter 9 of the South African Constitution to provide for the establishment of an office of a Cyber Commissioner to be tasked with supporting and strengthening constitutional democracy in South Africa by advising, monitoring and establishing cyber security capabilities in the public sector and will work with tertiary institutions and the private sector to establish minimum good standards, build capacity and create awareness.

Budgeting and events for 2023 calendar year

As soon as reasonably possible in the new year, the Committee will seek to meet with the Professional Affairs department of the LSSA to ascertain potential events at which E-Law Committee representatives may look to contribute to relevant topics to be discussed as well as available budget for Committee activities in 2023 in order to plan pro-actively for the year.

Note of appreciation

My thanks go to all E-Law Committee members who gave their time in support of the work of the Committee in 2022 and to LSSA personnel for their support of the Committee, including but not limited to Kris Devan, Lizette Burger, Ricardo Wyngaard and Tony Pillay.

Brendan Hughes
Chairperson

Environmental and Climate Justice Affairs Committee

Members

Ilan Lax (Chairperson), Norman Brauteseth, Rose Mfundisi, Hajira Kara, Krishnambal Krishna, Terry Winstanley and Marnus Booysen (*ex-officio*).

Key developments

The Committee held one virtual meeting for the year. Members did however stay in informal contact via e-mail and other channels.

After a request from the Law Society of South Africa's House of Constituents for a change of name, the Committee discussed and considered the matter. In view of the fact that the Committee's mandate was seen to be much broader than simply environmental affairs, it agreed that the Committee's name be changed to *Environmental and Climate Justice Affairs Committee*.

The Committee also reviewed its terms of reference. Given the above change in name, the Committee added a focus area around the prioritising of environmental and climate justice.

The Committee considered various proposed legislation and has not seen fit to comment on these in the year under review.

The Chairperson and Ms Krishna authored an article that was published in September's *De Rebus* entitled 'Why it is imperative that we build a more climate and disaster resistant South Africa' 2022 (Sept) *DR* 6.

Ilan Lax
Chairperson

Ethics Committee

Members

Krish Govender (Chairperson), Butch van Blerk, Ed Southey, Masika Modupe, Motsomi Litheko, Odwa Nyembezu and Sam Matsimela.

For the purposes of context, this report continues from previous years to be located within the worsening difficulties facing our country in 2023. The purpose for and the objectives of an Ethics Committee, within the legal profession as whole, are inextricably linked to the state of the socio-economic and political conditions prevailing in our country. The consequences of the recent failed insurrection in mid-2021 still live vividly in our memory and remains as a stark reminder of the possibilities of such uprising occurring sooner than one may imagine. The consequences for our country and by extension the legal profession would be devastating.

The weakened two arms of government, namely the executive and the legislature, have somewhat painstakingly responded to some of these challenges. However, these two arms but still appear to be rather limp wristed. The judiciary as the third arm has stood firm under pressure and from direct attacks from disgruntled and certain seemingly corruption compromised politicians and their ilk, in particular. Some judges have been specifically identified by these elements for such purpose. Social media is often a favoured medium to launch *ad hominem* abuse and even threats ones at those principled and courageous judges. Many persons have been identified in the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (the Zondo Commission), which was delivered during 2022 by Chief Justice Raymond Zondo, as key figures in state corruption and bleeding of the depleted fiscus and destruction of many state-owned enterprises. No state, especially a developing one can hope to survive the wide infestation of corruption that has taken root, without a powerful and effective system of law and order, which sadly we do not have. The role of the legal profession as prosecutors, state lawyers, private legal practitioners and the organised profession as a whole in fighting State capture is heightened. The choices that lawyers make in aiding and abetting the downfall of the state by facilitating corruption and crime, drafting duplicitous contracts and agreements, furnishing advice and opinions as veils for criminally inspired conduct and ultimately defending criminally syndicated corruption and waging lawfare in the courts, in the name of 'constitutional rights', will ultimately determine the future of our country. The need for strong and organised support for the principled and ethically minded lawyers is crucial in the fight against rampant corruption and looting of state resources. The judiciary and many of its brave judges remain a bulwark against these dangerous forces in our society and country and are identified as an obstacle to institutionalised corruption within a gangster infiltrated state.

The Ethics Committee recognises and asserts that the legal profession and the majority of its members provide vital strength and support to the judiciary. Without these with lawyers, of impeccable integrity throwing their weight behind just causes via the Zondo Commission and before the many courts in our country, the judiciary would be hamstrung and unable to deliver powerful judgments of hope to the desperately poor majority of people in our country. While a significant previously privileged and nouveau rich sectors of the legal profession are preoccupied with personal accumulation and the pursuit of wealth, it is inevitable that those fighting for

just causes are always in the minority.

It is a painful reality that crime syndicates feed of the generous rights afforded to them under our Constitution, aided and abetted by a ready supply of eager lawyers, some posing as cynical and crude champions of justice and the rule of law. Many have shamelessly enriched themselves in the proverbial 'lawfare' waged against, and at the expense of, a developing state running low on borrowed money and crippled by internal reactionary forces actively undermining the state. The principled and ethical lawyer has to be alive to and mindful of this grave and pending crisis and join in the good fight for justice and future stability of a weakened state.

In addition, there are innumerable challenges facing the principled and ethical lawyer who wishes to earn an honourable living in a time when the aggressive 'marketing' and blatantly unscrupulous conduct reaps profits for the unscrupulous lawyer. This unfortunately, is also symptomatic of the standards reflected in those who run global commercial and continental commercially driven legal organisations.

Despite these insurmountable challenges, we have to forge ahead in the struggle to promote integrity, ethics and oppose corruption in all its forms. The Office of the Legal Services Ombud, as provided for under ch 5 of the Legal Practice Act 28 of 2014 (LPA), will no doubt be an important stakeholder as its objects include the promotion of high standards of integrity in the legal profession and the profession's independence. The Legal Services Ombud, retired Judge Seraj Desai, has taken steps in 2022 to get the Office of the Legal Services Ombud off the ground. An important requirement under s 37(5)(e) of the LPA is the participation of lay assessors in the disciplinary hearings involving members of the legal profession. Judge Desai held a series of workshops around major centres in the country to introduce the lay assessors who were selected from a pool of suitable persons established and maintained by the Office of the Ombud, to the disciplinary processes and to familiarise them with the provisions of the LPA. The LSSA as always provided support to Judge Desai at these workshops with their staff attending, as well as the Chair of this Committee who was an invited speaker. The Chair, in addition to giving an address on the LPA and the Legal Practice Council, also dealt with some of the questions from the participants, relating to the differences between the LSSA and the LPC, legal fees, legal processes and professional ethics. These workshops were a great success.

Will 2023 be the year of the good lawyer who helped reverse the effects of state capture by giving strength to that important arm of the state, which guards the rule of law and dispenses swift justice? The ranks of the ethical lawyer are not swelling. The existential threats to our society, arising out of growing racism, xenophobia, nationalism, corruption, crime, gender-based violence, violence against the LGBTQI community, have drained our energies and resources. We have to work harder to repair, strengthen and support the justice fighting forces within the wounded National Prosecuting Authority. Lawyers have to recover from the devastating effects of the pandemic and commit to reversing the exponential growth of economic inequality in South Africa. While the prospects of the ranks of the 'good lawyer' expanding and performing Herculean tasks to save a failing state, look bleak, the indomitable spirit of hope and the courage of those who sacrificed their lives for our liberation from racial domination and a transition to a democratic order, must serve as examples to us, as their sacrifices should never be in vain.

We must acknowledge that the not-so-many lawyers who advance principles of honesty, ethics, justice and simply doing the right thing throughout the world, have been subjected to serious attack by forces of repression and accumulation of capital, at the expense of the exploited and poor working classes. These forces have also contributed to the irreversible damage to our environment and the consequent ravages of climate change that has

befallen the whole world, including many of the previously invulnerable rich and famous.

Amidst this existential state of uncertainty, we must call for the overhauling of our educational system, which rewards and promotes levels of mediocrity and meagre pockets of excellence. The lost culture of dedicated and caring teachers and trainers imparting the knowledge and skill that is essential for a successful and prosperous country to grow and thrive must be revived with a renewed patriotic spirit of selflessness and moved away from the current cancerous paradigm within public education, of less unaccountable working hours for undeserving higher salaries.

Our broad-based social democratic capitalist-based state promotes an educational system that produces a majority of students who seek tertiary qualifications with ambitions of joining the financially secure middle class, and wherever possible, accumulating wealth like the infamous one percent. The education system has not been effective in producing social conscious and rights sensitive, justice seeking lawyers who put monetary reward as a lesser priority. This is compounded by the resistance of the vast majority of our universities, to offer studies in ethics as a mandatory modular requirement for the attainment of the LLB degree. It also runs contrary to the concept of higher learning and is a negation of the values that accompany any such institution of higher learning that seeks to contribute to the building of a better nation. The corporate mentality that has long taken root at universities, overseen by super executives heading universities in competition with the commercialised private sector, for super salaries and bonuses, and overseen by a neutered Council for Higher Education. This is the outcome of the neoliberal policies of our government over the past decades. The responsibility of promoting ethical values especially amongst aspirant lawyers, has consequently been left to the compromised legal profession. This task by the present limited resourced legal profession to reverse a culture of acquisition at all costs in a law student's development is almost insurmountable. Enhancing the crucial aspects of ethics in law, and one may add, in life, has been left largely to the hard pressed few in the legal profession. These lawyers in the organised profession and professional bodies are committed to the raising of standards and constantly reviewing the training of aspirant lawyers. They are often found teaching the candidate legal practitioners in the practical legal schools and they are few. This is a critical matter that raises the difficulties in effecting changes to the curricula and content of the LLB degree, because of ultra conservative and snail-paced processes that strangle the urgency for change within universities which all fall under the authority of the Council for Higher Education.

The responsibility resting on the leadership of the legal profession in developing a socially conscious legal practitioner is huge. This is, in turn, necessary in protecting our fragile and threatened constitutional democracy. Despite the negative socio-economic environment and the culture of corruption that has taken root in our country, we as ethical lawyers must commit to and advance, the values enshrined in our Bill of Rights and our Constitution. It is, therefore, worth repeating some of the principles that the LSSA and all its constituents urges legal practitioners to adhere to at all times, in order to advance for the best interests of our public, namely –

- ❖ relentlessly promote the Bill of Rights, which is referred to in s 7(1) of our Constitution as 'a cornerstone of our democracy';
- ❖ embrace ethics in all aspects of our activities and actions;
- ❖ commit to the principle of equality by assisting all persons, free of any race, class, religious, age, gender or nationality bias;
- ❖ treat all members of the judiciary, colleagues, members of the public and witnesses in all matters with utmost respect;
- ❖ obey the laws of the country and the code of conduct for legal practitioners;

- ❖ abide by the rules and procedures of the courts;
- ❖ ensure that the fairness of a trial remains the prime objective, and not merely the acquittal or conviction of a person;
- ❖ adopt a caring and sensitive approach to children in all court proceedings;
- ❖ stand firm against all forms of corruption, within society in general and in all departments or components of the justice system, thereby ensuring a corrupt-free judiciary for all future or aspirant judicial officers;
- ❖ elevate the interest of clients above considerations of fees and profits or personal gain; and
- ❖ infuse a more relevant meaning to the concept of the Rule of Law, which recognises the aspirations of a populace freeing itself from the shackles of the colonial past.

The challenges, therefore, facing lawyers and our country, are very much the same over the past years. However, time is not on the side of our young constitutional democracy. We must strive to follow the courageous example of some of the greatest lawyers and leaders that our country has produced, namely, Nelson Mandela, OR Tambo, Pius Langa, Dullah Omar, Griffiths and Victoria Mxenge, Ismail Mahomed, Braam Fischer, Frene Gin-wala, to mention but a few. Or else the great cause of nearly 400 years of domination by a multitude of different negative forces will be reversed.

The choices we make as lawyers should take into account the future of our children and grandchildren in this beautiful land, our South Africa and all who live in it.

Mention must be made of the collegiality within the Committee and the ever-willing support and assistance that is always forthcoming whenever questions involving ethics and practice emanate from practitioners. In as much as there were not as many questions posed and advice sought from the Committee in the year under discussion, the Committee was always up to the challenge. The experience and knowledge of the combined membership of the Committee has always made for speedy answers. It is also noted that questions relating to professional ethics that are posed directly to the Legal Practice Council officials by practitioners are referred to the LSSA as one may expect from the regulator who would not want to sit in judgement over any of its own possible advice.

Krish Govender
Chairperson

Legal Aid, Pro Bono and Small Claims Court Committee

Members

Ncumisa Sotenjwa (Chairperson), Shaun Hangone (Deputy Chairperson), Benedict Jordaan, David Bekker, Ettienne Barnard, Liesl Williams, Mandla Motha, Philippa Kruger, Zinedile Tiya, Ncumisa Nongogo, Majobhi Mokoena, Ngqiqo Sakhele and Nkosana Mvundlela (*ex-officio*).

The Committee at its first meeting held on 12 April 2022, elected its new Chairperson, Ncumisa Sotenjwa, deputised by Shaun Hangone. The Committee has endeavoured to hold its meetings on a frequent basis, however, during the period under review, it was only able to hold one meeting, as a result of unavailability of members.

The Committee identified that since the merger of the Legal Aid, Pro Bono and Small Claims Courts Committee into one committee, it is imperative that the Committee does not lose the many experts that have previously served in the then committees. The Committee agreed on retaining the

merged structure and work towards establishing sub-committees which will assist in the effectiveness and efficiency of the Committee and further enhancing access to justice.

The Committee identified the need for a more structured *pro bono* programme in the legal profession, which would require the appointment of dedicated *pro bono* coordinators in the various provinces.

The Committee further agreed that it was pertinent to establish a relationship with the South African Board for Sheriffs to start a conversation relating to Small Claims Court services, *pro bono* services that sheriffs could offer to communities, and their service in general to promote access to justice.

The annual meeting between the Committee and Legal Aid South Africa (Legal Aid SA) took place on 30 August 2022. The representatives of Legal Aid SA were Patrick Hundermark (Chief Legal Executive), Upkaar Mungar (Legal Support Manager), Mpho Kgabi, Hope Bambiso, Hanoneshea Hendricks, Dick Khubana, Thabiso Mbhense and Nolitha Jali.

This meeting was an informative and productive engagement. Below are some of the key topics discussed:

Wills Week

Legal Aid SA advised on some of the challenges they faced in respect of their service during Wills Week, such as restricted capacity to assist and challenges in the appointment of executors or administrators. In terms of the Legal Aid policy, they currently can only administer estates where minor children are involved, although there are estates of higher value. Legal Aid SA will further engage the LSSA on referral mechanisms through the LSSA where they are unable to provide assistance.

Legal Aid Manual

The latest version of the Legal Aid Manual (Version 6), came into operation on 6 May 2022, which contains substantial changes, available at <https://legal-aid.co.za/legal-aid-manual-and-regulations/>.

New Mandate Land Rights

We were informed that, once the Land Court Bill is finalised, Legal Aid SA's mandate will be extended. Legal Aid SA has taken over the panel of the Land Rights Movement Facility from the Department of Agriculture, Land Reform and Rural Development and there is a very specific requirement that all practitioners on the panel must meet the requirements for CSD. If a practitioner is non-compliant, Legal Aid SA will not be able to fund the matter further.

Candidate Attorney Programme

Legal Aid SA has advised that it is running a school for candidate legal practitioners, specifically to prepare them for competency-based examinations, as a form of internal training. LSSA has committed to further engagements with Legal Aid SA in establishing how it can assist in their programme.

Women Empowerment

Legal Aid SA is concerned about the low number of women who have been accredited. In addressing this concern certain measures have been put in place, such as reducing the number of years required before receiving instructions in Regional Court and High Court matters.

Legal Aid SA is also offering advocacy training to legal practitioners who have not appeared in the Regional Court or the High Court.

Ncumisa Sotenjwa
Chairperson

Legal Sector Code Task Team Report

Members

Tiaan Joubert, Monise Ponoane and Eunice Masipa

On 22 July 2022, the Department of Trade, Industry and Competition published a Draft Legal Sector Code (LSC) for public comment in GG 47061. The LSSA solicited comments from legal practitioners and attorneys' associations, and established a Task Team to consider the document and the comments received.

The LSSA made substantive submissions to the Department, which can be viewed on the LSSA's website.

The LSSA supports, in principle, the development of a tailor-made Sector Code/Charter for the legal profession in South Africa. It is pertinently aware that transformation of the legal profession has become a topical and contentious issue. However, the draft LSC as it is currently formulated, was not drafted in accordance with the processes to develop a sector code as per the Amended Guidelines for Developing and Gazetteing of Sector Codes, and is furthermore fraught with inconsistencies that will make the implementation thereof problematic, and will most probably be litigated upon. More importantly, the draft LSC, in its current format, will not be able to bring about meaningful transformation.

The LSSA submitted that proper discussions should be held with stakeholders in person to ensure that workable Codes can be drafted in accordance with the processes to develop a sector code as per the Amended Guidelines for Developing and Gazetteing of Sector Codes, and by means of consensus to ensure that practical goals regarding true transformation can be set.

The LSSA had previously expressed its views to the Legal Practice Council (LPC) when comments on the earlier version of the draft LSC were requested. Despite receiving approximately 140 submissions, the LPC did not take into consideration many of the comments and key proposals by the LSSA or other stakeholders when finalising the second draft of the LSC. The LSSA believes that in light of this, the LPC could not provide a thorough representation of the submissions of legal practitioners.

There are many practical implications to be considered. The current draft LSC is still fraught with issues and ambiguous statements and definitions that would require further additional hours of work to identify and highlight. Most of the submissions had come from different angles, but raised mutual concerns. We believe that, should the draft LSC be approved, it will open a floodgate of unintended consequences.

Legal practitioners are already burdened with various compliance requirements, including obligations pursuant to the Financial Intelligence Centre Act 38 of 2001 and the Protection of Personal Information Act 4 of 2013. The draft Codes, in its proposed form, will just amplify the burden, specifically on smaller firms, not to mention the uncertainty it will bring. Put differently, it would thwart the noble transformation objectives for the legal profession.

There is a real risk that, due to the uncertainty and issues raised in the various submissions, the Codes will most likely be tested in the courts (should they be gazetted in its current form). Certain constitutional issues have been raised. Should these issues be litigated upon, the Codes will get stuck in a legal quagmire and transformation will once again be left by the wayside.

Ideally, the LSC should provide for broad-based black ownership schemes and entrepreneurship schemes with special incentives to recognise and reward the transformation initiatives, and encourage participation by all the stakeholders. Better results can be achieved by consensus reached with legal practitioners, rather than dictating to legal practitioners. In seeking consensus, government can ensure that the central pillars of our constitutional democracy are not undermined, and that there is no erosion of the fundamental

principles, including the independence of the legal profession and the judiciary.

In summary, the current format of the LSC should be redrafted as it:

- (a) was not drafted in accordance with the processes to develop a sector code as per the Amended Guidelines for Developing and Gazetteing of Sector Codes, causing it to be fatally flawed;
- (b) failed to take into account previously invited comments provided to the LPC;
- (c) includes misleading and divisive language that does not support an inclusive approach to BEE and transformation;
- (d) fails to be based on sound economic principles, sectorial characteristics, or empirical research;
- (e) will not be able to achieve real transformation of the legal sector; and
- (f) is impractical and does not take into account the practicalities of a legal practice.

Liquor Matters Committee

Members

Kobus Burger (Chairperson), Sandile Dlomo, Abongile Matomane, Eugene Kruger, Mhlana Bela and Sam Matsimela

Key developments

• National Liquor Act

No significant changes took place the past year. Their online system seems to function better in respect to new applications and the renewal of national registrations.

• Developments at provincial level

Free State: The Free State published amendments to the regulations on 22 April 2022, mainly including a few smaller issues and some of the application forms have been changed. They also published a Free State Gambling, Liquor and Tourism Amendment Bill, 2018 in the *provincial gazette* on 9 September 2022 for comment. It was only published in the provincial gazette, and nobody knew about it. After role-players informed the Free State Legislature that they did not receive sufficient time to file their comments and that virtually nobody knew about the publication thereof, the Free State Legislature went ahead, again without informing the role-players, and published the same Bill on 7 October 2022. The Amendment Bill makes provision for a number of significant changes that will severely affect the liquor industry in the Free State. Some of these provisions are unconstitutional. What made it extremely difficult to comment properly, was the fact that the Amendment Bill refers to a number of issues that will be dealt with by regulations, but they failed to publish the amended regulations.

North West and Limpopo: Both these provinces still use the old Liquor Act 27 of 1989. It seems that the Limpopo Liquor Board functions fairly well, but unfortunately the same cannot be said about the North West Liquor Board. It is virtually non-functional to the extent that attorneys no longer are willing to lodge new liquor applications in this province.

Mpumalanga, Eastern Cape and Northern Cape: These Liquor Boards seems to function fairly well and according to the Northern Cape Liquor Board, their turnaround time for new applications is between three and six months, whilst in the Eastern Cape, the turnaround time is maybe a bit

shorter. However, the turnaround time with applications in the Mpumalanga province is delayed, due to the fact that new liquor applications must first be submitted to the municipalities, who must file their reports within 30 days, and which does not happen in many of the dysfunctional municipalities.

Gauteng: Apart from a small amendment to the Act there were no significant changes. Their turnaround time of new liquor applications is approximately between three and six months.

Western Cape: There were no significant changes, except that their turnaround time is much too long in respect to new applications, which can take up to six months and even more to be finalised.

KwaZulu-Natal: The KwaZulu-Natal Liquor Board introduced a new computer system in 2019. It seems that this system is still not functioning properly. Together with the fact that they are under-staffed, the turnaround time is approximately eight months for new applications and the transfer applications seem to take much longer.

Focus for 2023

There appears to be a decline in the number of attorneys or attorney firms that do liquor applications and an increase in the number of liquor consultants. The reason for this seems to be the fact that it has become increasingly more difficult to convince the administration of Liquor Boards to attend to their work, which is rather frustrating to say the least. The Committee will endeavour to intervene by making submissions and having meetings with the relevant authority and will endeavour to assist attorneys, if requested to, to resolve their problems with the relevant authorities.

Conclusion

The Committee will continue to monitor developments pertaining to its field of expertise at national and provincial level and deal with issues appropriately.

Kobus Burger
Chairperson

Personal Injury Committee

Members

Jacqui Sohn (Chairperson), Benock Shabangu, Likhaya Makana, Lindy Langer, Mpendulo Gama, Sinawo Makangela.

Introduction

The Committee made use of e-mail and telephone/video conferencing as required.

Key developments

- **Comment submitted to the South African Law Reform Commission by Law Society South Africa on Discussion Paper 154: Project 141: Medico-legal claims**

In November 2021, the South African Law Reform Commission (SALRC) published Discussion Paper 154 – Project 141 – Medico Legal Claims for comment following research conducted by it and after considering comments on Issue Paper 33. The paper proposed far-reaching changes.

The discussion paper stated that it was apparent that the current method of dealing with medico-legal claims in South Africa is untenable and that the extent of medical negligence litigation against the state had reached a level where it is adversely and prejudicially impacting in a serious manner on service delivery in the public health sector and endangering the constitutional right to have access to health care services.

The LSSA emphasised in its submission that any remedial plan to the crisis, which currently prevails in public health has to be a holistic one and the recommendations of the SALRC in this regard pertaining to the law are merely a component of what has to be a bigger solution. Furthermore, that any court examining legislative changes to implement a solution aimed at merely curtailing the outflow of cash to settle claims will do so against the backdrop of the state of the existing health care system and the constitutional duty of the state to provide access to proper health care, as well as the constitutionally protected rights of an injured party to bodily integrity and access to the courts.

Thus, any solution which forces an injured victim back to the very institution that injured him or her in the first place can only be supported if and when that institution is operating efficiently and effectively and can guarantee consistent quality health care of an acceptable standard.

The LSSA's submission can be viewed on its website.

• Road Accident Fund Board Notice 271 of 2022

On 6 May 2022 Board Notice 271 was published in *Government Gazette* 46322. Its terms did not materially differ from Board Notice 66, commented on in our previous report.

The effective date for Board Notice 271 to come into operation was dependant on the publication of a revised RAF Form 1. On 27 May 2022 Board Notice 280 was published prescribing a revised RAF 1 Third Party Claim Form. However, a few days later, on 31 May 2022, Board Notice 281 was published, which withdrew Board Notice 280. Thus, the operation of Board Notice 271 was again suspended pending the prescribing of a new claim form.

On 4 July 2022 the current further revised Form 1 was prescribed by the Minister of Transport (as opposed to being published in a notice by the Board) which, yet again, triggered the operation of Board Notice 271.

The Committee is of the opinion that Board Notice 271 and the current RAF 1 Third Party Claim Form are *ultra vires* the powers of the Board and the Minister, and in previous submission pointed out that many of the documents which are now expressed to be mandatory for a valid claim to be substantially compliant are not always readily available, or even exist. The Board Notice and revised RAF 1 further exclude claims from foreign nationals who are unable to produce a current valid visa or are undocumented. The effect of the Notice will be to deny access to compensation to many claimants whose claims will prescribe before they are able to obtain the stipulated documents or information.

The Legal Practitioners Insurance Indemnity Fund has launched an application out of the High Court to review Board Notice 271 and the revised Form 1. The application can be viewed on their website.

The Committee is following the proceedings closely and will make further recommendations to Council as to whether the LSSA should intervene.

• Road Accident Fund Medical Tariff

On 10 March 2021, the Minister of Transport published a notice in terms of s 26 of the Road Accident Fund Act 56 of 1996 advising of his intention to prescribe the tariffs set out in the schedule. In terms of s 17(4B)(a) of the Act, the prescribed tariffs limit the liability of the Road Accident Fund (RAF) for the costs of all health care treatment and services resulting from injuries sustained in motor vehicle accidents.

A medical tariff was first introduced in terms of the Road Accident Fund Amendment Act 2005, which prescribed the Uniform Patient Fee Schedule (UPFS). This came into effect in 2008 and was challenged by the LSSA and others. In 2010 the Constitutional Court struck it down and in para 99 of the judgment had the following to say:

‘[99] I am satisfied that the UPFS tariff is incapable of achieving the purpose which the Minister was supposed to achieve, namely a tariff which would enable innocent victims of road accidents to obtain the treatment they require. UPFS is not a tariff at which private health care services are available; it does not cover all services which road accident victims require with particular reference to spinal cord injuries which lead to paraplegia and quadriplegia. The public sector is not able to provide adequate services in a material respect. It must follow that the means selected are not rationally related to the objectives sought to be achieved. That objective is to provide reasonable healthcare to seriously injured victims of motor accidents.’

The LSSA made an initial submission and a supplementary submission, which can be viewed on the LSSA website. Despite submissions from several suppliers and representative bodies the RAF proceeded to promulgate a medical tariff which the LSSA believes –

‘... is incapable of achieving the purpose which the Minister was supposed to achieve, namely a tariff which would enable innocent victims of road accidents to obtain the treatment they require.’

On 22 October 2022, the National Council of and for Persons with Physical Disabilities, together with the LSSA, launched an application for an interim interdict and review of the prescribed medical tariff. Despite the Minister of Transport having agreed to the suspension of the operation of the medical tariff pending the outcome of the review, the RAF refused to follow suit, which necessitated an urgent hearing of Part A of the application.

On 15 December 2022, the in *National Council for and of Persons with Disabilities and Another v Minister of Transport and Others* (GJ) (unreported case no 039100/2022, 15-12-2022) (Tolmay J) court granted an interim interdict against the implementation of the tariff, pending the outcome of the review application. Cost was awarded against the RAF on an attorney-and-client scale.

Part B on the application will be argued in May 2023. The application can be viewed on the LSSA's website.

- ***Hlatswayo and Masilela v RAF***

The Committee also considered the above matter, where the Mpumalanga High Court ordered the LPC to file an affidavit dealing with certain issues, including the RAF's administration of claims and compliance with court procedure. The LPC approached the LSSA for assistance and the LSSA issued an advisory to practitioners requesting input. A considerable number of responses were received.

Focus for 2023

Both Board Notice 271 and the Medical Tariff published by the Minister of Transport, if implemented in their current form, will result in material prejudice to the public and the profession alike. The Committee will continue to engage with the RAF and to respond appropriately to both Board Notice 271 and the prescribed tariffs in the interests of the public and the profession.

Jacqui Sohn
Chairperson

Property Law Committee

Members

Dave Bennett (Chairperson), Anita Gounden, Hussan Goga, Monise Ponoane, Mabaeng Lenyai (*ex-officio*), Khanyi Gcolotela (*ex-officio*), Anton Theron (*ex-officio*), Elvira le Roux, Loleah Mamabolo and Bonwabile Nyanda

- **Electronic Deeds Registration System (EDRS)**

Due to the financial and other effects of the COVID-19 epidemic during 2020, 2021 and the early part of 2022, the Department of Agriculture, Land Reform and Rural Development had to delay the advancement of the Electronic Deed Registration System (EDRS) development program for a while. This process, however, was reactivated again during 2022, and as the funding for the development is being provided by the State Information Technology Agency (SITA) the Department together with the SITA embarked on countrywide stakeholder engagement meetings during October and November 2022 on how the development of EDRS would be structured and implemented over the next three years. In preparation of these roadshows, a meeting was arranged by the Committee with representatives of the conveyancers at all seats of the Deeds Offices throughout the country to provide them with background about the EDRS development up to that stage, in an effort to allow constructive debate and participation in the stakeholders meetings. The Committee also ensured proper representation at these meetings, and that feedback be received from the meetings in order to monitor the discussions at the various centres.

An indication was given that the conveyancing profession would shortly be invited to participate in certain practical aspects of the development and implementation program, but at the date of compiling this report, no such invitation has as yet been received from the Department.

- **Engagement with stakeholders**

The Committee continued to participate in a number of discussions with stakeholders in the development of the EDRS. The Committee is represented in a working group with the Banking Association of South Africa (BASA), LAWtrust, and other service providers and developers of conveyancing programs, and have presented proposals to the Chief Registrar of Deeds on the electronic systems currently used within the conveyancing process and how these could be incorporated in the new EDRS. At the stakeholder engagement meetings referred to above, it appears as if the Department have taken note of the said proposals, and will only be developing systems that regulate the processes from lodgement to delivery, and will take into consideration the concerns of the profession regarding security of signatures and titles.

- **Business Unity South Africa (BUSA)**

The chairperson, as part of the BUSA delegation, also attended several meetings facilitated by the Chief Registrar of Deeds on the Socio-Economic Impact Assessment System (SEIAS): Final Impact Assessment

on the proposals for Transformation of Deeds Registration Legislation. This included, amongst others, discussions on the registration of land tenure rights in future, the slow pace of land reform, and stimulation of informal transfers being delayed to unaffordable registration fees and complexity of deeds registration procedures. The impact and possible role of stakeholders such as the Department of Agriculture, Land Reform and Rural Development, other Government Departments, the LSSA, the Legal Practice Council and Traditional Leaders in the assessment and resolving of these issues were discussed and a report was presented to the Department.

• Deeds Registries Amendment Bill

Throughout the year, the Committee participated in various meetings about the Deeds Registries Amendment Bill with various stakeholders at the Development Chamber: Labour and Development Unit of NEDLAC as part of the Business Unity South Africa group, where various amendments to the Deeds Registries Act 47 of 1937 was discussed. These amendments were thereafter approved by NEDLAC and published by the Minister in August 2022. It was tabled in Parliament on 2 November 2022.

• Property Practitioners Act 22 of 2019

The Property Practitioners Act came into operation on 1 February 2022. The Committee had a meeting with representatives of the Property Practitioners Regulatory Authority (PPRA) in August 2022, with a view of creating a working relationship with the new board, and to specifically discuss certain concerns of the profession with the new Act and the Regulations. The implementation of s 56(5), which prohibits conveyancers from paying remuneration to property practitioners who have not provided them with a certified copy of their Fidelity Fund Certificates, valid on the date of the transaction and the date of payment, was pertinently discussed, as well as the challenges experienced by the PPRA in issuing these certificates.

• South African Revenue Services

The Committee held two meetings with Sars relating to the delays being experienced with the issuing of transfer duty receipts and exemptions, as well as a number of other operational and practical problems experienced by the profession with the service delivery by Sars in property and deceased estate related matters. Some improvement have since been effected by Sars, who indicated that they were in the process of considering and implementing changes to their systems in the near future, which would improve the turnaround times and performance from their side.

• Conveyancing Fee Guidelines

The Committee is considering and finalising an adjustment to the conveyancing fee guideline in accordance with the Consumer Price Index (CPI) index of January 2023. This is being attended to at the moment and will in due course be presented to Exco of the LSSA for approval, and thereafter be implemented by notice to all members. The planned date of implementation is 1 May 2023.

Dave Bennett
Chairperson

Tax Matters and Exchange Control Committee

Members

Robert Gad (Chairperson), Iqbal Ganie, Charles Ancer, Mzawuthethi Kalimashe, Vusumuzi Rajuili and Thopane Maloka.

Key developments

This Committee held telephone conferences during the period under review to discuss relevant topics, including proposed engagement with other South African Revenue Service (Sars) and professional bodies. In lieu of physical meetings, telephone conferences seem to be a more economical and convenient alternative.

The main actions for the year were as follows:

Stakeholder relationships

The Committee has improved its profile and has received more frequent invitations to attend Sars/ National Treasury workshops, and make submissions on proposed Tax Law, to which it responds.

The Committee is a regular invitee and participant in the Regulatory Controlling Body (RCB) stakeholder workshops with Sars on issues of concern to tax practice. In addition, the Committee has been invited to a smaller group workshop with Sars on streamlining tax dispute processes.

The Committee has engaged with other RCBs and LSSA Committees on proposals by South African Institute of Chartered Accountants to expand legal professional privilege and right of appearance in tax matters. The LSSA intends opposing these proposals.

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

Submissions

Where appropriate, this Committee participates in written and oral comments on changes to the tax and related legislation.

As Chairperson, I would like to thank the Committee very much for all of their input and efforts during the course of the year under review. I would also like to thank Lizette Burger for her efforts, as well as those of her professional assistant, Kris Devan, Nonhlanhla Chanza (Parliamentary Liaison Officer), Ricardo Wyngaard (Senior Legal Official) and Selinah Sekano (Committee Secretary).

Focus for 2023

This Committee has confirmed its objective of ongoing engagement with Sars and stakeholders in legal and tax practice, and to continue to be a regular and visible participant in the increasing number of fora, which have been established for this purpose.

Robert Gad
Chairperson

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