

DE REBUS HITS A HIGH NOTE

The title 'De Rebus' has emerged as a strong brand name and attorneys and candidate attorneys who participated in a recent survey were adamant that, although they were not certain of its meaning, the name should not be changed or altered in any way. This brand loyalty extended to a general satisfaction with the content, layout and range of topics covered in *De Rebus*. In fact, 95% of the participants in the reader survey conducted on behalf of *De Rebus* by Johannesburg-based media research company Research in Action said they would miss *De Rebus* if it were to be discontinued.

A broadly representative random sample of respondents was selected from *De Rebus*'s attorney and candidate attorney database. The research was con-

ducted in two phases country-wide. The first, to establish a profile of *De Rebus*'s readers and their readership patterns, was conducted through 300 telephone interviews. In the second phase, 20 face-to-face personal interviews were conducted to gauge the perceptions and attitudes of readers as well as assessing the editorial content of the journal.

The results revealed that *De Rebus* is held in high regard by readers and has very high credibility. Most readers (88%) believe that the journal adequately reflects the concerns of the attorneys' profession.

General trends

The following trends emerged:

- The journal is read regularly and fairly thoroughly. Senior

practitioners tend to read more selectively.

- Practitioners glance through the journal on receipt, and then take it home for further reading. The journal is then returned to the office for future reference.

- The classified advertising supplement (the 'yellow pages') is generally read first.

- Items that are relevant to practice – such as law reports, case notes and step-by-step-guidelines – are high on practitioners' preferred reading list.

- *De Rebus* readers actively read the advertisements published in the journal, particularly those dealing with information technology products and courses offered by various institutions. Advertisements are also used to advise clients.

- Younger practitioners are interested in advertisements and articles dealing with practising overseas.

Computers

Only 6% of respondents indicated that they did not use computers themselves. 70% of practitioners themselves use computers in their practices, 80% of those use e-mail facilities and 70% use the Internet for legal research. Many junior and candidate attorneys indicate that they do not have access to PCs at the

office or that they are not permitted to use the Internet.

A disappointing response was received to *De Rebus*'s web site as only 12% of respondents appear to visit the site. Practitioners indicated that they thought the web site merely reflected the content of the journal and were not aware of extra features such as the search engine and the 'Between Issues' professional news update.

Payment

With pressure increasing on the Attorneys Fidelity Fund to reduce funding of non-core expenditure items and with *De Rebus* falling under this head, practitioners were asked whether they would pay R15 per copy of *De Rebus*. Only 19% of the respondents indicated that they were not prepared to pay that price for the journal. However, indications from smaller firms are that they would subscribe only to one or two copies. At present all practising attorneys and candidate attorneys receive *De Rebus* free of charge, courtesy of the Attorneys Fidelity Fund.

Read the full reader survey report on *De Rebus*'s web site at www.derebus.org.za

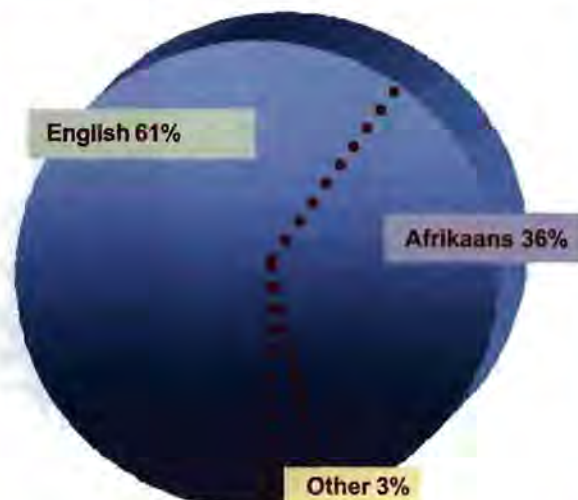
Language used in practice

	Afrikaans	English	Other
Total	36%	61%	3%
Gauteng	31	68	1
Eastern Cape	5	81	14
KwaZulu-Natal	3	97	
Mpumalanga	53	35	12
Northern Cape	80	20	
North-West	71	21	7
Free State	69	31	
Western Cape	49	51	
Northern Province	46	31	23

As reflected in the table and graphic, 61% of the surveyed practitioners use English as the main language in their practices, whereas 36% use Afrikaans and 3% use other languages in their practices.

In a 1995 reader survey, 45,5% of the respondents indicated that they spoke English and 44,8% Afrikaans.

More than three-quarters (77%) of the respondents indicated that a predominantly English publication would be acceptable to them.



LEGAL AID: 'NO REAL ACCESS TO JUSTICE WITHOUT LEGAL PRACTITIONERS,' SAYS LSSA

At the end of October the Legal Aid Board (LAB) announced a range of cooperation agreements between it and a number of NGOs and university law clinics as a second phase of its 'Access to Justice' programme. LAB chief executive officer Ashley Ally said: 'We have already moved a long way from the old judiciary system that tended to fund assistance in criminal matters through using lawyers in the private sector. 'Access to Justice' and the cooperation agreements in particular, are designed to contain the costs of providing legal assistance to the poor and vulnerable so that this assistance can be made more widely available.'

However, Law Society of South Africa (LSSA) co-chairpersons Silas Nkanunu and Jan Maree said that although the LSSA supported the LAB in its constitutional responsibility to provide legal representation to the public, it was firmly of the view that the Board would not be able to fulfil its obligation to the poor without the assistance of legal practitioners. 'Notwithstanding the establishment of justice centres and the expansion of legal aid clinics, the LAB is unable drastically to reduce judiciary instructions to legal practitioners due to the dire need for legal representation,' the co-chairpersons told *De Rebus*.

The first phase of the LAB's 'Access to Justice' programme was the establishment of justice centres as direct access service providers or, according to the LAB, 'social agency law firms'. There are currently twenty-four justice centres and the Board plans to have set up sixty by 2004.

The second-phase cooperation agreements are between the LAB and current legal service providers – such as the university legal aid clinics, Lawyers for Human Rights and the

Centre for Rural Legal Studies in the Boland – which have an established infrastructure in a region where the LAB is not represented or which specialise in matters identified by the Board as high priorities. Like the justice centres, the cooperation agreement partners will focus on criminal representation, 'women's issues' such as divorce, maintenance and domestic violence, as well as children's and land issues. According to the LAB, the essence of the agreements is that the Board will fund additional staff to be employed by each of

the cooperation partners to increase the partner's output of legal aid matters.

In identifying potential partners the LAB took into account their track records, sound management and reporting and the potential cost per case. Mr Ally said: 'We are proud to be associated with a range of organisations that have served their communities faithfully and effectively, and to be able to help them to extend this service, thus increasing the delivery on their mandate and on ours.'

However, the LSSA co-chair-

persons remain confident that the legal profession will continue to play a fundamental role to assist the LAB in achieving its objectives. 'The LSSA pledges its support to the LAB to ensure access to legal services. We will urge attorneys to enter into cooperation agreements to assist the Board in reducing the cost of legal aid instructions,' said the co-chairpersons.

Barbara Whittle

BENCH PRESS



In October President Thabo Mbeki accepted the Judicial Service Commission's recommendations for new appointments to the bench.

Three attorneys feature among the eleven new judges. Pietermaritzburg attorney Atkins Moleko, who has represented the Black Lawyers Association on the council of the Law Society of South Africa since its establishment in 1998, and Herbert Msimang, also of Pietermaritzburg, were both appointed to the Pietermaritzburg high court bench. Johannesburg attorney Ellem Francis was appointed as a judge in the Labour Court.

New high court Judge Atkins Moleko.

Bobroff heads Gauteng Law Council



Johannesburg attorney and Law Society of South Africa and Law Society of the Northern Provinces council member, Ronald Bobroff, was re-elected chairman of the Gauteng Law Council at its annual general meeting in Johannesburg earlier this year.

BAR REFORM

At a special general meeting in Johannesburg at the end of October the General Council of the Bar (GCB) implemented a decision taken at its annual general meeting earlier this year to ensure that at least half the members of its national executive are black. Leading Advocates for Transformation (AFT) members Justice Poswa SC of Durban, Pops Aboobaker SC of Durban and Norman Arendse SC of Cape Town were appointed to the GCB national executive.

According to a GCB media statement issued after the meeting this served 'to end five years of division about governance of the profession'. At the meeting GCB chairman, Cape Town advocate Jeremy Gauntlett SC, said: 'I believe this is a decisive breakthrough. It means that advocates are united as never before in seeking to deal with challenges both within our profession, and more generally relating to the administration of justice.'

The members of the new GCB executive are Jeremy Gauntlett SC (chairman), Willem van der Linde SC (deputy chairman), Justice Poswa SC (vice-chairman), Patric Mishaulana (honorary secretary), Fayeeza Kathree (assistant honorary secretary), Mabel Jansen SC, Ishmael Semanya SC, Pops Aboobaker SC, Norman Arendse SC and Archie Findlay SC (ex officio as chair of the National Bar Examination Board).

AUSTRALIAN PROFESSION FACES REFORM

Law Society of South Africa (LSSA) co-chairperson Jan Maree and council members Susan Abro of Durban and Vincent Saldanha of Cape Town were surprised to hear echoes of a very familiar rhetoric on the need for a unified, national profession at the Law Council of Australia's recent 32nd legal convention in Canberra. Australia's Attorney-General Daryl Williams QC called for a national regulatory framework for the Australian legal profession.

Ms Abro told *De Rebus* that Mr Williams believed the greatest challenge facing the Australian profession to be the need to remain relevant, flexible and competitive. To do so the profession would have to deliver a foundation that would allow it to face the challenges unimpeded by jurisdictional barriers. This would allow the profession to compete on an equal footing with other 'advice providers' who did not face regulatory barriers. Also, and most significantly according to Mr Williams, it is in the public interest to set up a framework to improve access to justice. He identified the key issues to guide the reform of the legal profession as

- setting up core uniform admission requirements and procedures,
- developing a consistent model for regulatory and disciplinary procedures, and
- facilitating the incorporation of legal practices and multidisciplinary practices and other similar business structures.

A profession under attack

In addressing the state of the profession, Law Council of Australia president Anne Trimmer said there had been an unprecedented number of attacks on the legal profession categorising it as greedy, self-serving and abusers of the tax system

for personal gain. She added that in formulating their attacks, commentators had attacked all lawyers indiscriminately. Ms Trimmer pointed out that many lawyers were worthy of tribute and that the profession was made up of ordinary lawyers doing extraordinary things. She added that it was lawyers who provided the voice of reason and defended the rule of law as a value above all others at a time when it was under sustained attack. According to her, the best feature of the profession was its commitment to service of the community.

Women in the profession

Ms Abro attended an Australian Women Lawyers Association breakfast where the guest speaker, New Zealand law society president Christine Grice, gave an overview of the progress of women lawyers in New Zealand, one of the first countries to allow women to enter the legal

profession. Women in New Zealand make up 54% of law graduates, 17% of the district court bench and 14% of the high court bench. Women leaders were becoming more visible in the profession which has a woman chief justice, attorney-general and governor-general. However, according to Ms Grice women still had to reach the internationally recognised 30% mark which would afford the critical mass to change the culture of the organisation. Women in the profession still tended to concentrate on the 'softer' areas of law such as family and matrimonial work and few were tackling areas such as tax law and other commercial work.

Pro bono

Mr Saldanha attended a session on access to justice at which he made an informal presentation on access to justice in South Africa. He told *De Rebus* that the Australian profession took pride in

its contribution to access to justice through its pro-bono scheme run by the Public Interest Advocacy Centre (see 2001 (Nov) *DR* 18).

Mr Saldanha, Ms Abro and Mr Maree all participated in the forum of international bar leaders, which focused on the strengthening of the rule of law at an international level. Much of the discussion was an exchange of processes and procedures in the various countries on the appointment and dismissal of judges, the debate on whether court proceedings should be televised live and generally the issues affecting the independence of the legal profession and the judiciary.

Read Ms Abro and Mr Saldanha's full reports on the Australian conference in the 'News' section of *De Rebus*'s web site at www.derebus.org.za



Law Society of South Africa delegates Vincent Saldanha, left, Susan Abro and Jan Maree with Law Council of Australia president Anne Trimmer (second from left).

The 'Aboriginal Embassy' opposite the Old Parliament Building in Canberra has been there as a form of protest for many years.



SA and Irish law societies join forces to offer commercial training

The Law Society of South Africa (LSSA) and the Law Society of Ireland recently entered into an agreement to provide training in commercial law to fifty practitioners from a disadvantaged background. The project has been approved by the Irish government and will be funded by Ireland Aid. According to Michael Irvine, solicitor and Irish law society member: 'The Irish government recognised that to a large extent, expertise in commercial law was dominated by practitioners in the larger law firms practising in the larger urban centres. ... It is hoped that this [project] will assist in the practical application of commercial law and allow for the development of commercial activities through a wider spectrum of society in South Africa.'

The LSSA's Practical Legal Training section (PLT) in Pretoria will coordinate the project locally, provide administrative back-up and set up a selection panel to interview and select candidates.



Irish Ambassador Hugh Swift, left, and Law Society of South Africa (LSSA) management committee member Jake Moloi, sign the LSSA/Law Society of Ireland commercial law training project contract at the Irish Embassy in Pretoria.

In two six-day courses – scheduled for Pretoria in February 2002 and Durban in September 2002 – Irish solicitors will lecture, tutor and examine the 50 South African practitioners in

- analysing and explaining the elements and procedures relating to the conclusion of an enforceable commercial transaction;
- negotiating the terms of such a transaction, particularly through legal documentation;

- explaining tax and other statutory and financial implications,
- drafting relevant documentation, and
- examining arbitration as a method of settling disputes in such transactions.

Requirements

Employment equity principles will apply in terms of selection. Delegates will have to be in possession of an LLB or BProc de-

gree and must have completed their PLT training. If a delegate has been admitted as an attorney, he must have practised as such and for a period of no longer than five years. Should the delegate not be admitted as an attorney, he must not be employed outside the profession. Preference will be given to applicants who are not working in a firm with a specialised commercial division. Applicants are also requested to show in writing why they will benefit from attendance.

- Further information is available before 31 January 2002 from Tumi Buda at PLT, tel (012) 341 3091 or e-mail: pltdir@lssa.org.za

The application form for the project is available in the 'News' section on *De Rebus's* web site at www.derebus.org.za

SHERIFFS' PROFESSION COMMITS ITSELF TO TRANSFORMATION

The Board for Sheriffs launched its National Action Plan (NAP) to transform the sheriff's profession in Cape Town earlier this year.

According to the Board's chairman, Cape Town attorney and Law Society of the Cape of Good Hope vice-president Taswell Papier, the primary objective of the NAP is to bring the profession in line with constitutional imperatives of race and gender, as well as skills and service delivery.

As at April this year the sheriffs' profession consisted of 365 white sheriffs and 69 black sheriffs. Forty-five sheriffs are women and of those eight are black.



Sheriffs' Board chairman, Cape Town attorney Taswell Papier, said sheriffs' work must be carried out within the framework of the Constitution.

A survey of the sheriffs' profession was conducted during the year and the views of the attorneys' profession were canvassed through a questionnaire (see 2001 (May) DR 16).

Speaking at the launch of the NAP Mr Papier said it was important to understand the role of the sheriff in its proper context. 'The role of the sheriff is to execute court process. It is a grudge profession; the task is an unpleasant one,' he said. He explained: 'Often the sheriff is the only link between the civil justice system and the public, interacting with, amongst others, the poorest of the poor and most marginalised sectors of society.

'The removal of furniture and

the ejectment and eviction of families can by definition not be an enjoyable task. The sheriff and deputy sheriff are, in most instances, the bearers of bad news to the toiling masses of our country, plagued by the evils of poverty, illiteracy and oppression, confronted by a sheriff who is compelled to execute the court order in terms of the law.'

Mr Papier said the task of sheriffs needed to be executed within the framework of the Constitution, recognising and appreciating the social context, and taking steps to ensure that it is executed with full recognition of the rights to dignity and integrity.

A VIEW OF THE PROFESSION

Philip van der Merwe and **Barbara Whittle** report on discussions, debates and decisions from the AGMs of the provincial law societies and the BLA.

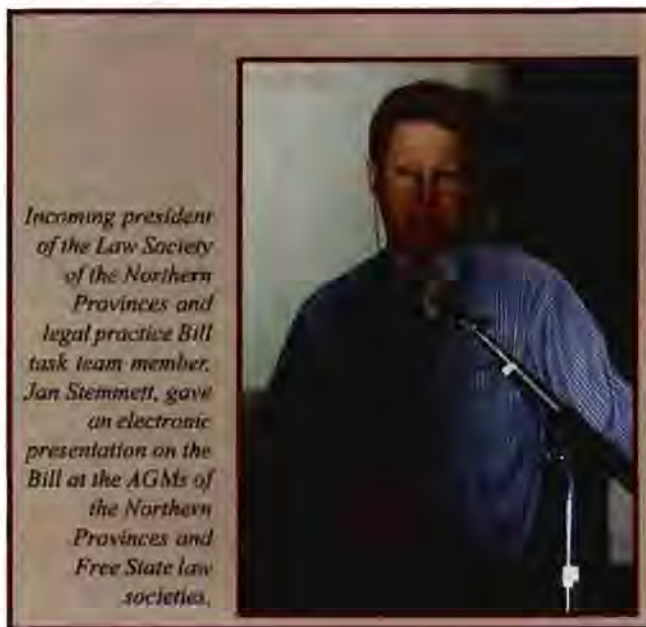
Two issues were common to the agendas of all law society annual general meetings (AGMs) this year: the legal practice Bill and the Attorneys Fidelity Fund proposal that attorneys should consider self-certification of trust accounts.

The Bill

Attorneys attending the AGMs generally supported the Law Society of South Africa's proposals to the legal practice Bill task team and mandated their respective law societies to continue negotiating with the other branches of the legal profession and with the Minister.

At their AGM in Bloemfontein early in November, Free State attorneys had the benefit of two task team members giving their impressions of the Bill drafting process – incoming Northern Provinces law society president Jan Stemmett and outgoing Free State law society president Jan Maree, who as Law Society of South Africa (LSSA) co-chairperson, leads the attorneys' delegation on the task team.

Mr Stemmett pointed out that although a number of issues still had to be resolved, the one certainty was that the future representative structures of the legal



profession – both at national council and Fidelity Fund board level – would include non-attorneys. Mr Maree stressed that the LSSA would continue to oppose the fragmentation of the profession into a myriad of small accredited voluntary organisations.

At two of the AGMs attorneys asked why the change in legislation had been necessary at all. Mr Maree explained that after 1994 there had been a call to restructure the four law societies

into nine representative bodies. One of the main objectives of the transformed LSSA – stated in its constitution – had been to redraft the Attorneys Act to ensure a representative and unified attorneys' profession. This mandate had been extended by the Ministry of Justice to the entire legal profession.

Cape law society president David Macdonald – who also sits on the Bill task team – told Cape attorneys at their AGM in Kim-

berley at the end of October that the Justice Department's original plan of setting up a 'legal megastructure' for all branches of the legal profession had receded through negotiation now to include attorneys, advocates and paralegals only.

In making her presentation to KwaZulu-Natal attorneys in mid-October, Durban attorney and law society vice-president Susan Abro, who is also a member of the task team, applauded Durban attorney Roger Green for his role in persuading the team to recommend that conveyancing continue to be reserved to specially qualified attorneys. Mr Green is chairman of the LSSA's property law standing committee (see also 2001 (Oct) *DR* 16 and (Nov) *DR* 4). This sentiment was echoed also in Kimberley and Bloemfontein.

Outgoing KwaZulu-Natal law society president, Durban attorney Greg Kruger, said that, although as a member of the Black Lawyers Association he supported transformation, he was against any loss of self-regulation by the profession. He was dismayed that the Bill was likely to introduce a measure of government control and allow 'outsiders' a say in how the profession will be run.

Legal practice Bill delayed

The Legal practice Bill task team was hoping to complete its discussions and drafting of the legal practice Bill by the end of November.

After its meeting on 24 October, task team chairman, Johannesburg attorney Geoff Rudlender, told *De Rebus* that he would inform Justice Minister Dr Penuell Madons that the draft Bill would not be complete by the end of October deadline.

Self-certification: proceed with caution

The Attorneys Fidelity Fund's proposal of limiting its risk exposure by introducing self-certification of trust accounts (see 2001 (Oct) *DR* 21 and (Nov) *DR* 17) received a mixed reception from most attorneys at AGMs. The clear message to the Fund was 'proceed with caution'. AFF executive director John Moorhouse, who discussed the proposal in Bloemfontein, said he would inform to AFF's board that there were grave reservations among the profession and that

the AFF would have to devise an acceptable model for self-certification and present it to the profession.

At the Cape law society AGM, where Board vice-chairman Max Boqwana introduced the discussion, questions were raised about the infrastructure necessary to support an efficient inspectorate. Also, the point was made that often newly admitted practitioners – particularly those in small firms which did not have dedicated finance and bookkeep-

ing departments – needed an annual audit as a support system. At the Free State AGM practitioners felt that the Fund should investigate how it could improve the current system both from the side of attorneys and from that of auditors.

KwaZulu-Natal attorneys indicated their support for the system of self-certification by way of their applause, although no vote was taken on the issue.

The Fund's chairman, Durban attorney and former law society

president David Randles, told the AGM that despite the social and cultural differences between Scotland (on whose system the Fund's proposal was based) and South Africa, the problems encountered were much the same in both jurisdictions.

His view was that revised audit procedures – the alternative being proposed by the accountants – would increase the profession's present audit costs threefold.

However, at their AGM, Northern Provinces attorneys refused to give even an informal indication of their support for the idea of self-certification, which was presented to them by the Fund's vice-chairman, Rustenburg attorney and former law society president Igna Klynsmith.

The meeting heard calls for the council to take the proposal, which was described as too 'important and critical' for it to be left to the council to decide, on a road show so that there could be informed debate at circle level. Other speakers suggested that a decision be postponed to the next AGM or a special general meeting.



The Attorneys Fidelity Fund (AFF) promoted its self-certification concept at all the law society AGMs. Clockwise from left, AFF board vice-chairman Igna Klynsmith, board chairman David Randles, board vice-chairman Max Boqwana, and AFF executive director John Moorhouse.



AGM BRIEFS

New name: KwaZulu-Natal practitioners agreed unanimously to a proposal by the law society's council to use the name KwaZulu-Natal Law Society *de facto*, pending the necessary legislative amendments.

Obligatory community service: Cape attorneys adopted a resolution that, in principle, members be obliged to make themselves available to perform obligatory community service. The ambit of such service and the mechanisms for delivery are to be worked out in consultation with the Cape law society's local circles and members generally during 2002.

RAF: The chairman of the Gauteng Law Council, Johannesburg attorney and law society councillor Ron Bobroff, warned Northern Provinces attorneys to expect a number of assaults on MVA work within the next few months.

The new board of the Road Accident Fund (RAF) was, after a good start, turning out to be an even worse 'enemy' of the profession than its predecessor was

and many of its recent proposals to Parliament's transport committee would make it impossible for attorneys to rely on obtaining their fees from settlements in favour of their clients. Mr Bobroff also told the meeting that 'big business' was interested in becoming involved in MVA claims management, once again at the expense of attorneys.

He warned that, in addition, the profession still had to face the Satchwell Commission's report, which was likely further to curtail the profession's role in MVA claims.

Johannesburg Attorneys Association chairman Michael de Broglie demanded that the Fidelity Fund and the law societies should make a 'substantial bud-

get' available to fund the profession's opposition to the proposed changes.

MVA touts: Cape attorneys overwhelmingly opposed the profession's condoning of the buying of work in any area of practice. Attorneys undertook to provide the law society with information on colleagues guilty of such conduct.

Speaking at the AGM of the Free State law society, Bloemfontein high court Judge Hans Rampai – the first attorney to be appointed to the bench in the Free State – made a special plea to 'give young black children the opportunity to be lawyers'. He said he had been given an opportunity by 'white' practitioners: 'You will never understand how dear that opportunity has been to me.' He added: 'Judges, like attorneys, are jurists. The ties between us will always remain. Those ties are created by our passion for law and keep us in touch with one another.'

For comments by guest speakers at other law society AGMs see 18 of this issue.



AGM briefs

In 1997 the Cape law society council decided that an attorney using the services of a 'consultant' to gather evidence for the successful prosecution of MVA claims would not be guilty of unprofessional conduct provided a number of conditions were met. However, it became clear to the council that the ruling had, in part, created a new industry for the selling by MVA consultants or 'touts' of personal injury claims to attorney. The council noted that often

Conveyancer's independence: Free State attorneys agreed that a conveyancer's independence is not threatened if he operates an estate agency business from his office. This was accepted practice in many of the small Free State towns. The view was that an attorney is aware of the fact that he must refuse instructions if there is a conflict of interest between the parties.

Clinics: Cape attorneys agreed to lift the limitation on the scope of work which can be undertaken by university legal aid clinics accredited by the law society, with the exclusion of Road Accident Fund work.

Tariffs: Welkom attorney Henri van Rooyen reported to Free State attorneys that the LSSA had approached the Rules Board for a 45% increase in the magistrates' courts tariff, but the Board had indicated that it would consider a 20% increase. Mr Van Rooyen said the LSSA would accept this but would motivate for a further increase.

Small claims courts: At present, attorneys must have been admitted to practice for five years before they can be appointed small claims court commissioners. The Cape law society council undertook to approach the SA Law Commission with a request

to reduce the requirement to three years.

Contingency debt-collections: The Cape law society will also ask the SA Law Commission to consider amending the Contingency Fees Act 66 of 1997 to make provision for debt-collections to be conducted on the basis of a negotiated fee agreement, calculated as a percentage of the capital sum, provided that such negotiated fee will not have an impact on the debtor.

Strikings: In cases of proven theft of trust monies by an attorney and taking into account the protection of the interests of the public and the integrity of the



Port Elizabeth attorney Doris Ndlovu spoke out vehemently against the touting of MVA claims.

- the consultants were employed by attorneys,
- the claimant had little choice as to which attorney he was referred to,
- the payment to the consultant exceeded the value of the work done by the consultant,
- the attorney-client relationship with the claimant was rarely established as the consultant was, in many cases, the only link to the claimant,
- the business of touting claims had become so active that it was not unusual for a claim to be touted away from a local attorney and offered to another attorney practising in a place remote from the claimant.

Attorneys attending the AGM agreed that the council should review its resolution so as to outlaw the buying of MVA work from consultants.

Touting, estate agents and mortgage originators

The KwaZulu-Natal Law Society has been instructed by its members to 'take all steps' to enforce its ruling against touting for conveyancing work by way of financial inducements and to take effective disciplinary actions against attorneys guilty of this practice.

The law society must also investigate all complaints, whether made by affidavit or not, and hire investigators to do the work if necessary.

Proposing the motion – which was carried overwhelmingly at the law society's annual general meeting in Durban in mid-October – Pinetown attorney Ken Mustard said that the profession could hardly argue for self-regulation if it was seen to be unable to stamp out corruption among its members. 'If we don't clean up our own act, someone else will do it for us,' he warned.

Umhlanga Rocks attorney Gavin Gow informed the meeting that the decision by the legal practice Bill task team to recommend the continued reservation of conveyancing work to attorneys was based on the conveyancer being the only independent party in conveyancing transactions. 'This independence is destroyed by conveyancers paying money for instructions,' he added.

Earlier Mr Mustard told the meeting that payments to estate agents for transfers were increasingly being matched by payments to so-called mortgage originators for bond instructions. The lack of action against attorneys involved in such practices was forcing more and more firms of attorneys to adopt them, as abiding by the rules meant that they were losing conveyancing work, Mr Mustard said.



Pinetown attorney Ken Mustard proposed a motion against mortgage originators.

Durban attorney and former law society president Nic Theunissen told the meeting that he had been informed by a number of banks that they were being 'held hostage' by estate agents and mortgage originators on the basis that if they did not cooperate, they received no bond applications.

The annual general meeting of the Law Society of the Northern Provinces, held at Sun City at the end of October, also heard calls for the active disciplining of attorneys who purchased bond instructions from mortgage originators and the appointment of special investigators 'to dig out the truth'.

Earlier, outgoing president Nano Matlala told the meeting that his council had told a major firm of mortgage originators that its operation was unacceptable and indicated that it would prosecute offending attorneys if evidence of their wrongdoing was forthcoming. The society had already conducted two investigations but had been unable to find the necessary evidence.

Pretoria attorney Solly Gross suggested that the profession should put pressure on the banks in which members invested funds not to collude with mortgage originators.

profession, the Black Lawyers Association (BLA) may in appropriate circumstances support an ultimate penalty or sanction of striking off the roll.

At its AGM in Pretoria in mid-October, the BLA rescinded an earlier resolution prohibiting attorney members of the BLA from accepting instructions by the law societies to act as attorneys of record in strike-off matters.

Attorneys' CCs: The Cape law society has noted the trend among attorneys to register close corporations as vehicles through which they choose to do non-reserved work. This often leads to confusion in the minds of the public who believe that they are consulting an attorney and are accordingly protected by the Fidelity Fund. Attorneys agreed unanimously that the law society should proceed with an application for a *declaratur* in the interest of establishing jurisdiction over attorneys who attempt to confuse the public by creating such alternative companies to do legal work ordinarily performed by attorneys, albeit non-reserved work.

Errant attorneys: The Free State law society received its members' approval to publish the names of attorneys practising without Fidelity Fund certificates in the press to warn members of the public. It follows the example of the Cape law society in this regard. The law society's executive officer will also notify the magistrate in the district where the attorney is practising and the Deeds Office in Bloemfontein that the attorney is not permitted to practise as an attorney.

Compulsory bookkeeping training: Retired attorney Mike Rafferty called for the law societies to put in place compulsory bookkeeping training for attorneys and their bookkeepers. He said that, as business development manager for the Fidelity Fund, he had visited many Free State firms. There were still many attorneys who were not aware that they should be negotiating interest rates and bank costs with their bank managers at the preferential rates negotiated by the Fund with many of the large banking institutions.



New councils

Law Society of the Cape of Good Hope

President: David Macdonald

Vice-presidents: Peter Horn, Taswell Papier and James Yekiso

Councillors: Ashoek Adhikari, Allison Alexander, Max Boqwana, Daryl Burman, Klem Druker, Lawrence Helman, George James, Constantine Magabane, Phumzile Majeke, Percival Maseti, Sithembile Mgxaji, George Moolman, Bulelwa Nomjana, Rehana Parker, Anri Smuts and Mathilda van Niekerk.

Law Society of the Free State

President: Jerome Mthembu

Vice-president: Etienne Horn

Councillors: John Anderson, David Bekker, Dina Howell, Jan Maree, Vincent Matsepe, Abe Mathebula, Joseph Mhlambi, Thembele Mtati, Wilfred Phalatsi and Henri van Rooyen.

KwaZulu-Natal Law Society

President: Iqbal Ganie

Vice-presidents: Susan Abro, Regan Hoskins and Ebi Moolla

Councillors: Eric Barry, Poobie Govindasamy, Marcus Gumede, David Gush, Allan Hartley, Chris James, Greg Kruger, Hugh Madonsela, Kishore Mehta, Mohini Murugasen, Andrew Parsons, Richard Pemberton, Martin Potgieter, Cassim Sardiwalla and Alison Tate.

Law Society of the Northern Provinces

President: Jan Stemmett

Vice-presidents: CP Fourie, Mokgale Moabi and Henry 'Muzi' Msimang

Councillors: Org Basson, Ronald Bobroff, Johan Fourie, Nano Matlala, Johan Gresse, Themba Gura, Caroline Heaton-Nicholls, Mohamed Husain, Jan Janse van Rensburg, Aubrey Ledwaba, Abraham 'Kums' Makume, Gerry Maritz, Kathleen Matolo, Mpho Mofomme and Danie Olivier.

Black Lawyers Association

President: Edward Ngubane

Deputy-president: Kgomotso Moroka

National executive members: Charles Frank, Themba Gura, Jackie Henriques, Molefi Kgokong, Phineas Mojapelo, Andiswa Ndoni and Legodi Phatudi.

National Association of Democratic Lawyers

Nadel held its AGM earlier this year at which its new executive was appointed. Silas Nkanunu remained president of Nadel (see 2001 (July) DR 18).

Left, from the top, Cape law society president David Macdonald, Free State law society president Jerome Mthembu, KwaZulu-Natal law society president Iqbal Ganie and Black Lawyers Association president Edward Ngubane.



The new leadership of the Law Society of the Northern Provinces: vice-president Mokgale Moabi, president Jan Stemmett and vice-presidents Henry 'Muzi' Msimang and CP Fourie.

Outside views at the AGMs

Outgoing Judge President of the Kimberley high court, Judge Appie Steenkamp – speaking at the AGM of the Law Society of the Cape of Good Hope in Kimberley – said no community should be exposed to advocates, attorneys or paralegals who are not members of a professional organisation. 'No person

should be allowed to practise and serve the public unless such a person has the necessary qualifications and the necessary training,' said Judge Steenkamp. He explained that the courts experienced 'endless problems with so-called freelance advocates who practise from nowhere – not even having an office'.

He said the Cape law society's contribution – through the Law Society of South Africa – to the redrafting of the legal practice Bill was of paramount importance. In this regard Judge Steenkamp reiterated the view of

the judiciary (or most of the judges) that the independence of the judiciary was fundamentally linked to the independence of the profession. This independence was also important in view of the fact that the public has a constitutional right of access to independent lawyers.

He added that it was the duty of lawyers to protect and defend the independence of the judiciary.

Prof Jerry Coovadia, professor of HIV/Aids research at the University of Natal's medical school, told KwaZulu-Natal attorneys at their AGM in Durban in October that there was a 'failure of leadership' in South Africa as regards the Aids epidemic which was devastating the country's economy and society. Aids was the worst epidemic the world had ever known, but in South Africa political leaders had

challenged scientific method by claiming that HIV did not cause Aids. This opened 'the way for all sorts of charlatans pushing their views and cures'.

Reserve Bank governor Tito Mboweni discussed the Bank's legal basis with attorneys attending the AGM of the Law Society of the Northern Provinces. He said the Bank's main objective was the protection of the value of the national currency in the interests of balanced and sustainable development. The Bank believed this was to be done by the achievement of price stability within the country, rather than the protection of the exchange rate. It was important for South Africans to be able to satisfy the needs of their families 'in South Africa and not in London' and for this reason inflation, which was injurious to poor people, had to be held in check.



*Reserve Bank
governor
Tito Mboweni*

Attorneys called to contribute to competition jurisprudence

Judge Dennis Davis, the Judge President of the Competition Appeal Court, was the guest speaker at a dinner hosted by the Law Society of the Northern Provinces' competition law committee earlier this year.

Judge Davis referred to the public criticism to which the competition authorities had been subjected in the media. He said that although some of the criticism may be valid, it is not an acceptable proposition that South Africa should have no competition regulation. Judge Davis was of the view that lawyers had an important role to play and should seek to establish a competition law jurisprudence. As this was a new area of law in South Africa, vigorous discourse based on proper research was required. He said judges and tribunal members could give sound judgments only if the legal counsel appearing before them had fulfilled their roles.



*Competition Appeal Court
Judge President
Dennis Davis, right, with
competition tribunal
chairman
David Lewis and
tribunal member Norman
Manoim.*

Cape candidate attorneys addressed by DJP

*Cape Town high court Deputy
Judge President Jeanette
Traverso, centre, was the guest
speaker at this year's Cape
Candidate Attorneys Association
ball. With Judge Traverso
are committee members
John Jacobs and Sarah Dodd.*

