

Legal aid

Report by H Saldulker and P Mokoena, GCB representatives on the Legal Aid Board

Delivery of legal services

Statistics released by the Legal Aid Board (LAB) for the period 2003-04 indicate that only 9% (or 15 224) of legal cases finalised by justice centres were civil matters. The LAB has stated that it wants to increase the number of civil matters it administers and finalises. For this reason it has budgeted R10 million to be spent on civil work in the 2004-05 financial year. In the business plan a target of 15% has been allocated to civil matters.

Advice office project

This project is being piloted in the rural areas of the Western Cape and KwaZulu-Natal. The success of the project can be attributed to the fact that it is enhancing access to justice for the rural poor as well as giving legal assistance on matters that are currently not covered by the LAB because they are predominantly civil. The success of the project depends on the co-operation partner (the Community Law and Rural Development Centre) which has experienced organisational and financial difficulties this year, resulting in its restructuring.

Civil matters

Some justice centres, including some that previously took on civil work, have turned away recent legal aid applicants who seek assistance in civil matters, on the basis that no capacity remains once the criminal cases have been attended to.

A motivation is being prepared for submission to the Parliamentary budget hearings and to the Department of Justice for additional funds for legal aid in civil matters in 2005-06.

Judicare and justice centres

Justices centres may allocate judicare instructions in a manner that is fair, impartial and transparent as well as uniform, consistent and accountable, in instances where:

- the justice centre lacks capacity such as insufficient professional staff;
- it is not possible to appoint profes-

sional staff when temporary additional courts are established to eliminate backlogs;

- it is not practical or economical to send an in-house legal practitioner to serve a court as the number of matters emanating from that court does not justify a fulltime in-house practitioner, or if the courts are situated at a distance from the justice centre;
- the matter is complex or specialised;
- a conflict of interest exists; or
- ethical reasons prevent the legal practitioner from continuing to represent the client.

Judicare instructions in these matters must be issued in compliance with the provisions of Chapter 3 paras 3-13 of the *Legal Aid Guide*.

Fifty-eight justice centres have been opened. Judicare figures in the Eastern Cape and Free State were the highest due to underresourced justice centres. Judicare instructions have also increased where satellite offices have been identified, especially in the rural areas of the Eastern Cape.

A total of 46 613 judicare instructions were issued during the financial year. This information is based on the latest available from the LAB information systems. (Due to the delay in capturing judicare instructions in the system this number may increase at a later stage when a new report is drawn.)

The budgeted cost per case at a justice centre was R742 but the actual cost averages R851. The budgeted judicare cost per case as at 31 March was R1 590 and the actual cost was R2 506. The LAB has implemented new increased fee tariffs for case preparation which will increase the judicare cost per case.

The bias in legal matters is still towards criminal matters, with 91% of finalised matters being criminal and only 9% being civil.

The LAB continued its strategic shift from judicare to justice centres during 2002. This enabled the organisation to double the provision of legal services to the poor from 114 524 finalised cases in 2001-02 to 204 424 cases in 2002-03, while simultaneously using less resources.

Sydney and Felicia Kentridge Award

The General Council of the Bar of South Africa presented George Bizos SC, of the Johannesburg Bar, with the Sydney and Felicia Kentridge Award for Service to Law in Southern Africa at a dinner function sponsored by Nedcor on 5 November 2004.

The Sydney and Felicia Kentridge Award is made annually to the person/s or institution adjudged to have made an outstanding contribution, worthy of public recognition, to the law in Southern Africa.

A report on the event, and also the tribute by the GCB chair, Norman Arendse SC, will be published in the next issue of *Advocate*.

The IBA's *Bernard Simon Memorial Award* was also presented to George Bizos at the IBA's conference in Auckland, New Zealand, during October 2004.

International protest on Guantanamo Bay

More than twenty international legal leaders have condemned the continuing detention of non-US 'enemy combatants' in Guantanamo Bay.

In letters submitted for publication to major news outlets internationally, the leaders said that they welcomed the US Supreme Court ruling on 28 June 2004 allowing the detainees to challenge the validity of their detention in US courts. The leaders called on the US authorities to abandon the 'review panels' now being held in Guantanamo Bay.

The lawyers' leaders pointed out that the detainees have been held for a long time without access to lawyers of their choice, or family contacts, and in conditions of physical and psychological duress. They concluded that the case for the detainees to be able to challenge their detention in a civilian court was stronger than ever.

Edward Nally, president of the Law Society of England and Wales, said: 'The war on terrorism cannot be won by denying those suspected of terrorism the opportunity to have the evidence against them tested fairly in accordance with fundamental principles of common law.'

Stephen Irwin QC, chair of the Bar of England and Wales, said: 'In view of the considerable time that these detainees have been held, without access to lawyers of their choice or their families and reportedly in conditions of physical and psychological duress, the case for them to be able to challenge their detention in a civilian court is stronger than ever.'

Crime prevention

In line with the PFMA and King II Report requirements, the Internal Audit Department provides the Audit Committee and management of the LAB with assurances that the internal controls are appropriate and effective. This is achieved by means of an independent, objective appraisal and evaluation of the risk-management processes, and internal control and governance processes, and by identifying corrective actions and suggested enhancements to the controls and processes.

National coverage

For LAB to complete national coverage of the criminal justice system the following are required:

- complete coverage of all courts; and
- completion of satellite offices (attached to justice centres) to cover courts in remote or rural areas.

The Department of Justice has planned the following courts for 2004-05 for which no funding has been provided for the LAB to increase capacity:

- Sexual offences courts – regional courts (56 new courts); and
- Community courts for minor offences (27 new courts).

These courts will therefore require increased capacity from the LAB.

The provinces of Mpumalanga and Limpopo are currently being serviced by

circuit courts and the LAB provides these courts with judicare lawyers. The opening of High Courts will require new High Court units at Nelspruit and Polokwane.

Challenges

Some of the key challenges facing the LAB are improving the quality of legal services it provides, consolidating and expanding offices and human resources that provide legal aid to South Africans, building stronger management capacity to drive operational delivery in line with its strategies, and continuing legal training for our lawyers.

In fulfilling its constitutional and legal mandate the LAB has identified various gaps in the ability of clients to have access to justice. The following projects are meant to address these gaps:

- The LAB currently assists only those criminal accused with a potential jail term of more than three months. It is proposed that this be revised to provide assistance to first offenders with potential jail terms.
- The LAB is facing increased pressure from NGOs and civil society to increase its civil services. Currently only 12% of its new matters are civil. In addition the LAB has to address the new requirements of the equality legislation, Family Courts, and so on. Civil legal aid is also necessary to protect the socio-economic rights of the poor as guaranteed in the Constitution.

– A challenge for client accessibility is the ability to reach and serve the rural poor due to geographical location and remoteness. The LAB proposes employing lawyers who are able to travel between the remote rural areas to provide legal aid clinics at different locations in the rural areas.

– It is further proposed that the resolution of certain matters by non-litigious means, ie Alternative Dispute Resolution (ADR), where justified, will be a more cost-effective response to resolving the legal problems of the poor.

To increase client accessibility the LAB currently opens its offices on two Saturdays a month as a pilot project to test the effectiveness of its approach.

Conclusion

Other highlights during the year include the opening of new justice centres, the establishment of seven High Court units, the launch of new pilot projects aimed at increasing access to justice for all citizens, and improving the standards of service delivery.

The LAB has shown that in spite of the huge challenges faced in the past, and the challenges it continues to face, it has taken its rightful place in the justice family by becoming a key role player in fulfilling its constitutional mandate in a manner that will make all South Africans proud. □

Professional Provident Society (PPS)

Report by Ralph Meyer SC, GCB representative on the PPS

As a result of the restructuring of the Professional Provident Society due to legislative changes, the GCB's representative serves as a non-executive director on the board of the Professional Provident Society Limited, a company limited by guarantee. PPS Limited is the sole shareholder in PPS Insurance Company Limited, which is registered as a long-term insurance company. The board of the holding company appoints the directors of the insurance company on an annual basis. I was appointed and served as a non-executive director on the board of the insurance company for the past year. I was elected by the board of the insurance company as its deputy chairman and currently serve in that position. I also serve as a member of the Audit and Risk Committee, the Remuneration Committee and the Medical Risk Review Committee of the insurance company.

During the past year there has been a significant change in the leadership structures of the management of the companies. A new chief executive was appointed and he has made a number of new appointments to and restructured his management team. The insurance company has embarked on a new era in which it is anticipated that there will be considerable growth with the anticipated introduction of a number of new insurance products. In order to remain competitive in the insurance industry, it is anticipated that investment products will be introduced which will offer members a wider choice of the type of investment which they would like to make, depending on their age and financial status. The new appointments to senior executive positions have already enhanced the ability of the insurance company to take advantage of its unique position in the niche professional market.

New products will also be launched in the near future which are specifically designed to cater for professional people such as advocates who practise independently and do not work in a corporate or partnership environment. It is anticipated that the new products will be launched and marketed during the latter part of this year and I believe that there will be considerable interest in these products from members of our profession.

Because the company operates in a competitive industry and by reason of the corporate nature of the structures, considerable attention has been focused on corporate governance issues, including employment equity policies and empowerment objectives based on the Financial Services Sector Charter.

Considerable energy and capital has been invested in information technology services and systems. Notwithstanding a setback which arose when a previous initiative was implemented, the insurance company is now well positioned to exploit the most advanced technology available.

Continuous attention is given to the investment of members' funds, the management