

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

of retirement annuity policies and life insurance policies which are offered to members. The financial investment performance has been encouraging, although

the economy has experienced a period of market volatility.

As a non-executive director of the two companies, I am able to express my continued

satisfaction with the manner in which the companies have operated during the past year. □

Bursary Committee

*GC Pretorius SC,
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Gerrit Pretorius SC of Johannesburg and Ig Bredenkamp of Pretoria sat on the Bursary Committee which processed 23 applicants for the second half of 2003. The committee decided to award bursaries to four candidates of whom two decided not to proceed with their pupillage, one was not admitted as an advocate, and one failed the examination. All four applicants had been recommended for bursaries by the representatives of their respective Bars. Three further unsuccessful applicants passed their examinations.

Sixteen applicants applied for bursaries in 2004. Bursaries of R10 000 each were awarded to PI Thole of Free State, R Abrahams of Cape Town, CE Malema of Johannesburg, and ML Mohlhlo and TM Matshidza of Pretoria. Matshidza did not continue with his pupillage and no monies were paid to him. The other

four each received an initial payment of R5 000, with a further R5 000 payable on passing the exam.

The manner in which bursaries are allocated remains unsatisfactory. It appears from the applications that many of the applicants are in dire financial need, yet have little or no legal experience. As always, the committee relied heavily on the recommendations from the various Bars. Despite this, the allocations largely remain a hit-and-miss affair. This is graphically demonstrated by the following: the committee decided not to utilise the balance available for the second part of 2003 as bursaries, but proposed that it be utilised as financial assistance to those unsuccessful applicants for bursaries who later passed their examinations. The committee would like the authority to implement this proposal in cooperation with the various representatives at the different Bars.

What might contribute to a more satisfactory allocation of bursaries would be the allocation of a lump sum to each of the Bars ('block bursaries'), in turn to be allocated by them to deserving applicants.

It seems that the larger Bars (Cape Town, Natal and Johannesburg) all have bursary schemes running which seem to meet, to some degree, the demand. The smaller Bars obviously do not have the capacity.

The extension of pupillage to one year has placed a heavy financial burden on almost all the pupils. The committee could easily distribute R400 000 in bursaries, but until a satisfactory system of determining deserving applicants - who have some chance of successfully practising as advocates - is implemented, the committee cannot justify the increased expenditure.

The committee therefore recommends that the budget for the new year should only be adjusted for inflation. If any additional increase is to be considered, the committee feels strongly that half of the amount of the bursaries be paid to pupils only after they have passed the examination. The amounts allocated to unsuccessful pupils should then be paid to unsuccessful applicants who pass the examination.

Editorial note: The committee's recommendation was accepted by the GCB. □

Professional ethics

PJ Olsen SC, Durban Bar

The committee was asked during the course of the year to consider a relaxation of the rule relating to receipt of remuneration during pupillage, and to consider also the admission of regional court magistrates to pupillage. The committee submitted draft amendments to the rules dealing with both these topics. As to the first, the committee supported the amendment, but as to the second (the admission to pupillage of regional magistrates), the committee was not unanimous. On this latter subject a separate

report supported by two of the three members of the committee was submitted through the Society of Advocates of KwaZulu-Natal, advancing the argument that it was inappropriate for regional magistrates to be admitted to pupillage whilst still holding office.

The committee was asked to re-draft the rules relating to pupillage to bring them into line with the new system of pupillage. However, the new system is in its infancy, notwithstanding its current implementation, and the matter of the amendment of the rules was referred to those responsible for education within the profession. Rule 8 concerns in the main matters of training, and it is uncertain whether the issue will be referred back to the Ethics Committee before an

amended rule 8 formulated by those concerned with training is put before the GCB.

An opinion by Wallis SC and others on the subject of contingency fees was referred to the committee with a request that a rule be formulated in accordance with it. The committee however experienced difficulty in formulating the rule, because, as Wallis SC points out, legislative amendments on the subject are required. In the circumstances, a draft rule was prepared for circulation to constituent Bars with a request for critical comment. No response has yet been referred to the committee.

The question of contingency fees is the only outstanding matter on the committee's agenda at present. □

Parliamentary Committee

Report by O Rogers SC, Cape Bar

During the period 1 May 2003-30 April 2004 the Parliamentary Committee comprised Rogers SC (chair), Heunis SC, Dicker, Katz, Ntsebeza, K Pillay and De Waal. The committee, in keeping with past practice, viewed its mandate as being to examine proposed legislation that might impact on the legal profession and on the administration of justice generally.

During the year under review, 172 bills were scrutinised in the first instance by the chair with a view to ascertaining whether they would appropriately form the subject of comment. In 20 instances these were referred to various members of the Cape Bar for their consideration and report. In 13 instances written reports were submitted to either

Parliament, the relevant government department, the GCB or the SALC. On two occasions, oral submissions were made to the relevant portfolio committees (by Williams SC and Dane in regard to proposed new legislation relating to the RAF; and by Rogers SC and Jacobs in regard to proposed amendments to the Supreme Court Act).

The contribution of a number of busy members of the Cape Bar in assisting the GCB to perform this important task is recorded with particular appreciation.