

LAW SOCIETY OF SOUTH AFRICA 2011 ANNUAL REPORT

CONTINGENCY FEES COMMITTEE

Members: Clem Druker (Chairperson), Ronald Bobroff, Poobie Govindasamy, Henry Msimang, Taswell Papier, Henri van Rooyen and George van Niekerk

The Committee met once during the year under review. The issue of common law contingency fees languished during 2010 mainly because, for a while, the Government contemplated the inclusion of contingency fees in the Legal Practice Bill. This was eventually removed from the later draft of the Bill. **Given the fact that the Cape Law Society Council is now prepared, in principle, to side with all the other bodies which recognise common-law contingency fees, the way would appear to be open to call a meeting and draft a replacement to the existing Contingency Fees Act or amendments to it.**

Clem Druker
Chairperson, Contingency Fees Committee

COSTS COMMITTEE

Members: Asif Essa (Chairperson), Graham Bellairs, Bennie Makola, Danie Olivier, Sias Reyneke, Morné Scheepers and Jan van Rensburg

The Costs Committee of the LSSA convened a meeting in February 2010 and teleconferences during May and August 2010. In addition, members of the Committee met with the Costs Committee of the Rules Board in February 2010 in Durban. The primary purpose of the Committee is to consider all issues relating to legal costs, *inter alia*, the tariffs of fees, disbursements and counsel's fees, and matters incidental to these costs.

The main issues that are deliberated by the Committee relate to the inhibition of access to justice as a result of the tariffs not being adjusted on a regular basis and the resultant disparity between attorney-and-client charges and the party-and-party tariffs. The motivations to the Rules Board resulted in amendments being effected to the tariffs in 2009 and 2010, after a significant period during which the tariffs of fees remained stagnant. However, the amendments have only to a certain extent ameliorated the recovery of reasonable and necessary costs, having regard to attorney-and-client fee structures in the profession.

The challenge facing the profession is to engage with the Rules Board, supported by economic data, as regards the annual adjustments to the tariffs. This will need to be properly motivated and will also require the profession to speak with one voice. In addition, simplified and practical tariffs are a necessary prerequisite to the proper administration of justice, particularly with regard to obviating the current delays in the taxation process.

It will be necessary to engage further with the Rules Board in 2011 to achieve the objectives of the profession so as to ensure access to justice. This will be the objective of the Costs Committee in the year ahead.

Asif Essa
Chairperson, Costs Committee

CRIMINAL PROCEDURE COMMITTEE

Members: William Booth (Chairperson), Dr Llewelyn Curlewis (Deputy Chairperson), Ronnie Bokwa, Johan Kramer, Strike Madiba, Xolani Mpeto and Eric Zaca

The Criminal Procedure Committee of the LSSA met in May and November 2010.

At its two meetings, the Committee discussed certain legislation, including amendments to s 49 of the Criminal Procedure Act 51 of 1977. It also engaged a consultant and later made detailed submissions to the South African Law Reform Commission on the working paper on Electronic Evidence in Criminal and Civil Proceedings.

The prison visits project, as coordinated by the LSSA's National Project Coordinator, Petunia Ramela, was successful and various practitioners visited prisons throughout South Africa and conducted workshops focussing on plea bargaining. It was felt that these workshops should be sustained throughout 2011.

It was also decided that the LSSA should be involved with the Department of Correctional Services with regard to parole and conditions at prisons. It was resolved that a member of the committee should attend the Parliamentary Portfolio Committee meetings on Correctional Services.

It was resolved that arrangements be made with the Minister of Police to engage with the South African Police Service (SAPS) on issues involving the arrest of suspects. There was concern about the fact that many police officials do not have adequate training or knowledge on when and when not to arrest a suspect.

Although the Committee had decided to arrange a seminar with the SAPS on the issue of unlawful arrest, this still had not taken place. It is hoped that the SAPS will agree to such a meeting and/or seminar during 2011.

Other matters of interest that were discussed were the involvement by the National Institute of Crime Prevention and the Re-Integration of Offenders (NICRO) with regard to the diversion of cases from the criminal justice system, as well as the International Criminal Court which operates within the confines of the Rome Statute.

The functioning of courts was also debated and it was noted that members of the various provincial law societies attend caseflow management meetings with the relevant role players on a regular basis.

Concern was also raised about consulting facilities at prisons, police stations and at many courts. The functioning of courts after hours was a topic which it is felt should be further debated and that the Justice Department should look at reintroducing a system akin to what took place during the 2010 FIFA World Cup to assist with clogged court rolls.