E - M A N T S H I

A KZNJETCOM Newsletter

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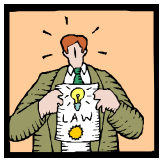
Welcome to the seventeenth issue of our KwaZulu-Natal Magistrates' newsletter. It is intended to provide Magistrates with regular updates around new legislation, recent court cases and interesting and relevant articles. Your feedback and input is key to making this newsletter a valuable resource and we hope to receive a variety of comments and suggestions – these can be sent to RLaue@justice.gov.za or gvanrooyen@justice.gov.za or faxed to 031-368 1366.



New Legislation

The National Road Traffic Regulations promulgated in terms of the National Road Traffic Act, Act 93 of 1996 have been amended with effect from 4 May 2007 and were published in Government Gazette No. 29865 dated 4 May 2007. It deals amongst others with the National Traffic Information System (NATIS), the exporting of a motor vehicle, drivers licence tests, application and issue of duplicate licences, and the equipment used in ascertaining concentration of alcohol in breath. The amended Regulation 332 reads as follows now:

"Equipment used in ascertaining concentration of alcohol in breath

332. (1) For the purpose of this regulation type-approved and type-approval means that one example of a specific make and model of equipment has been tested in terms of the South African National Accreditation System (SANAS), by an accredited test laboratory in terms of SANS 1793: Evidential breath testing equipment and a test report indicating compliance with such specification is issued in respect of such make and model of equipment.

(2) The equipment to be used to ascertain the concentration alcohol in any breath specimen as contemplated in section 65(7) of the Act, shall comply with the requirements of the standard specification, SANS 1793: Evidential breath testing equipment and shall be type-approved as contemplated in sub regulation (1).

(3) If, in any prosecution for an offence under section 65(5) of the Act, an allegation is made in the charge sheet, in relation to the prescribed equipment used to ascertain the concentration of alcohol in a breath sample, a certified copy of a test report, indicating that the specific make and model of equipment complies with SANS 1793, issued by an accredited test laboratory shall, in absence of evidence, to the contrary, be prima facie evidence as to the fact that the equipment complies with the provisions of sub regulation (2).

(4) A certified copy of a certificate issued by the manufacturer or supplier of the equipment referred to in sub regulation (1), that contains the make and model of the equipment, shall in absence of evidence to the contrary, be prima facie evidence that such equipment is of such make and model".

A new Regulation 332A is inserted which reads as follows:

"Presumption regarding calibration or verification certificate for equipment used for road traffic law enforcement purposes

332A. Where in any prosecution for an alleged offence in terms of this Act, it is necessary to prove that any equipment used for road traffic law enforcement purposes, was calibrated or verified to establish the accuracy and traceability, of such equipment, a certificate issued by a laboratory that is accredited for the purpose of issuing such certificates and conducting the tests required for such calibration or verification, by the South African National Accreditation System (SANAS), shall in absence of evidence to the contrary, be prima facie evidence as to such calibration or verification.".

1. On 18 May 2007 the Minister of Correctional services published the Correctional Services Amendment Bill, 2007 in Government Gazette No. 29893. One of the proposed amendments is that the Minister be given the power to determine, under certain conditions, the period before a prisoner may be placed on parole. This could most likely be done in a case where the Department's capacity to rehabilitate the offender is not good.

2. The Criminal Laws (Sentencing) Amendment Bill, 2007 was published on 22 May 2007 in Government Gazette 29908. The purpose of the Bill is to further regulate the imposition of discretionary minimum sentences for certain serious offences; to give a regional court jurisdiction to convict and sentence a person found guilty of an offence referred to in Part I of Schedule, 2, to imprisonment for life; to provide that certain circumstances shall not constitute substantial and compelling circumstances justifying the imposition of a lesser sentence, when a sentence must be imposed in respect of the offence of rape; to repeal all sections dealing with the committal of an accused for the purposes of sentence by a High Court after conviction in a regional court of an offence referred to in Schedule 2; to amend the Criminal Procedure Act, 1977, so as to provide for an automatic right of appeal if a person was sentenced to life imprisonment by a regional court; to amend the National Prosecuting Authority Act, 1998, so as to provide for policy directives indicating in which instances prosecutions in respect of offences referred to in Schedule 2 to the Criminal Law Amendment Act, 1997, must be instituted in the High Court as a court of first instance; and to provide for matters connected therewith.

A copy of the above Bill can be found on the website of the Parliamentary Monitoring Group at http://www.pmg.org.za .

Recent Court Cases

1. S. v. AUBE 2007(1) SACR 655 (WLD)

Section 36 of Act 62 of 1955 is an offence of dishonesty and not of mere negligence.

The offence of contravening s 36 of the General Law Amendment Act 62 of 1955 (being found in possession of goods, other than stock or produce as defined in stock-theft legislation, in regard to which there is a reasonable suspicion that they have been stolen and being unable to give a satisfactory account of such possession) is one of dishonesty and not one of mere negligence. For an account to be satisfactory in terms of the section, it must be to the effect that the person concerned *bona fide* believed his possession to be innocent, having regard to the objects of the legislation, but it will not matter that such belief is not also a reasonable one. (At 658d-f)

2. S. v. MLAMBO 2007(1) SACR 664 (WLD)

Section 17(e) of Act 140 of 1992 does not give a court a discretion to impose a fine with alternative imprisonment.

The accused was convicted of dealing in 121 grams of dagga and sentenced to a fine of R1 000 or five months' imprisonment. On special review, the question was whether, having regard to the penalty prescribed by s 17(e) of the Drugs and Drug Trafficking Act 140 of 1992, it was competent to impose a fine with the alternative of imprisonment without such sentence being coupled to a sentence of direct imprisonment.

Held, that s 17(e) provided for a sentence of imprisonment not exceeding 25 years, or both such imprisonment and such fine as the court might deem fit. The section did not intend to vest the court with a discretion to choose which of these sentences, or which combination thereof, it would impose. On the contrary, the wording of the section left no doubt that a court was obliged to impose a sentence of direct imprisonment and, only when it had done so, could it couple a sentence of a fine with alternative imprisonment to the sentence of direct imprisonment. To interpret the section as authorising the imposition of any of the bouquet of punishments was to ignore the effect of the words 'both' and 'and'. (At 666d-g)

Held, further, that this conclusion was underlined by the significantly different penalties provided for in s 17 (a), (b), (c) and (d), in each of which the court was authorised to sentence an accused to a fine or to imprisonment or to both of these. The wording of s 17(e) was clearly intended by the Legislature to signal that dealing in dagga should be dealt with more severely than the mere possession thereof. (At 666g-667a)

Held, accordingly, that, where there is a conviction of contravening s 5(b) of the Drugs and Drug Trafficking Act, s 17(e) requires the imposition of a sentence of imprisonment without the option of a fine (which may be suspended), and a fine with an option of imprisonment may only be imposed in conjunction with such sentence of direct imprisonment and may not be imposed as a self-standing sentence. (At 667g-h)

Sentence set aside and a sentence of a fine of R600 or three months' imprisonment, and a further two months' imprisonment, suspended for three years, imposed.

3. S. v. ROOI 2007(1) SACR 668 (CPD)

Mechanistic formulation of sentence not to be used in sentencing alcohol-related driving offences

The accused was convicted in a magistrate's court of contravening s 65(2)(a) read with s 89(1) and 89(2) of the National Road Traffic Act 93 of 1996, in that he had driven a motor vehicle on a public road while the concentration of alcohol in his blood was 0,22 g per 100 ml. He was sentenced to a fine of R20 000 or 12 months' imprisonment, suspended for five years, and to undergo 240 hours of periodical imprisonment over five successive weekends. On automatic review:

Held, that the magistrate had misdirected himself in proceeding on the basis that an accused could be fined an amount of R1 500 for every one hundredth of a gram in excess of 0,05 of a gram of alcohol concentration. Such a mechanistic sentencing formulation was completely inappropriate as it fettered the sentencing officer's discretion. (At 670a-d)

Held, further, that the magistrate had also misconstrued the Adjustment of Fines Act 101 of 1991 and had not properly understood the jurisdiction he enjoyed. The Adjustment of Fines Act, read with s 92(1) (a) and (b) of the Magistrates' Courts Act 32 of 1944, established the rate between a sentence of imprisonment and a permitted fine. As the maximum sentence for this offence was six years' imprisonment, a district court was permitted to impose a fine up to R120 000. Accordingly, a district court's sentence jurisdiction for this offence was a fine of up to R120 000, and not, as the magistrate had considered, R60 000. (At 670d-h)

Held, further, that the maximum permitted fine was not a bench-mark. Any fine must bear a relation to the convicted person's means and must fall within the sentence parameters established in similar cases. The 'norm' for such sentences was a fine of R4 000 to R6 000 with an alternative of imprisonment for between six and 18 months. (At 670h-671c)

Held, further, on the facts of the present case, that the accused earned R4 000 per month. Although the alcohol concentration was significant, and although he had a previous conviction, there were no other factors justifying the imposition of such an extraordinarily high fine. While it would have been appropriate to impose a fine of R6 000, partly suspended, together with some form of non-custodial punishment, the accused had already served his periodical imprisonment. Accordingly, the appropriate sentence would be a fine of R6 000 or 12 months' imprisonment, totally suspended, together with the periodical imprisonment already served. (At 671c-h) Sentence altered accordingly.

S. v. MIGGEL 2007(1) SACR 675 (CPD)

Principles to be applied in assessing the evidence of a single witness

Held, that it was settled law that the evidence of a single witness had to be approached with caution. In the normal course of events, the evidence of a single witness would only be accepted if it were in every important respect satisfactory or if

there were corroboration for that evidence. The corroboration that was required was confirmatory evidential material outside the evidence that was being corroborated. The corroboration did not necessarily need to link the accused with the crime. (At 678a-c.)

Held, further, that the court had to be satisfied that the witness making the identification was not only honest, but also reliable. Honesty by itself was no guarantee of reliability. Consequently, a witness's honesty and own conviction as to the correctness of his or her identification could never be allowed to take the place of an independent enquiry into the reliability of the identification itself. (At 678c-f.)

Held, further, that there were a multitude of factors which could affect the ability of a witness to make a correct identification. These had all to be borne in mind whenever the reliability of an identification was judged. (At 678f-g.)

Held, further, that the probability that an identification was reliable was strengthened when the person who had been identified was known beforehand to the identifying witness. But even in that case, close attention had to be paid to the opportunity which the witness had of identifying the person in question in the circumstances then prevailing, in order to ascertain whether a correct identification was made. (At 678g-h.)

Held, further, that, at the end of the day, the test was, and remained, whether there was proof of guilt beyond all reasonable, doubt, taking into account the evidence as a whole, including the question as to whether an accused has given evidence or not. (At 678h-i.)

From The Legal Journals

Bhamjee, S and Hoctor, S
'Of obedience and offence – S v Mostert 2006 1 SACR 560 (N)' 2006 Obiter 663.

Hoctor, S
'Interrogating irresponsible driving' 2006 Obiter 636.

Mamashela, M
'Some hurdles in the implementation of the Maintenance Act 99 of 1998' 2006 Obiter 590.

De Villiers, WP
'Depriving a criminal defendant of his choice of paid counsel' 2007 THRHR 153.

Olivier, M
'The appointment of acting judges in South Africa and Lesotho' 2006 Obiter 554.

Olivier, M
'Anyone but you, M'Lord: the test for recusal of a judicial officer' 2006 Obiter 606.

Ferreira, S

‘Intercountry adoptions’ 2007 THRHR 146.

Hoctor, S and Carnelley, M
‘Maintenance arrears and the rights of the child’ 2007 TSAR 199.

Peté, SA
‘Between the devil and the deep blue sea – the spectre of crime and prison overcrowding in post-apartheid South Africa’ 2006 Obiter 429.

Van de Walt, T
‘’n Grond-wetlike oorsig oor die gebruik van geweld tydens arrestasie deur die Suid-Afrikaanse polisiediens’ 2007 TSAR 96.

Van der Walt, A and Kituri, P
‘The equality court’s view on affirmative action and unfair discrimination’ 2006 Obiter 674.

If you would like a copy of any of the above articles please send your request to gvanrooyen@justice.gov.za

Contributions from Peers

A DIFFERENT PERSPECTIVE ON THE PROVISIONS OF SECTION 75 OF ACT 51/1977

Introduction

A recent discussion document by Magistrate D Thulare has elicited an interesting debate amongst magistrates concerning the practice of keeping matters destined for the Regional Court on the District Court roll until they are ready for trial. He argues that this practice is not only unjust but also contrary to case flow management principles and he urges magistrates not to tolerate it any longer, but to transfer these matters, in terms of S. 75(3) of Act 51 / 1977, at the conclusion of the bail application in the District Court to the Regional Court entrusted with the necessary substantive jurisdiction to try such matters.

He argues that the Regional Court prosecutor would then be obliged to justify and advance reasons for postponements and simultaneously allow the Regional Court Magistrate to play a more active role in the management of his or her court roll. I am in full agreement with him that judicial officers should guard against becoming complacent, allowing themselves to become mere rubber stamps to requests for postponements by the prosecution or the defence, without due regard to the rights we swore to protect and uphold. It is not only improper to merely rubber stamp such requests, but irregular for a judicial officer not to enquire from the prosecutor why there are delays in the finalization of criminal

proceedings, even more so where an accused person is in custody. In ***S v Hlopane*** **1990 (1) SA 239 (O)** the court held that the presiding officer should not act as though he agrees with everything suggested or asked for by the State in connection with a postponement or with bail. The court held that it is neither the police nor the prosecutor who is to decide on the question of bail, but the presiding officer. To this one could justifiably add: likewise, on the question of postponement.

Where a Magistrate is aware of the problems in his or her district concerning overloaded court rolls and cases which can only be heard weeks, or even months, after the accused's first appearance, he or she should always ascertain whether the detention of the accused is really necessary before such is ordered. Where the prosecutor applies for a postponement the court should be satisfied that the application is well founded and that a postponement is justified in the circumstances.

The ultimate responsibility, and duty, remains that of the presiding officer, even in the absence of any objection from the accused, to enquire why matters are delayed. It goes without saying that any court would fail in its duties if it were to permit prolonged detention of an accused person due to delays in the finalization of the investigation in respect of any particular matter on its roll. It is trite law that the primary purpose of any arrest is to ensure that a person charged with committing an offence will appear at his or her trial and that courts cannot condone prolonged detention as a form of anticipatory punishment for the alleged commission of an offence.

It is my submission that, in the event of any delays in matters pending before any court, it is incumbent upon the presiding officer to thoroughly examine the reasons for such delays, whether the court before which such matters are pending, has jurisdiction to try those particular matters or not.

Interpreting the provisions of section 342A of Act 51/1977

No basis exists in law to hold that a District Court is precluded by the provisions of section 89 of Act 32 /1944, from invoking section 342A of Act 51 / 1977, whether the court before which such matters are pending has jurisdiction to try those particular matters or not. I will argue that this particular section empowers such courts to examine the reasons for delays in the finalization of criminal proceedings pending before them, notwithstanding the fact that these matters are destined for the Regional Court or the High Court.

Section 89(1) of Act 32 / 1944 only precludes a District Court from ***trying*** criminal proceedings pending before it and it is not the intention of the legislature to preclude such a court from invoking the provisions of section 342A. A contrary perception is misguided, owing to an incorrect interpretation

of the provisions of the Criminal Procedure Act. I submit that it is not the intention of the legislature to limit the scope of section 342A of the Act. It is interesting that the legislature, in the construction of this particular section, elected to use the words: "***A criminal court before which criminal proceedings are pending"*** as opposed to the words: ***"A criminal court before which a criminal trial is pending…"*** This, I submit, illustrates a clear intention on the part of the legislature not to limit the scope of section 342A only to courts having substantive jurisdiction to ***try*** criminal proceedings pending before it. Surely, if this was not the intention the legislature it would then have included the words: ***"A court before which criminal proceedings are pending and having the jurisdiction to try such matter…"*** in the construction of section 342A, thereby limiting it to courts having jurisdiction to ***try*** such matters. A restrictive and narrow interpretation of the particular section by a court is clearly not what the legislature had in mind, if due regard is had to the fact that the term: "***criminal proceedings"*** in the Act has not been defined as referring only to trials. The words ***"criminal proceedings"*** are defined in section 1 of the Act as including a preparatory examination, and no indication exists in the Act that these words were intended to be limited to proceedings at the trial only. In ***S v Thomas and Another* 1978 (1) 328 A.D at 334** the Appeal Court held: "***The words criminal proceedings are defined in section 1 of the Act as including a preparatory examination and there is no indication in the Act that the words criminal proceedings were intended to be limited to proceedings at the trial."***

It is also interesting, perusing, the Afrikaans text of the Act, that it refers in section 342A to the word "***verrigtinge",*** as opposed to ***"verhoor"***; clearly, also illustrating the intention of the legislature not to limit the scope of the particular section. In ***S v Swanepoel* 1979 (1) 476 A.D** the Appeal Court held: " ***Dit is duidelik dat Wet 51/1977 nie probeer om 'n omskrywing te gee van die term 'strafregtelike verrigtinge' nie behalwe deur te sê dat dit ook 'n voorlopige ondersoek behels. Dit sou onmoontlik wees om 'n presiese omskrywing van die term strafregtelike verrigtinge te gee, omdat, indien na die wet gekyk word die woorde nie net kan slaan op een bepaalde soort strafregtelike verrigtinge, maar op verskillende soorte van strafregtelike verrigtinge."***

Where any Court invokes the provisions of section 342A it is merely conducting an enquiry and is not adjudicating on the merits of the charges against an accused. As far as the provisions of section 342A (6) are concerned, this subsection relates to a situation where an order of a Lower Court, made in terms of section 342A, is challenged in the High Court by way of a motion application. The High Court would then, in accordance with S.342A (6), be empowered, if it is of the opinion that a referral back to the Lower Court will result in a further delay of such proceedings, to conduct its own enquiry into the reasons for the delay and make an appropriate order. I therefore fail to understand how it can be argued, that a District Court, lacking substantive

jurisdiction to try a matter pending before it, would be acting *ultra vires* the Act if it invokes section 342A. I will argue that a proper examination of the term: "jurisdiction", as envisaged in sections 89 and 110 in Act 32/1944, relates to one of limitation as used in criminal law, indicating the restricted power of a court to adjudicate on the question of guilt of an accused person on a criminal charge and the imposition or confirmation of punishment, in case of a conviction. The word "trial" as envisaged by section 89 of Act 32/1944 relates to a Court's power to enquire into the question of the guilt of an accused person on a criminal charge and the imposition of an appropriate sentence, if need be. If a District Court is empowered to conduct a preparatory examination in terms of section 123, to proceed with plea procedures in terms of sections 119 and.122 of the Act in respect of offences justiciable in the Superior Courts, then it follows that it would similarly, have powers to invoke section 342A. In so far as the question relating to the basis for keeping such matters on the District Court rolls, section 168 of Act 51/1977 allows a Court to adjourn any criminal proceedings pending before it to any date if it deems it necessary.

In ***S v Van der Vyfer*** **2007(1) CLR 69 (C),** the High Court confirmed the discretion of a Court to regulate postponements in terms of section 168 of the Act. It held, that the Court, in an application for adjournment, should take into consideration that: "***It is in the interest of society that guilty persons should not evade conviction by reason of an oversight or because of a mistake that can be rectified; and that an accused person who is deemed innocent, is entitled, once indicted, to be tried with expedition."***

The authority to institute criminal prosecutions, vests in the National Prosecuting Authority (See section 179(2) of the Constitution 108/1996, section 20 and section 2 (1) of National Prosecuting Act 32 / 1998). I submit that it remains the prerogative of the prosecuting authority, duly authorized by the provisions of section 38 of Act 51/1977, to elect the court of first instance. Nothing, however, prevents the State from placing a matter on the roll of either the Regional Court or the High Court, but ordinarily, the court of first instance is the District Court and it remains the prerogative of the prosecution to determine the forum. Prior to plea procedure, the prosecution remains *dominus litis* and it can, within the scope of the relevant statutory guidelines and judicial directives, determine the forum for the trial.

In ***Gqalana and others v Knoesen and Another*** **1980 (4) SA 119 (E)** the court held that as *dominus litis,* the State is entitled to elect in which forum to proceed against an accused. There is no provision, in either Act 32/1944 or Act 51/1977 or any other statute, which empowers a Lower Court to remove a trial for hearing from one venue to another. Being a creature of statute, a Magistrate's Court, unlike the Supreme Court, has no inherent jurisdiction and it would, therefore, be precluded from granting such an order.

What is the purpose and effect of S.75 in the context of the Act?

It is unfortunate that the only reported authority on this particular issue originated prior to the promulgation of the amendments to the section. It is nevertheless submitted that the contention by Magistrate Thulare that S.75 (1) empowers Heads of Courts or for that matter, Magistrates, to order that matters destined for the Regional or High Courts be placed on the rolls of such courts has no legal basis. It is clear from the construction of S. 75(1) that this particular subsection relates to those matters that are ready to be set down for trial in terms of:

1. 75(1) (a): In a court which has jurisdiction and in which the accused appeared for the first time in respect of such offence in accordance with any method referred to in S. 38, i.e. arrest, summons, written notice, and an indictment in accordance with the provisions of the Act; or:
2. S.S.75 (1) (b): In a court which has jurisdiction and to which the accused was referred to under S.S 75(2); or:
3. S.S.75 (1) (c): In any other court which has jurisdiction and which has been designated by the DPP or a person so authorized by him or her, for the purpose of trial.

It is interesting to note the difference in the construction of the subsections in S.75. According to S.75 (1) (a) it remains within the discretion of the prosecution to determine the forum for summary trial. It is my submission that the intention of the legislature is quite clear in S.75 (1): that a case shall only be placed on the roll of the trial court if the prosecution is ready for summary trial procedure. By using the words: "***When an accused is to be tried…***" the intention must surely have been that the trial of the accused would commence forthwith and that the investigation has been finalized. It could never have been the intention of the legislature to have matters placed on rolls of the Regional or High Courts where the investigation has not been finalized. S.75 (2) (a) and (b) empower the State to place matters on the District Court rolls even where such courts lack jurisdiction to try those matters. It is further submitted that the prosecution is under a duty in terms of this subsection to request the court to transfer the case only if it is ready for trial. It follows, therefore, that S.75 (2), or for that matter, S.75 (3), does not empower a court to transfer a matter from its roll, unless so requested by the prosecution, or where the forum has been designated by it. Prior to plea, the prosecution is bound to decide the forum and the District Court is obliged to transfer the case to the court that has substantive or territorial jurisdiction, as identified by the prosecution. In so far as S.75 (3) is concerned, it is submitted that by omitting the words: ***"….. the court having jurisdiction to try the case"***, the intention of the legislature is that this section does not relate to matters destined for the Regional or High Courts only, but also to those matters falling within the jurisdiction of the District Court. Similarly, a District Court has no power to transfer a case destined for the

Regional Court in terms of S.119, to that particular court, once the DPP has decided the charges on which the accused will appear. In **S *v M;S v S en Andere* 1979(2) SA 959 (T*)*** the court held that the decision to prosecute rests with the Attorney-General and that a District Court Magistrate cannot refer the matter to the Regional Court for trial. He or she must adjourn the proceedings and await the decision of the Attorney-General. By transferring matters for trial to Superior Courts, whether the Prosecution agrees or not, a court would not only be acting *ultra vires* the Act, but also contrary to the spirit of the Constitution and encroaching on the independence of the prosecuting authority.

G Harmse
MAGISTRATE: MOSSELBAY

(This article was written before the recent decision in the Cape High Court of S v A Khalema and 5 Others on 6 June 2007.)

If you have a contribution which may be of interest to other Magistrates could you forward it via email to RLaue@justice.gov.za or gvanrooyen@justice.gov.za or by fax to 031 3681366 for inclusion in future newsletters.

Matters of Interest to Magistrates

The trouble with LLB graduates …

There is much discussion nowadays about the poor quality of law graduates. The topic even featured at the ninth and final provincial consultative workshop on the Legal Services Charter, held in Gauteng last month.

In his address to the workshop the Department of Justice Director-General, Menzi Simelane, referred to the poor quality of many law graduates who were said to be unable to draw affidavits and pleadings. He questioned the need for law firms to fund their own training programmes and asked whether the profession was engaging with the universities on the matter. The profession is.

Just more than a year ago, in March 2006, a strategic work session during the LSSA's annual meeting concluded, in the context of a review of

the 'external environment', that the educational standards of entrants to the profession were in decline. The meeting proceeded to note that this required that the 'LLB must be upgraded'.

In addition to specific legal knowledge, there are two general areas of skills deficit that practitioners mention most – numeracy and literacy.

The Attorneys Fidelity Fund has an obvious interest in the first of these and last month advertised in this journal for a researcher to conduct a study of all the numeracy training programmes taught at law faculties across the country with a view to recommending standards for numeracy training. The Fund noted that numeracy had been highlighted as an area in which students were generally deficient and that several training programmes had been developed at law faculties to address this deficiency.

The LSSA's department of Legal Education and Development (LEAD) is also closely concerned. It is involved in bridging courses, to assist with skills training at postgraduate level, such as that at the LSSA's School for Legal Practice in Durban. In addition, the LSSA's director of legal education, Nic Swart, is engaged in an ongoing nationwide review of the LLB curriculum, together with the deans of law faculties and schools.

The review needs to get to grips not only with the lack of numeracy skills, but also with the apparent general lack of functional literacy to which the Director-General referred. Many (prospective) candidate attorneys, including those who have been good students and achieved good results, cannot write an essay. Yet writing is an essential professional skill in almost every branch of legal practice.

The general skills deficits may have their origins at a school (primary and secondary) level, but they need to be addressed actively at tertiary and postgraduate levels if the legal profession is not only to retain its status as one of the learned professions but is also successfully to withstand increasing competition from other jurisdictions and professions.

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(The above article appeared as the editorial in the April issue of the DE REBUS attorneys' journal)