

AS ADOPTED AT PIETERMARITZBURG ON 3 JUNE 2008
BY THE
FOUNDER MEMBERS
OF THE
KWAZULU-NATAL ASSOCIATION OF PUBLIC SECTOR LAWYERS (KAPSL)
AND AMENDED ON 18 AUGUST 2009

**CONSTITUTION
OF THE
KWAZULU-NATAL ASSOCIATION OF PUBLIC SECTOR LAWYERS
(KAPSL)**

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OF THE
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(KAPSL)**

PREAMBLE

WHEREAS we, public sector lawyers attached to various departments, administrations and public entities in the respective branches and spheres of government in the Province of KwaZulu-Natal, affirm that our country, province and government is founded on–

- democratic values;
- the recognition of human rights;
- the recognition of the need for moral regeneration;
- the recognition of the family;
- the recognition of freedom of religion and worship;
- the principles of mutual trust and co-operation;
- co-operative, responsible and accountable government and good governance;
- the Rule of Law; and
- the recognition of, respect for, and loyalty to, the Constitution of the Republic of South Africa, 1996, as the supreme law of the Republic of South Africa;

WE HEREBY commit ourselves to serve and uphold these values and principles in providing professional, non-partisan legal services and legal advice to government;

AND WHEREAS we subscribe and commit ourselves to the Legal Services Sector Charter adopted in December 2007;

NOW, THEREFORE, in dedication to the above commitment;

AND RECOGNISING the need for a separate, visible and sustainable structure on the basis of voluntary association–

- to organise and empower public sector lawyers; and
- to support public sector lawyers in the co-ordination of the provision of professional, non-partisan legal services and legal advice in the public sector, within KwaZulu-Natal,

WE HEREBY FORM THIS ASSOCIATION as the representative body of the organised legal

profession in the public sector in KwaZulu-Natal in accordance with the provisions of this
CONSTITUTION:-

NAME OF ASSOCIATION

1. The name of the Association is the **KwaZulu-Natal Association of Public Sector Lawyers** (“KAPSL”).

AIMS AND OBJECTS OF ASSOCIATION

2. The aims and objects of the Association are to—

- (a) uphold and strive for the fulfilment and attainment of the values, principles and commitment in the Preamble to this Constitution, and especially, to maintain and promote throughout the public service and public administration, the Rule of Law and the recognition of, respect for, and loyalty to, the Constitution of the Republic of South Africa, 1996, as the supreme law of the Republic of South Africa;
- (b) promote, maintain and protect the independence, non-partisanship and integrity of public sector lawyers within the institutions they serve;
- (c) support public sector lawyers in the co-ordination of transversal legal issues within the public sector in KwaZulu-Natal;
- (d) promote professionalism in, and uniformity of, public law legal practice in KwaZulu-Natal;
- (e) promote an effective and professional legal support and legal advisory service to our respective employers;
- (f) promote increased co-operation between public sector lawyers;
- (g) promote the status and interests of its members;
- (h) plan and organise its administration and lawful activities;
- (i) facilitate networking amongst public sector lawyers, both nationally and internationally;
- (j) promote interest in all aspects of public law and practice;
- (k) provide a focus and *fora* for the exchange and sharing of information and ideas;
- (l) support public sector lawyers in the carrying out of their professional duties and functions;
- (m) facilitate and promote training, formal and informal, for public sector lawyers;
- (n) facilitate and promote skills development for public sector lawyers;
- (o) promote greater collaboration and co-operation between public and private sector lawyers and other bodies in respect of legal matters of mutual importance;

- (p) elect, nominate, designate, appoint or delegate members of the Association to represent the Association, or to present the views of the Association, at any meeting of any body, institution or forum in which the Association may be affiliated, have an interest, or to which the Association may be invited;
- (q) promote, support or oppose any proposed legislative or other measures affecting the interests of members;
- (r) engage in any activity relevant to and calculated to implement and foster all or any of the preceding aims and objects to the benefit of–
 - (i) the Association and its members, in particular; and
 - (ii) public sector law and public sector lawyers, in general;
- (s) invest or subscribe money for the furtherance of the aims and objects of the Association; and
- (t) do such lawful things as may appear to be in the interests of the Association and its members and which are not inconsistent with the aims and objects of the Association or any matter specifically provided for in this Constitution.

POWERS, FUNCTIONS AND DUTIES OF ASSOCIATION

3.(1) The Association must–

- (a) actively promote its aims and objects referred to in clause 2; and
- (b) apply for institutional membership of similar bodies, nationally and internationally, such as the Commonwealth Association of Public Sector Lawyers.

(2) The Association may–

- (a) adopt–
 - (i) a coat of arms, crest, logo or badge; and
 - (ii) a motto;
- (b) design, establish and maintain a website;
- (c) design a letterhead and other stationery;
- (d) compile and distribute a newsletter in printed or electronic format;
- (e) hold conferences, workshops and meetings;
- (f) attend conferences, workshops and meetings of similar bodies, both nationally and internationally;
- (g) present or facilitate skills transfer, training or continuing legal education to members of the Association;
- (h) render assistance to members of the Association on legal matters referred to the Association;

- (i) canvass issues of mutual importance with other public sector lawyers; and
- (j) co-ordinate liaison between the respective spheres and branches of government and other persons or bodies, including lawyers in the private sector, on legal matters of mutual importance.

(3) The Association may, by resolution of the Plenary Council—

- (a) affiliate with any other national or international association, organisation or body promoting an aim or object similar to those referred to in clause 2; and
 - (b) designate a person who, in the opinion of the Plenary Council—
 - (i) is of the appropriate seniority and stature;
 - (ii) enjoys the requisite honour and respect amongst his or her peers; and
 - (iii) has made a significant contribution to the advancement of—
 - (aa) the law and legal practice;
 - (bb) the administration of justice; or
 - (cc) any of the aims and objects of the Association referred to in clause 2,
- as the patron of the Association.

STATUS OF ASSOCIATION

4.(1) The Association has juristic personality, and is—

- (a) an independent voluntary association;
- (b) a body corporate with perpetual succession;
- (c) capable of entering into contractual and other relations; and
- (d) capable of suing and of being sued in its own name.

(2) The Association may hold property apart from its members.

(3) The liability of members is limited to the amount of their subscriptions outstanding or other monies due to the Association at any time in terms of this Constitution.

DEFINITIONS

5. In this Constitution, unless the context indicates otherwise—

- (a) “**Association**” means the KwaZulu-Natal Association of Public Sector Lawyers referred to in clause 1 and established by the founder members by the adoption of this Constitution in terms of clause 28, and “**KAPSL**” has a corresponding meaning;
- (b) “**Code of Ethics**” means the minimum ethical standards embodied in the Code of

Ethics in Schedule 1 to this Constitution;

- (c) “**Executive Committee**” means the Executive Committee of the Association referred to in clauses 11(b) and 14;
- (d) “**founder member**” means a founder member of the Association referred to in clause 7(1);
- (e) “**Headquarters**” means the Headquarters of the Association referred to in clause 6;
- (f) “**honorary member**” means an honorary member of the Association referred to in clause 7(4)(b);
- (g) “**municipality**” means a municipality contemplated in section 155 of the Constitution of the Republic of South Africa, 1996, and established by and under sections 11 and 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), read with sections 3, 4 and 5 of the KwaZulu-Natal Determination of Types of Municipality Act, 2000 (Act No. 7 of 2000);
- (h) “**Office Bearer**” means an Office Bearer referred to in clauses 11(c) and 14;
- (i) “**ordinary member**” means an ordinary member of the Association referred to in clause 7(4)(a);
- (j) “**Plenary Council**” means the Plenary Council of the Association referred to in clauses 11(a) and 12; **[and]**
- (k) “**provincial public entity**” means a provincial public entity as defined in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); and
- (l) “**public sector lawyer**” means any person in the employ of an organ of state who has a legal qualification.

HEADQUARTERS OF ASSOCIATION

6. The Headquarters of the Association is at Pietermaritzburg or such other place as the Plenary Council may, from time to time, determine.

COMPOSITION AND MEMBERSHIP OF ASSOCIATION

7.(1) The founder members of the Association are those public sector lawyers who–

- (a) adopted this Constitution on 3 June 2008 in Pietermaritzburg; and
- (b) are listed as founder members in the register contemplated in clause 15(6)(b)(iv).

(2) The founder members are regarded as the first ordinary members of the Association.

(3) Subject to sub-clause (4), a public sector lawyer in the employ, and on the establishment

of–

- (a) a national department with a regional office in KwaZulu-Natal;
- (b) a provincial department in KwaZulu-Natal;
- (c) the KwaZulu-Natal Provincial Legislature;
- (d) a municipality in KwaZulu-Natal;
- (e) an institution established in terms of Chapter 9 of the Constitution of the Republic of South Africa, 1996, with a regional office in KwaZulu-Natal; or
- (f) a provincial public entity in KwaZulu-Natal,

is eligible for membership as set out hereunder: Provided that such person–

- (i) subscribes to the aims and objects of the Association referred to in clause 2;
- (ii) subscribes unconditionally to the Code of Ethics; and
- (iii) is not–
 - (aa) a member of the executive; or
 - (bb) an office bearer,of a political party at national, provincial or regional level.

(4) Subject to the power of the Plenary Council to exclude any person from any category of membership, the Association consists of–

- (a) ordinary members, being public sector lawyers who are eligible for membership and who, on application in terms of clause 9(1), and in the opinion of the Plenary Council, should be granted ordinary membership; and
- (b) honorary members, whether public sector lawyers or not, who are invited by the Plenary Council to become honorary members: Provided that such honorary members–
 - (i) must, in the opinion of the Plenary Council, have made a significant contribution to the advancement of–
 - (aa) the law and legal practice;
 - (bb) the administration of justice; or
 - (cc) any of the aims and objects of the Association referred to in clause 2;
 - (ii) are exempt from the payment of the annual subscription payable by ordinary members, but have all the other rights and obligations of an ordinary member; and
 - (iii) must, on acceptance of an invitation to become an honorary member, submit to the Secretary a completed form substantially as provided for and set out in Schedule 2 to this Constitution.

(5) Every ordinary member is liable to pay an annual subscription, as determined from time to time by the Plenary Council.

(6) A member may be a member of any other voluntary legal or professional association.

(7) A member may resign by giving 30 days written notice to the Secretary: Provided that no resignation takes effect until all monies due to the Association by the member concerned have been fully paid up.

RIGHTS AND OBLIGATIONS OF MEMBERS OF ASSOCIATION

8.(1) Subject to the rights of membership as may be prescribed in this Constitution, a member is entitled to—

- (a) participate in meetings and activities of the Association;
- (b) elect other members as Office Bearers, to the Executive Committee, or to any other committee of the Association; and
- (c) timely receipt of notices, agendas and minutes of meetings.

(2) A member of the Association must—

- (a) subscribe unconditionally to, and is bound by, the Code of Ethics;
- (b) attend all meetings; and
- (c) participate meaningfully in any activity, which promotes any aim or object of the Association.

(3) Apologies must be forwarded to the Secretary in writing before a meeting if a member will not be attending.

APPLICATION FOR MEMBERSHIP OF ASSOCIATION

9.(1) Applications for admission of ordinary membership must be—

- (a) made to the Secretary in writing (on the form substantially as provided for and set out in Schedule 3 to this Constitution);
- (b) accompanied by the full monthly subscription currently applicable to members for the month in which the application is made; and
- (c) referred by the Secretary to the Executive Committee for consideration.

(2) If admission to membership is refused by the Executive Committee, the applicant

concerned must be notified and may appeal to the Plenary Council whose decision is final.

(3) Whenever an appeal is lodged, the applicant must be afforded an opportunity to state his or her case personally to the Plenary Council and may, if he or she so desires, call witnesses in support of any statement made by him or her.

(4) An applicant to whom membership is refused is entitled to a refund of any subscription paid by him or her on application.

(5) A member who has—

- (a) resigned; or
- (b) been expelled,

from the Association may be re-admitted to membership on such conditions as the Plenary Council may determine.

MEMBERSHIP SUBSCRIPTIONS

10.(1) The annual subscriptions of ordinary members are determined from time to time by resolution of the Plenary Council.

(2) The annual subscriptions of ordinary members are payable –

- (a) monthly in advance before or on the fifteenth day of the month;
- (b) in advance for the year, at the beginning of the financial year;
- (c) on becoming a member at any time; or
- (d) at a reduced annual subscription rate, if the subscription is paid in advance for the year and if the Plenary Council passes a resolution to this effect.

(3) Any member who is more than three months in arrears in the payment of subscriptions, ceases to be in good standing and is not entitled to any benefits of the Association.

(4) In addition to the aforementioned subscription, a member is also liable for the payment of any other fees or levies as may be imposed by the Plenary Council from time to time.

STRUCTURES OF ASSOCIATION

11. The Association operates at the following levels of organisation—

- (a) the Plenary Council;

- (b) the Executive Committee; and
- (c) the Office Bearers, being the Chairperson, the Deputy Chairperson, the Secretary and the Treasurer.

PLENARY COUNCIL

12.(1) The Plenary Council is composed of all members of the Association.

(2) The first meeting of the Plenary Council must–

- (a) take place not later than the last day of March 2009; and
- (b) be convened by the founder members.

(3) Subsequent to its first meeting, the Plenary Council must meet at least once every three months, with the Annual General Meeting of the Plenary Council taking place once a year in March.

(4) Notice of every Plenary Council meeting together with an agenda must be provided to the members of the Association.

(5) A *quorum* for a Plenary Council meeting is at least 25 percent of the members of the Association: Provided that in the event of there not being a *quorum* at the meeting–

- (a) the meeting must be adjourned and reconvened within a period of 14 days;
- (b) seven days written notice of such adjourned meeting must be given by the Secretary to the ordinary members of the Association; and
- (c) the members present at such adjourned meeting form a *quorum*.

(6) Minutes of all Plenary Council meetings must be submitted for approval at the following meeting of the Plenary Council.

(7) The Plenary Council–

- (a) may consider and resolve on all matters concerning the Association;
- (b) must consider and resolve on all matters, including draft policies and resolutions, submitted to it for consideration;
- (c) has all the powers vested in the Executive Committee;
- (d) has the right to vary or reverse any decision of the Executive Committee;
- (e) has the power to discipline members as provided for in this Constitution; and
- (f) may consider any matter which the Plenary Council agrees to discuss.

- (8) The Plenary Council, at its Annual General Meeting must–
- (a) bi-annually elect the Executive Committee and Office Bearers referred to in clause 11(c); and
 - (b) in addition to any other matters that have been submitted to it for consideration, consider and resolve on–
 - (i) an annual report on the activities of the Association by the Chairperson and the Secretary;
 - (ii) a financial report presented by the Treasurer;
 - (iii) the auditor's reports and the financial statements of the Association for the previous financial year; and
 - (iv) the appointment of auditors.

SPECIAL MEETINGS OF PLENARY COUNCIL

- 13.(a) A Special Meeting of the Plenary Council may be called by the Executive Committee on 14 days written notice to the members of the Association.
- (b) A Plenary Council Special Meeting decides on the matter for which the Special Meeting was called.

EXECUTIVE COMMITTEE MEMBERS AND OFFICE BEARERS

- 14.(1) The Executive Committee consists of not more than nine members, which include–
- (a) the four Office Bearers referred to in clause 11(c); and
 - (b) five ordinary Executive Committee members,
- to be elected bi-annually by the Annual General Meeting of the Plenary Council from among its members.
- (2) The Executive Committee meets at least monthly.
- (3) A *quorum* for the Executive Committee meetings is a majority of the members of the Executive Committee.
- (4) Copies of minutes of the Executive Committee meetings must be approved at the next ensuing Executive Committee meeting.
- (5) Subject to direction from the Plenary Council, the Executive Committee is responsible for

the day-to-day administration of the Association.

(6) The Executive Committee—

(a) must—

- (i) co-ordinate the activities and promote the interests of the Association and its members generally;
- (ii) report regularly to the Plenary Council;
- (iii) ensure that all monies collected by the Association are properly receipted, deposited and administered; and
- (iv) decide all matters of procedure on which this Constitution is silent; and

(b) may—

- (i) for the purpose of the effective performance of its functions, establish any other committee and determine its membership, which may include any member of the Association and any other person, and may determine the terms of reference of such committee;
- (ii) for the purpose of maintaining discipline and adherence to the Code of Ethics

—

- (aa) reprimand members;
- (bb) recommend disciplinary action by the Plenary Council in terms of clause 19; or
- (cc) itself institute disciplinary action in terms of clause 19;
- (iii) subject to authorisation by resolution of the Plenary Council, acquire by purchase, lease or otherwise, or dispose of, any property or hold same on behalf of the Association: Provided that any agreement or contract to which the Association is a party or signatory to give effect to such purchase, lease, disposal or holding must be signed by the Chairperson and must contain, as a schedule to the agreement or contract, a copy of a dated resolution by the Plenary Council signed by all the Office Bearers authorising the Chairperson to sign the agreement or contract in question;
- (iv) open, operate and close banking accounts on behalf of the Association and, generally, control, manage and administer the funds and finances of the Association;
- (v) borrow, raise or invest monies and funds, allocate funds and approve all expenditure on behalf of the Association;
- (vi) subject to authorisation by resolution of the Plenary Council, conclude any agreement it deems necessary or appropriate: Provided that any agreement or contract to which the Association is a party or signatory must be signed by the

Chairperson and must contain, as a schedule to the agreement or contract, a copy of a dated resolution by the Plenary Council signed by all the Office Bearers authorising the Chairperson to sign the agreement or contract in question;

- (vii) provide legal assistance to members on matters related to their functions;
- (viii) decide on the establishment, maintenance or termination of employment posts for the effective running of the Association;
- (ix) engage and dismiss any employee of the Association, fix their remuneration and other conditions of employment and define their duties;
- (x) subject to ratification by the Plenary Council, designate, nominate or elect persons to represent the Association on any body constituted in terms of any law or any other body on which it is regarded desirable or appropriate for the Association to be represented;
- (xi) institute or defend legal proceedings by or against the Association, or any of its members; and
- (xii) do such other things as in the opinion of the Executive Committee or the Plenary Council appears to be in the interests of the Association and which are consistent with the provisions of this Constitution.

(7) A member of the Executive Committee vacates office—

- (a) on the expiry of his or her term of office;
- (b) on resignation, suspension or expulsion from membership of the Association;
- (c) on ceasing to be eligible to be a member of the Association;
- (d) on ceasing to be a member of the Association in good standing;
- (e) by decision of the Plenary Council; or
- (f) on absenting him- or herself from three consecutive meetings without an apology acceptable to the Executive Committee.

(8) A vacancy in respect of an Office Bearer is filled by appointment by the Executive Committee from amongst themselves on a temporary basis until such vacancy is filled by election at the next ensuing meeting of the Plenary Council from among the members of the Association.

(9) A member elected to fill a vacancy holds office for the unexpired portion of the period of office of his or her predecessor.

(10) A member of the Executive Committee is eligible for re-election.

- (11) The following procedure applies in respect of the election of Office Bearers –
- (a) the Secretary must call for nominations of all Office Bearer positions one month prior to the Annual General meeting;
 - (b) members of the Association must submit nominations to the Secretary within seven days of such request;
 - (c) the Secretary must after receiving the nominations contemplated in sub-clause (b) confirm with each nominated candidate whether he or she wishes to stand for the office for which he or she has been nominated;
 - (d) the Secretary must prepare ballot papers with names of all the candidates who have confirmed their nominations;
 - (d) the ballot papers must be distributed to all members at the Annual General meeting;
 - (e) the Office Bearers are elected in the following order –
 - (i) Chairperson;
 - (ii) Deputy Chairperson;
 - (iii) Secretary; and
 - (iv) Treasurer;
 - (h) each member present has one vote for each position of Office Bearer;
 - (i) after the votes are cast, three independent ballot scrutinisers must refer the result to the Chairperson;
 - (j) the Chairperson must announce the number of votes cast for each candidate and declare the candidate with the most votes as the newly elected Chairperson;
 - (k) the newly elected Chairperson must forthwith assume the task of presiding over the elections of the other Office Bearers;
 - (l) the Chairperson must announce the number of votes cast for each nominee and declare the candidate with the most votes as the newly elected Office Bearer.
 - (m) the result of each round of balloting must be disclosed to the Plenary Council before the following round commences; and
 - (n) the newly elected Office Bearers take office at the closure of the Annual General Meeting of the Plenary Council at which they are elected.
- (12) The following procedure applies in respect of the election of the remaining five ordinary members of the Executive Committee –
- (a) a ballot paper must be prepared by the Secretary, with names of all the candidates for the positions;
 - (b) each member casts a vote for five candidates of the Association, who have not just been elected as Office Bearers, and submits their ballot papers to the three independent ballot scrutinisers;

(c) the ballot scrutinizers must tally the number of votes cast for each candidate and submit the names of those candidates who received the highest number of votes to the Chairperson;

(d) the Chairperson must declare the five persons receiving the highest number of votes as duly elected ordinary members of the Executive Committee with effect from the closure of the Annual General Meeting of the Plenary Council at which they are elected.

DUTIES OF OFFICE BEARERS

15.(1) The Chairperson must attend all Plenary Council Meetings and Executive Committee meetings and must preside at such meetings.

(2) The Chairperson has a deliberative vote at a meeting of the Plenary Council and a deliberative as well as a casting vote at meetings of the Executive Committee.

(3) The Deputy Chairperson assists the Chairperson in performing his or her duties and performs such duties of the Chairperson as are delegated to him or her by the Chairperson.

(4) In the event of both the Chairperson and the Deputy Chairperson being unable, either temporarily or permanently, to perform their duties, the Executive Committee must appoint a member of the Executive Committee to act as Chairperson, who holds office as Acting Chairperson until the Chairperson or Deputy Chairperson is able to assume his or her duties or until the next election, as the case may be.

(5) The Treasurer must—

(a) keep proper books of account;

(b) ensure that the books of account are audited annually by the auditors;

(c) inspect all records relating to the finances and books of account of the Association;
and

(d) submit statements of income and expenditure of the accounts of the Association to each meeting of the Executive Committee and in respect of each financial year to the Annual General Meeting of the Plenary Council.

(6) The Secretary—

(a) attends to the publication and dissemination of information pertaining to the affairs and views of the Association; and

(b) is responsible for the proper administration and co-ordination of the Association, including the duty to—

- (i) supervise the work of the employees, if any, of the Association;
- (ii) perform such other duties as the Executive Committee may direct;
- (iii) report fully to each meeting of the Plenary Council and the Executive Committee on all aspects of the activities of the Association; and
- (iv) ensure that a register of ordinary and honorary members is established and maintained: Provided that the register must indicate which ordinary members are founder members who adopted this Constitution in Pietermaritzburg on 3 June 2008.

RULES OF PROCEDURE AT ASSOCIATION MEETINGS

16. The normal Rules of Meeting Procedures apply to all meetings of the Plenary Council, including the Annual General Meeting of the Plenary Council, meetings of the Executive Committee and any other committee.

REMOVAL FROM OFFICE OF OFFICE BEARERS

17.(a) Despite any other provision in the Constitution for the removal of Office Bearers, at least 20 percent of the members of the Association in good standing, may in writing request the removal of an Office Bearer.

(b) Upon receipt of the written request, the Executive Committee must arrange for a ballot of all the members in good standing to determine whether they desire to have an Office Bearer concerned removed from office.

(c) A majority vote of the members present in favour of the removal effects the removal.

INDEMNIFICATION OF MEMBERS, INCLUDING OFFICE BEARERS AND EXECUTIVE COMMITTEE MEMBERS

18. All members, including Office Bearers and Executive Committee members, are—

- (a) indemnified by the Association against all proceedings, costs and expenses incurred by reason of any omission or other act done in the performance of their duties on behalf of the Association, unless they have acted with gross negligence or in a manner that constitutes wilful misconduct; and
- (b) not personally liable for any liabilities of the Association.

DISCIPLINE OF MEMBERS OR OFFICE BEARERS

19.(1) Any member of the Association, including an Office Bearer or member of the Executive Committee, who—

- (a) fails to comply with, or acts in a manner contrary to, any term or provision of this Constitution, including the Code of Ethics;
- (b) acts against the interests of the Association;
- (c) if such member is a public servant, fails to comply with, or acts in a manner contrary to, the Code of Conduct for Public Servants; or
- (d) is convicted of a criminal offence,

may be disciplined by either the Executive Committee or the Plenary Council.

(2) The Executive Committee or the Plenary Council, as the case may be, must notify the person concerned in writing of the substance of the charge and of the time and place of his or her hearing, at least seven days prior to the date of the hearing, and such notice may—

- (a) be sent by registered post to the last known address of the person charged; or
- (b) be delivered to the person charged by hand.

(3) At the hearing, the Executive Committee or the Plenary Council, as the case may be, must afford the person concerned an opportunity to state his or her case personally, and to call any member of the Association or any other person as a witness in support of his or her case.

(4) If the Executive Committee or the Plenary Council, as the case may be, is satisfied that the person charged has, though absent, received the notice, or if the person charged is present, the Executive Committee or the Plenary Council may proceed to hear and determine the charge, and if it finds the charge proved to its satisfaction on a balance of probabilities, may—

- (a) expel the member from the Association;
- (b) suspend the member from the Association for a definite period;
- (c) impose a fine not exceeding an amount equal to the current total annual membership subscription; or
- (d) impose a fine referred to in sub-clause (c) and suspend the member until such fine is paid.

(5) A decision by either the Executive Committee or the Plenary Council, as the case may be, in respect of a matter before it, is final.

(6) A member who has been suspended–

- (a) ceases to be entitled to the benefits of membership, including the right to vote, during any period while he or she is under suspension, and an Office Bearer also ceases to act on behalf of the Association during the period of his or her suspension;
- (b) remains liable for payment of the subscription fees payable by members;
- (c) may resign from the Association by giving 30 days written notice to the Secretary: Provided that no resignation takes effect until all monies due to the Association by the member concerned have been fully paid up.

FINANCES AND SIGNING POWERS OF ASSOCIATION

20.(1) The funds of the Association consist of all monies received or raised by means of the subscriptions, levies and donations for the administration and running of the Association and its campaigns or projects.

(2) All financial documentation requiring signature on behalf of the Association must be signed by the Treasurer and the Chairperson: Provided that the Treasurer may sign financial documents relating to transactions with a value of less than R25 000.

(3) The Treasurer may conduct electronic transactions on behalf of the Association up to a maximum value of R25 000.

(4) Any agreement or contract above a value of R25 000 to which the Association is a party or signatory must–

- (a) be signed by the Chairperson; and
- (b) contain, as a schedule to the agreement or contract, a copy of a dated resolution by the Plenary Council signed by all the Office Bearers authorising the Chairperson to sign the agreement or contract in question.

(5) Any official correspondence on behalf of the Association addressed to any person or body must be signed by either the Chairperson, or the Deputy-Chairperson.

LEVIES IMPOSED BY THE ASSOCIATION

21. The Executive Committee may, at any time, with a view to securing funds for any particular purpose or project, impose such a levy as it may determine on each ordinary

member: Provided that–

- (a) notice of the proposed levy has been given to all ordinary members; and
- (b) the Plenary Council may demand that a ballot of ordinary members of the Association be taken on the subject.

NOTICES

22. No meeting is invalid solely by reason of the non-receipt by any person entitled to receive the requisite notice.

MANDATORY BALLOTS

23.(a) Members in good standing may in writing, and supported by at least 20 percent of all members in good standing, request the Secretary that a ballot of members be held on any issue.

(b) On receipt of such written request, the Secretary must arrange for a ballot of all members in good standing to determine the issue, which must then be submitted by the Secretary to the Executive Committee to formulate a draft policy for consideration at the next ensuing meeting of the Plenary Council for adoption.

AMALGAMATION OR MERGER

24. In the event of the Plenary Council determining that the objects of the Association will be better achieved by a merger or amalgamation between the Association and any other association, the Plenary Council may, by decision of a majority of all members of the Association, resolve to amalgamate or merge with any other association, in which event the newly formed association acquires all assets and liabilities, and all rights and obligations of the Association, and the newly formed association is, for all purposes, the successor-in-title of the Association.

DISSOLUTION OF ASSOCIATION

25.(1) The Association may be dissolved at any time by resolution supported by two-thirds of the members of the Association, if for any reason the Association is unable to continue functioning.

(2) Upon dissolution of the Association–

- (a) the available members of the last elected Executive Committee must appoint a liquidator to perform the dissolution, who–
 - (i) may not be a member of the Association; and
 - (ii) must be paid such fees as may be agreed upon between the liquidator and the said members; and
- (b) any funds remaining after payment of all debts, must be disposed of in accordance with a decision of the members of the Association who were in good standing as at the date of dissolution.

AMENDMENT TO CONSTITUTION OF ASSOCIATION

26.(1) Any provision of this Constitution may be repealed or amended in any manner by resolution of the Plenary Council: Provided that–

- (a) written notice to that effect has been lodged with the Secretary at least 30 days prior to the date of the next ensuing Plenary Council Meeting;
- (b) the Secretary forthwith circulates the notice to all members; and
- (c) includes the notice as an item on the agenda of the next ensuing Plenary Council Meeting.

(2) A repeal or an amendment becomes effective upon a resolution to that effect being passed by the Plenary Council.

(3) The notice period may be waived if two-thirds of those present and entitled to vote at a Plenary Council Meeting so approve.

(4) Subject to the provisos set out in sub-clause (1) above, this Constitution may be substituted in its entirety with such substitution becoming effective upon a resolution to that effect being passed by the Plenary Council with a majority of two-thirds of those present and entitled to vote at a Plenary Council Meeting.

INTERPRETATION OF CONSTITUTION OF ASSOCIATION

27. The responsibility for the interpretation of the provisions of this Constitution or any matter arising in connection therewith, is vested in the Plenary Council and the decision of the Plenary Council is final and binding.

ADOPTION OF CONSTITUTION OF ASSOCIATION

28. THIS CONSTITUTION IS HEREBY ADOPTED AT PIETERMARITZBURG ON THIS 3rd DAY OF JUNE 2008 BY THE FOUNDER MEMBERS OF THE KWAZULU-NATAL ASSOCIATION OF PUBLIC SECTOR LAWYERS (KAPSL).

SCHEDULE 1

CODE OF ETHICS

(Clauses 7(3)(f)(ii), 8(2)(a), 9(1)(b)(ii), 14(6)(b)(ii) and 19(1)(a) of Constitution of Association)

PREAMBLE

(1) The continued existence of our free, just and democratic society is based on Constitutionalism, Human Rights and the Rule of Law.

(2) Lawyers, as practitioners and guardians of the law, also within the context of the public sector, play a vital role in the preservation of such a free, just and democratic society. Public sector lawyers, in fulfilling their collective and individual role as guardians of the law, must understand their relationship with, and function in, our legal and societal system. In fulfilling this role, public sector lawyers must maintain the highest standards of ethical conduct.

(3) In performing their professional responsibilities, lawyers of necessity assume various roles. Not every situation which the lawyer may encounter can be foreseen, but fundamental ethical principles are always present for guidance. Public sector lawyers are required to act within the framework of these principles as set out in this Code of Ethics.

(4) The Code of Ethics is the guiding light by which public sector lawyers are to judge their professional conduct. Each lawyer's own conscience must provide the touchstone against which to test the extent to which his or her actions should rise above these minimum ethical standards. But in the final analysis, it is the desire for the respect and confidence of the other members of the legal profession and of the society which the lawyer serves that should provide the incentive to a public sector lawyer for the highest possible degree of ethical conduct. The possible loss of that peer respect and confidence is the ultimate sanction.

(5) The mission of the public sector lawyer, in general, and a member of the KwaZulu-Natal Association of Public Sector Lawyers, in particular, is to protect the Constitution, Human Rights and the Rule of Law to realise social justice within a free, just and democratic society. To this end, a member is granted the requisite freedom and independence in the performance of his or her duties and is guaranteed a high degree of autonomy.

(6) A member is accountable to the Association for being aware of the minimum ethical standards embodied in this Code of Ethics, to be socially responsible and to discipline and direct his or her conduct and behaviour accordingly.

(7) All members of the KwaZulu-Natal Association of Public Sector Lawyers subscribe unconditionally to, and are bound by, the following minimum ethical standards embodied in this Code of Ethics (clauses 7(3)(f)(ii), 8(2)(a), 9(1)(b)(ii), 14(6)(b)(ii) and 19(1)(a) of the Constitution of the Association).

PART I OUTLINE OF ETHICS

Awareness of mission

1. A member–

- (a) is aware that his or her mission, as a public sector lawyer, is to protect the Constitution of the Republic of South Africa, 1996, Human Rights and the Rule of Law to realise social justice within a free, just and democratic society; and
- (b) must strive to attain this mission.

Freedom and independence

2. A member is free and independent in the performance of his or her duties as a public sector lawyer.

Protection of independence of judiciary and judicial system

3. A member must–

- (a) protect the independence of the judiciary and the judicial system; and
- (b) strive to contribute to the sound development of the judicial system.

Diligence, fairness and good faith

4. A member must be faithful and perform his or her duties diligently, fairly and in good faith.

Maintenance of honour and credibility

5. A member must–

- (a) value honour, maintain credibility, and simultaneously endeavor to refine him- or herself and enhance the level of his or her professional legal culture;

- (b) at all times maintain the honour and dignity of the legal profession; and.
- (c) in practice as well as in private life, abstain from any behaviour or conduct which may tend to discredit the legal profession.

Familiarity with laws, rules and legal practices

6. A member must be familiar with the laws, rules and legal practices pertaining to public sector law.

Discovery of truth

7. A member may not disregard the discovery of truth as a result of being overly concerned with the outcome of a matter.

Maintenance of integrity, impartiality and non-partisanship

8.(1) A member must endeavour to maintain his or her integrity, impartiality and non-partisanship.

(2) No member may be—

- (a) a member of the executive; or
- (b) an office bearer,

of a political party at national, provincial or regional level.

Best endeavour and value for money

9. A member must, at all times—

- (a) strive to provide the best level of representation for his or her employer to protect such employer's legitimate and lawful interests and legal rights; and
- (b) provide or facilitate value for money in respect of legal services rendered on behalf of his or her employer.

Quality and format of legal advice

10. A member must endeavour, at all times, to furnish legal advice and legal opinion which—

- (a) upholds and protects the Constitution of the Republic of South Africa, 1996, Human Rights and the Rule of Law;

- (b) complies with the letter and the spirit of the Constitution of the Republic of South Africa, 1996;
- (c) is candid, well-researched and well-considered; and
- (d) is furnished in writing, alternatively, to follow-up any oral opinion in writing.

PART II GENERAL ETHICAL STANDARDS

Dignity

11. A member must, at all times, act or behave in a dignified manner, appropriate or fitting under the relevant circumstances.

Instigation of litigation

12. A member may not recommend, instigate or institute litigation for an unwarrantable purpose or in a manner which would derogate from his or her dignity and credibility.

Co-operation with persons who are not lawyers

13. A member must co-operate with persons who are not lawyers and may in no way abuse, manipulate or take advantage of, the lack of legal knowledge of such persons.

Promotion of unlawful conduct prohibited

14. A member may not promote or participate in–

- (a) any fraudulent business transaction;
- (b) violence; or
- (c) any other violation of law or unlawful conduct,

nor shall he or she utilise or benefit, directly or indirectly, from, such conduct.

Participation in degrading business prohibited

15. A member may not–

- (a) conduct;
- (b) promote;
- (c) participate in; or

(d) allow his or her name to be used or associated with, any business which may be perceived to be degrading or against public order or morals.

Acquisition or assignment of right or interest to, or in, subject matter of legal dispute prohibited

16. A member may not acquire or be assigned or transferred any right or interest (financial or otherwise) to, or in, the subject matter of a legal dispute in which such member is acting on behalf of his or her employer.

PART III

ETHICAL STANDARDS IN RELATION TO EMPLOYERS

Freedom, independence and responsibility in relation to employers

17. A member–

(a) must strive–

(i) to maintain his or her freedom and independence, impartiality and non-partisanship in taking on and handling any matter on behalf of his or her employer; and

(ii) to ensure that legal advice and legal opinion given by such member–

(aa) upholds and protects the Constitution of the Republic of South Africa, 1996, Human Rights and the Rule of Law; and

(bb) complies with the letter and the spirit of the Constitution of the Republic of South Africa, 1996; and

(b) may not–

(i) knowingly give his or her employer incorrect or misleading information or advice which is, to the knowledge of that member, contrary to the law; or

(ii) withhold or conceal from his or her employer, any relevant fact or provision of any law within the knowledge of that member.

Realisation of employer's lawful and legitimate interest

18. A member must–

(a) follow the dictates of his or her conscience and endeavor to realise his or her employer's lawful and legitimate interest in any matter; and

(b) render legal assistance and legal advice with scrupulous care and due diligence.

Protection and maintenance of confidentiality

19. A member may not, without good, cogent and justifiable reasons, disclose or utilise confidential information of his or her employer which is obtained in the course of the work or employment of that member.

Litigating with poor prospects of success prohibited

20. A member may not advise that a matter be litigated if the result desired by his or her employer is clearly unlikely or improbable.

Settling of litigious matters

21. A member must, when in an employer's best interest, endeavour to reach a solution by settlement out of court rather than recommending, initiating or unnecessarily prolonging, legal proceedings.

Guarantee of beneficial result prohibited

22. A member may not promise or guarantee his or her employer that the outcome of a matter will be beneficial to the employer.

Taking on of unlawful or illegitimate matter prohibited

23. A member may not take on any matter which is unlawful or illegitimate in its objective, means, or method.

Disclosure of special relationships and removal of possible conflict of interest

24. If a member has a special relationship or connection with the opposite party in a matter which may reasonably be perceived to be prejudicial to, or in conflict with, the fiduciary relationship between the member and his or her employer, the member must–

- (a) disclose such circumstance in writing to the employer; and
- (b) without delay take all reasonable steps to remove or resolve any possible conflict of interest.

Handling of certain matters prohibited

25. A member may not handle the following matters—

- (a) a matter in which the opposite party has consulted the member, and the manner and degree of the consultation are based on a fiduciary relationship; or
- (b) a matter which may prevent the member from maintaining fairness, impartiality, independence and non-partisanship due to his or her relationship or connection with another lawyer or with a client of such lawyer.

Member must obtain full briefing and report on progress

26. (1) A member must at all times endeavour to obtain a full briefing on a matter handled on behalf of his or her employer to obtain full knowledge of the employer's cause, the subject, objective and scope of the matter.

(2) After taking a matter, a member must strive to commence and proceed with it without delay.

(3) A member must report to his or her employer—

- (a) regularly in respect of the progress;
 - (b) without delay any circumstance or matter which may affect, or which may reasonably be expected to affect, the outcome; and
 - (c) without delay, the eventual result or outcome,
- of the matter.

Conflict of opinion

27. In the event of a conflict of opinion between members who are jointly associated in a matter and such conflict may reasonably be expected to be prejudicial to an employer, the members concerned must, in writing inform the employer of such circumstance without delay.

Acceptance of fees by members prohibited

28. A member may not accept any compensation or fee from a litigant or any interested party in any matter handled by the member on behalf of his or her employer.

Performance of other legal work for remuneration

29. Subject to any applicable rule or provision governing his or her employment, a member may not perform other legal work for remuneration without the prior written consent of his or her employer first having been obtained.

Dispute with employer

30.(1) A member must, at all times, endeavour–

- (a) to maintain a healthy fiduciary relationship; and
- (b) to avoid a dispute,

with his or her employer.

(2) In the event of a dispute with his or her employer, the member must endeavour to settle the dispute through mediation or any other mechanism prescribed by any applicable rule or provision governing his or her employment.

PART IV

ETHICAL STANDARDS IN RELATION TO OTHER MEMBERS OF THE ASSOCIATION

Display of honour, mutual respect, trust and courtesy required

31. Members must display honor, mutual respect, trust and courtesy in their dealings with each other as lawyers and professional colleagues and must refrain from making any remark which could, in the absence of justifiable and cogent reasons, such as supervision and oversight, maintenance of discipline and performance standards, “whistle-blowing” or exposing fraud, corruption or maladministration, be construed or interpreted as being defamatory, derogatory or disparaging to, or of, any other member.

Entrapment prohibited

32. A member may not entrap another member in contravention of fair business practice or the principle of mutual trust.

Honouring fiduciary relationships

33. Where a member co-operates with another lawyer in handling a matter or is requested by

another lawyer to take over the matter, the member must endeavor to honour the fiduciary relationship between such lawyer and any other employer.

Co-operation with another member

34. Where more than one member has taken on, or has been seized with, the same matter, both members must co-operate with each other in handling the matter.

Participation of another lawyer

35. A member may not unreasonably interfere with the desire of his or her employer to have another lawyer, whether practising in either the public or private sector, participate in the handling of the matter.

Intervention in certain matters prohibited

36. A member may not attempt to intervene in a matter which another lawyer has already taken on, unless there are justifiable and cogent reasons for such intervention, such as supervision and oversight, maintenance of discipline and performance standards, “whistle-blowing” or exposing fraud, corruption or maladministration.

Direct negotiation with opposite party prohibited

37. Unless warranted by special circumstances, a member may not contact or negotiate directly with the opposite party who is represented by a lawyer, whether an attorney or advocate, without the consent of such lawyer.

Dispute between members

38. Members must use their best efforts and endeavours to settle any dispute between members amicably through mutual consultation, mediation or in accordance with any applicable directive of the Association.

PART V

ETHICAL STANDARDS IN RELATION TO OPPOSITE PARTY

Deriving benefit from opposite party prohibited

39. A member may not derive any direct or indirect benefit from, or be entertained by, the opposite party in connection with a matter, nor may a member demand or be promised such benefit or entertainment.

Giving benefit to opposite party prohibited

40. A member may not give any direct or indirect benefit to, or entertain, the opposite party, nor may a member promise such benefit or entertainment.

PART VI

ETHICAL STANDARDS IN RELATION TO COURT CASES

Fair hearing or trial and proper procedure

41. A member must endeavor to realise a fair hearing or trial and proper procedure (due process).

Enticement of perjury, submission of false evidence or concealing any fact or law prohibited

42. A member may not entice a witness into committing perjury or making a false statement, nor shall a member submit false evidence or withhold or conceal any relevant fact or provision of any law.

Undue or unjustified delay in judicial proceedings prohibited

43. A member may not cause any undue or unjustified delay in judicial proceedings, whether by negligence or for any inappropriate or unlawful purpose.

Personal relationship or connection with judge or presiding or prosecuting officer

44. A member may not use his or her personal relationship or connection with a judge, any other presiding or prosecuting officer or any member of the judiciary in an attempt to exert influence or to negotiate with them in connection with a matter.

Respect for court and officers of court

45. A member, as a lawyer and, therefore, an officer of the court, must at all times maintain due respect towards the court and other officers of the court.

Representation without fear or favour

46. A member must–

- (a) without fear or favour; and
- (b) without regard to any unpleasant or unfavourable consequence to that member or any other person,

represent and defend the lawful and legitimate interests of his or her employer.

Furnishing of information to court

47. A member may not–

- (a) knowingly give the court or another officer of the court incorrect or misleading information or advice which is, to the knowledge of that member, contrary to the law; or
- (b) withhold or conceal from the court, or any other officer of the court, any relevant fact or provision of any law within the knowledge of that member.

PART VII

ETHICAL STANDARDS IN RELATION TO DRAFTING OF LEGISLATION

Draft legislation formulated must be constitutionally compliant and reflect policy

48. A member must strive to ensure that draft legislation formulated by such member–

- (a) complies with the Constitution of the Republic of South Africa, 1996;
- (b) correctly reflects –
 - (i) national and provincial policy on the subject matter of the legislation; and
 - (ii) the legitimate and lawful briefing, instruction or objective of the client, whether that client is–
 - (aa) the employer;
 - (bb) a member of the provincial executive; or
 - (cc) a member or a committee of the provincial legislature,as the case may be;
- (c) is clear and unambiguous; and
- (d) is capable of practical implementation.

PART VIII

ETHICAL STANDARDS IN RELATION TO ASSOCIATION AND OTHER ASSOCIATIONS

Observance of other codes

49. A member must equally observe the codes of conduct, practice or ethics imposed by–

(a) law; or

(b) any other voluntary legal or professional association of which he or she is a member,

including any obligation for the payment of membership fees, subscriptions or levies.

Handling entrusted matters in good faith and with due diligence

50. A member must handle, in good faith and with due diligence, the matters which are entrusted to him or her by the Association or any other voluntary legal or professional association of which he or she is a member.

PART IX

CODE OF ETHICS JUSTICIABLE

Code of Ethics justiciable

51.(1) This Code of Ethics is justiciable for purposes of disciplinary proceedings.

(2) A member subscribes unconditionally to, and is bound by, the minimum ethical standards embodied in this Code of Ethics.

(3) Any member, who–

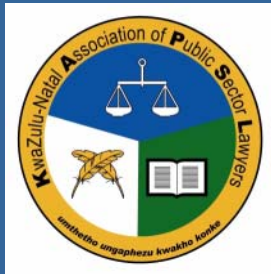
(a) fails to comply with any term or provision of; or

(b) acts in any manner contrary to any minimum ethical standard contained in, this Code of Ethics, may be disciplined by either the Executive Committee or the Plenary Council of the Association in terms of clause 19 of the Constitution of the Association.

SCHEDULE 2

ACCEPTANCE OF HONORARY MEMBERSHIP

(Clause 7(4)(b)(iii) of Constitution of Association)



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**KWAZULU-NATAL
ASSOCIATION
OF
PUBLIC SECTOR LAWYERS**

uMthetho ungaphezu kwakho konke
The Law reigns supreme
Die oppergesag van die Reg

HONOURARY MEMBERSHIP

DETAIL FORM

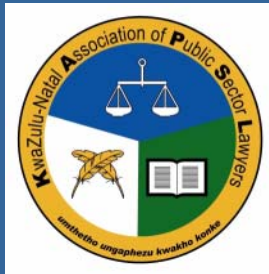
Full name:	
ID Number:	
Please attach full-colour Passport photo:	
Please attach CV:	
Residential Address:	
Postal Address:	
Contact details (Personal):	Telephone: Facsimile: Cellular: e-mail:
Contact details (Business/ Official):	Telephone: Facsimile: Cellular: e-mail:
Employer (if applicable):	
Employer Physical Address (if applicable) :	
Employer Postal Address (if applicable):	

Signature of Honourary Member:	
Date:	
Membership fees (for 2009/ 2010 financial year):	<p><u>Honourary Members are, in terms of clause 7(4)(b)(ii) of the Constitution of the Association, exempt from the payment of the annual subscription payable by ordinary members.</u></p> <p>The annual membership subscription payable by ordinary members for the 2009/ 2010 financial year is R100 per month or R1 000-00 per annum payable in advance.</p> <p>Donations to, and sponsorships for, the Association are, however, welcome and would be much appreciated.</p>
Please return to:	<p>Ms Tashini Naidoo The Secretary KAPSL</p> <p>243 Old Howick Road World's View PIETERMARITZBURG 3200 KwaZulu-Natal</p> <p>Tel: (033) 341-3382 Fax: (033) 394-4153 Enquiries: Ms T Naidoo (Secretary) e-mail: tashini.naidoo@gmail.com Cellular: 082-820-4598 Website: www.KAPSL.org</p>
KAPSL Banking Details:	<p>Account name: KwaZulu-Natal Association of Public Sector Lawyers (KAPSL)</p> <p>Bank: Standard</p> <p>Account Number: 271 716 851</p> <p>Branch Name: Longmarket Street</p> <p>Branch Code: 057 525</p>

SCHEDULE 3

APPLICATION FOR ORDINARY MEMBERSHIP

(Clause 9(1)(a) of Constitution of Association)



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The Law reigns supreme
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**APPLICATION
FOR
ORDINARY
MEMBERSHIP**

Full name:	
ID Number:	
Attach full-colour Passport photo:	
Professional Qualifications and year obtained:	
Admission as Advocate or Attorney (if applicable) and year of admission:	
Residential Address:	
Postal Address:	
Contact details (Personal):	Telephone: Facsimile: Cellular: e-mail:
Contact details (Business/ Official):	Telephone: Facsimile: Cellular: e-mail:
Employer:	
Employer Physical Address:	

Employer Postal Address:	
Declaration (in terms of clause 7(3) of the Constitution of the Association):	<p>I, the undersigned –</p> <p>(a) subscribe to the <i>aims and objects</i> of the Association referred to in clause 2 of the Constitution of the Association;</p> <p>(b) subscribe unconditionally to, and am bound by, the <i>Code of Ethics</i> embodied in the Schedule to the Constitution of the Association; and</p> <p>(c) declare that I am not –</p> <p style="padding-left: 40px;">(i) a member of the executive; or</p> <p style="padding-left: 40px;">(ii) an office bearer,</p> <p>of a political party at national, provincial or regional level.</p>
Signature of Applicant/ Prospective Member:	
Date of Application:	
Membership fees (for 2009/ 2010 financial year):	R100-00 per month or R1 000-00 per annum paid in advance (<i>pro rata</i> payment in advance calculated by the Secretary from date of joining to end of 2009/ 2010 financial year will be accepted)
Return to:	<p>Ms Tashini Naidoo The Secretary KAPSL</p> <p>243 Old Howick Road World's View PIETERMARITZBURG 3200 KwaZulu-Natal</p> <p>Tel: (033) 341-3382 Fax: (033) 394-4153 Enquiries: Ms T Naidoo (Secretary) e-mail: tashini.naidoo@gmail.com Cellular: 082-820-4598 Website: www.KAPSL.org</p>
KAPSL Banking Details:	<p>Account name: KwaZulu-Natal Association of Public Sector Lawyers</p> <p>Bank: Standard</p> <p>Account Number: 271 716 851</p> <p>Branch Name: Longmarket</p> <p>Branch Code: 05 75 25</p>