



**Keynote Address by the Deputy Minister of Justice and Constitutional Development, the Honourable JH Jeffery, MP at a Gala Dinner hosted by the South African Board for Sheriffs, held at Emperors Palace, Johannesburg, 17 October 2017**

Programme Director, Esteemed members of the judiciary, Chairperson, Deputy Chairperson and Members of the Board, Head of the National Prosecuting Authority, The Chairperson and CEO of the South African Human Rights Commission, The Director-General of the Department of Justice and Constitutional Development, Members of the Media and fellow guest speaker, Mr Justice Malala, Member of the Board and Regional Head of the Department of Justice and Constitutional Development, Adv Hishaam Mohamed, The Deputy Chairperson of SASS, The CEO and Management of South African Board for Sheriffs.... Ladies and Gentlemen.

A lot has been written, debated and argued about the topic of ethics in South Africa.

In an article in the Daily Maverick, well-known economist Dr Iraj Abedian, writes:

*“... a growing body of evidence implicating KPGM, Bell Pottinger, McKinsey and SAP, it has become clear that corruption is not confined to the public sector, political leaders and the executives of state-owned companies.*

*In fact, it has become clear that in today’s complex and globalized financial markets, no serious corruption can be sustained without an intricate and close working relationship among sophisticated and competent private sector professional firms and those who hold high offices-whether in public or in the private sector.”*

At a recent panel discussion held at Wits, Dr Abedian put it even more concisely, he said –

*“South Africa used to be a model of good economic governance. Today we are embarrassed.”*

Programme Director, these words may seem harsh, but examples abound: We saw the construction industry pay a R1.46bn collective fine for its role in colluding in the stadium building process for the World Cup.

Citibank has agreed to pay R69.5m for its role in forex rigging after reaching a settlement with the Competition Commission.

Earlier this month, a company which manufactures airbags, seatbelts, and steering wheels agreed to pay a penalty of almost R150 million for contravening the Competition Act and its involvement in price fixing, market division and collusive tendering with competitors.

And earlier this week the Competition Commission referred 14 fresh produce market agents to the Competition Tribunal for prosecution in relation to charges of price fixing and fixing trading conditions in contravention of the Competition Act.

So what happened to ethics? And why the seeming lack of ethics in corporate governance and elsewhere?

The term ethics is derived from the Greek word *ethos*, meaning custom or character. In philosophy, ethical behaviour is that which is good.

Philosophers have been grappling with the question of ethics since time immemorial – whether one looks at the Code of Hammurabi, or the Ten Commandments - ethics or morals, or the question of right versus wrong is as old as humankind itself.

In Plato's Protagoras it tells of how the god Zeus felt sorry for us as humans – humans were living in small groups, we had inadequate teeth, weak claws, and lack of speed, and we were simply no match for other creatures. So to make up for these inadequacies Zeus decided to give humans a moral sense, called a sense of Right and Shame, and the capacity for law and justice.

One scholar writes that it was this gift, this sense of right and wrong, which saved humankind from destruction. And most important, Zeus instructed his messenger, Hermes, to give this gift not to a few people only, but to everyone, so that this universal sense of right and wrong can form the basis of society.

So what went wrong?

A lack of ethics results from many different things: organizational culture, feelings of “getting away with it,” seeing other corrupt actions being met with impunity, general lawlessness in society, a fear of blowing the whistle, and possibly the most common of all – greed.

Today, ethics cut across many different professions, for example, in areas of medicine, science, business ethics, advertising standards and so forth.

One cannot speak of ethics in various professions if there are no professional or regulatory bodies.

Whether it be the law societies in the case of attorneys, or the bar councils in the case of advocates, or as in the case of sheriffs, the Board, someone has to ensure and maintain standards of ethics and professionalism.

In this regard, I am pleased to say that under the leadership and guidance of the Board much has been done to professionalize the sheriffs, such as the implementation of a Pledge and Code of Conduct which are vital for improving service delivery by the sheriffs' profession and in renewing the public's faith in the profession.

The past few months have also been a busy period for the Board, with the Legal Obligations Phase 1 being completed, the Board is now preparing for phase 2 which is due by 31 October 2017.

The theme of the Board's Annual Report is: **“Doing the right thing and doing things right.”**

The first part speaks to ‘doing the right thing’ which serves to remind us that sheriffs must rise to the high moral and ethical standards of conduct that was envisaged when the office of the sheriff was created.

The second part ‘doing things right’, speaks to the competency and effectiveness of sheriffs.

One of the sheriffs' profession's core values is professionalism.

This means that sheriffs are viewed as skilled and knowledgeable professionals, able to assist the public and legal profession so that justice is not only done but, as the maxim says, also seen to be done. The theme's underlining feature thus underpins the fact that a sheriff is an officer of the court. A sheriff occupies a position of trust and this requires high moral and ethical behaviour.

One way of doing this is for the sheriffs' profession to constantly adapt and find innovative ways in which to better serve the public.

In our country, the sheriff is appointed by the Minister for a defined area in which he or she has a monopoly - as the **only** person to serve civil process and attach and remove property. The mere fact that a sheriff has a monopoly for his or her area of appointment should tell us that an even higher degree of moral and ethical standards are expected of a sheriff.

One could ask if the current dispensation for sheriffs is in the interest of an efficient and effective civil justice system?

For example, what happens if the sheriff is not issued with a fidelity fund certificate and the sheriff and his or her deputies are then prohibited from working? What happens to the public who may need process to be served as a matter of urgency?

In many cases the issuing of a fidelity fund certificate can take months to resolve.

Currently Legal Aid South Africa and the DOJCD have serious challenges with some of the sheriffs who are not tax compliant.

One of the consequences is that the Department cannot pay the sheriff within the required 30 days, as prescribed by Treasury, which then results in audit queries and ad hoc sheriffs must be appointed by Legal Aid South Africa at additional costs.

One of the options we will have to consider is to appoint an acting sheriff to serve and execute process of government and statutory bodies until such time as the sheriff has resolved his or her tax matters with SARS. It is one of the matters that I will discuss with the Board and will be seeking legal advice on.

It has come to my attention that a number of sheriffs continue to perform the work of a sheriff, notwithstanding the fact that they have not been issued with a fidelity fund certificate by the Board, and before they have been suspended or removed from office.

Section 30 of the Sheriffs Act is very clear in this regard. A sheriff and his or her deputy shall not perform any function assigned to a sheriff by or under any law unless he or she is the holder of a fidelity fund certificate.

If a sheriff is disqualified from being issued with a fidelity fund certificate, the Board may, only if it is satisfied and under limited the circumstances, still issue a fidelity fund certificate to the sheriff - if it is justified and on such conditions as the Board may determine with the concurrence of the Minister.

This, for example, happens when a sheriff is investigated for allegations of misconduct of a more serious nature or pending the annual submissions that the sheriff is required to submit to the Board or failure to obtain professional indemnity insurance.

I have never been approached in this regard. I view this in a very serious light and will discuss this with the Board - as not only are the public placed at significant risk, but the service of documents served by such a sheriff or deputy sheriff could be deemed as irregular.

The misappropriation of trust monies also remains a matter of serious concern – and one for which the Minister and I have a zero tolerance approach.

At the same time, it important that the Board ensures that it has sufficient evidence and reasons before recommending the suspension of a sheriff - given the fact that misconduct proceedings will take a long time to finalise and the sheriff, together with his deputy sheriff and other staff will, for all purposes, “close office” as soon as an acting sheriff is appointed.

It is concerning that the South African Board for Sheriffs received claims to the value of R15.6 million for the 2016/2017 financial year against the Fidelity Fund for Sheriffs.

These claims concern allegations of misappropriation of trust money by a few sheriffs. Once a claim has been approved, the Board takes cession of the claims and can recover the money from the sheriff.

Other areas of concern are the delay or failure to respond to the queries by the public and attorneys; the overly-robust attitude by some sheriffs and deputy sheriffs towards judgment debtors and the overcharging of fees.

Stats SA recently released the Victims of Crime Survey, where households were asked a number of questions, amongst others, about their satisfaction with our courts. This survey focuses on the criminal justice system, but does give one an indication of the public's overall views of the courts.

When asked about their satisfaction with our courts and the way they deal with perpetrators, their reasons for being satisfied, and their reasons for being dissatisfied, the survey found that public satisfaction with the courts has been declining from 2011 to 2016/17.

From a high of 64.5% in 2011, it has come down to an all-time low of 44.9% this year.

If the public are not satisfied with our courts, it impacts severely on the faith and trust they have in the justice system.

In short, every single thing that each and every role-player in the justice system does – whether it be a clerk of the court, a legal aid practitioner, a private attorney, a magistrate, a judge or a sheriff – has a knock-on effect and affects the way the public sees the justice system and the rule of law.

We sometimes tend to forget just how prominent the concept of “justice” is in our Constitution. In fact, the Constitution opens with the very notion of “injustice” versus “justice” – as the first three lines of the Constitution's Preamble state-

*“We, the people of South Africa,  
Recognise the injustices of our past; [and]*

*Honour those who suffered for justice and freedom in our land”*

These words bestow on all of us a great responsibility, namely to ensure justice for all.

And at the forefront of ensuring justice is the sheriffs' profession.

We must ensure that we do all we can to empower and transform the sheriffs' profession, that we undertake training and research of the highest quality, assist in developing staff and deputy sheriffs to their fullest potential, promote a society of sheriffs founded on respect, integrity, diversity and gender equality, and promote quality service from its members to the civil justice system. I want to thank the Board for its commitment and efforts in achieving these goals.

It's also about building a justice system founded on ethics.

There is a saying that - *“Ethical behaviour is doing the right thing when no one else is watching.”*

And, if that isn't convincing enough, on a more practical level – and very true - poet and novelist Henry Wadsworth Longfellow said – *“It takes less time to do things right, than to explain why you did it wrong.”*

Let us ensure that we do things right.

I thank you.