

**Keynote Address by the Deputy Minister of Justice and Constitutional
Development,
the Hon JH Jeffery, MP
at the Sheriffs' Induction Programme, Pretoria,
24 July 2017**

Programme Director, Ms Lephadi
Chairperson of the South African Board for Sheriffs, Mrs Mabusa
Members of the Board
CEO of the Law Society of South Africa, Mr Nic Swart
Director of Justice College, Mr Julian Marsh
Sheriffs and Deputy Sheriffs
Ladies and gentlemen

Probably the most well-known, or the most notorious, sheriff of all time is the Sheriff of Nottingham, who was the main villain and arch-enemy of Robin Hood.

It is written that –

“King John's sheriffs were tough men who were chosen for their powerful personalities, strong spirits, and cruel behaviour. They excelled as military men and fighters and their task as his administrators and governors was to keep the populace in order and to raise taxes. The Sheriff of Nottingham was particularly disliked and along with King John his equally merciless master they governed the midland and northern counties with an iron hand.”

The sheriff was an unpaid position and the sheriffs had to pay the king a yearly sum to keep their offices. The sheriffs usually made far more from their various duties administering the shires, such as collecting taxes than the crown asked for, so they still made a profit.

Luckily much has changed since then.

If one goes back even further in history, the first documented reference to the sheriff was in 871 AD under King Alfred the Great of England.

Sheriffs have therefore existed for more than a thousand years – because the role of the sheriff is an important one.

And thus the continuous development of the sheriffs' profession within the ambit of our Constitution is extremely important.

I would like to welcome the newly appointed sheriffs, as well as the deputy sheriffs and office managers, who are attending this induction course.

One of the important objects of the South African Board for Sheriffs is the improvement of the standard of training and functions performed by sheriffs.

The Board therefore has to ensure that sheriffs attend and comply with the training programmes – such as this one - as prescribed by the Board. In this regard, section 33 of the Sheriffs Act provides that the Board shall not issue a fidelity fund certificate to a sheriff who does not comply with the prescribed standard of training.

The legislation and rules of court regulating the functions of sheriffs are ever-evolving and the exemption of a sheriff from prescribed training courses should be the exception rather than the rule - even if the sheriff has been in office for many sheriffs.

I am therefore concerned that a number of sheriffs, some of whom have been appointed to bigger service areas, are not attending this course – or then at least, part thereof - and this is something that I will take up with the Board.

I have been informed that this course is also viewed as an appropriate post-matric qualification and will therefore make it possible for an applicant to meet one of the minimum requirements for appointment as a sheriff. This is a more recent requirement which restricts some existing Sheriffs who were appointed before this took effect from being appointed in another office.

With regards to the mentors, it is of critical importance that the sheriffs who are appointed as mentors meet the requirements set by the Board, are in good standing and are above reproach, and are objective and impartial. The choice

of appropriate mentors also needs further consideration and one that I will address with the Board.

From correspondence received from applicants and other interested parties it is evident that there are misconceptions regarding the functions and powers of the Board, the Advisory Committees and the Deputy Minister in the appointment of sheriffs. Although I refer to the position of Deputy Minister, in the act the powers are allocated to the Minister but they have historically been delegated to the Deputy Minister.

In brief, the role of the Board in the appointment of a sheriffs is limited to the issuing, or not, of a fidelity fund certificate to a sheriff appointed by the Deputy Minister.

The appointment letters of the 33 newly appointed sheriffs clearly state that an appointment is subject to the issuing of a fidelity fund certificate by the Board.

In terms of Regulation 2D (8) a person appointed shall apply to the SABFS for a fidelity fund certificate. Although the Board is required to nominate a sheriff to serve on the Advisory Committee in each of the 9 provincial advisory committees, it is important to note that sheriff so nominated does not represent the Board and is appointed from nominations received from associations representing sheriffs. Furthermore, a sheriff who is a member of the Board may not serve on any of the Advisory Committees.

It is the function of the Advisory Committees to shortlist, interview and recommend fit and proper applicants for a vacancy.

The Advisory Committee is required to compile a list of the applicants interviewed and also of those whom the committee deems to be fit and proper persons for appointment.

The Deputy Minister may, if he or she is satisfied that all the requirements have been met, appoint an applicant from that list as a sheriff to the vacant office.

If there are concerns that all the requirements have not been met or if there is not a fit and proper person to be appointed I may then give directions to the Advisory Committee in question or to the Director-General.

Following concerns raised by some of the applicants and the reports received from the 9 Advisory Committees, it also became evident that more clarity should be provided regarding what is considered to be an appropriate post-Grade 12 qualification, as well as the supporting documents that must accompany an application and the discretionary powers of the Advisory Committee in this regard.

I am of the view that it is very important that the Advisory Committees follow a uniform approach to this process and I have requested the Department to attend to this before the next round of advertisements.

I have, in my interactions with the Board and the sheriffs' profession, referred to the significant role that sheriffs play in the civil justice system.

Sheriffs must perform their duties in a professional manner and provide a reliable and effective service to the public, the legal profession and other role players in the justice system.

I want to stress the importance of the quality of the work being done by the sheriff.

I recently received an email from an attorney claiming that the only way to ensure that sheriffs continuously provide a good service was to abolish the provision of having one sheriff per area and thus to allow for more competition.

I want to read a few lines from the email. The attorney writes:

"Sheriffs know that no matter how unhappy an attorney is about his/her service, said attorney will still have to knock on the relevant sheriff's door in the future as there is (apart from obtaining an ad hoc instruction) no option to the attorney for that jurisdiction.

If there is more than one sheriff appointed for an area an attorney can choose to whom it would prefer to forward his/her instructions.

Competition between sheriffs in the same area of jurisdiction will most definitely go a long way to remove some of the barriers created in the

current system where a sheriff has a mini monopoly on the jurisdiction it serves.”

The issue of competition was raised many years ago in a report of the South African Law Reform Commission. Section 3(2)(b) of the Sheriffs Act was subsequently enacted and makes provision for competition in that the Minister may, after consultation with the Board, appoint more than one sheriff for that particular area to perform the duties and functions of a sheriffs.

Regulation 2E of the Regulations Relating to Sheriffs sets out the procedure to follow to designate a particular area as an area in which more than one sheriff may be appointed - which may only take place after an investigation which includes consultation with the sheriff in the relevant area and any other stakeholders.

Should the Minister, after the investigation, decide to designate a particular area as an area in which more than one sheriff can be appointed, then the Minister must give notice to the sheriff of the area concerned to give comment within 21 days and must publish the decision in the Gazette and in writing to the sheriff concerned.

At the time, it was felt that it would be premature to implement these provisions to allow for greater competition – one of the considerations was to firstly address the issue of transformation, before dealing with issues of increased competition.

The question should perhaps now be asked whether it is in the interest of an effective and a reliable service to the public, the legal profession, the courts and other role-players in the justice system for one sheriff to have a monopoly in his or her area of appointment, particularly so if the performance of that sheriff is not satisfactory, does not have a tax clearance certificate, and so forth.

If justice is better served by having more than one sheriff in an area, then we must consider it.

Sheriffs must also, at all times, remember that they are dealing with human beings.

With regards to evictions, yes, sheriffs must follow the law but, at the same time, the sheriff must be concerned about the human beings they are dealing with. For example, the Sheriff who executed the removal of illegal shack dwellers from Sanral-owned land in Lwandle near Cape Town told a 2014 inquiry into the removals that - *"If something like this happens again, I'll definitely handle this in a whole different manner."*

For example, mass evictions take place where a community or persons invaded an open piece of land or premises such as a building or newly built houses. It is important that the sheriff act with humanity and compassion – whilst still following the prescripts of the law.

Mass evictions, in particular, take extensive planning, consultations and meetings with role players, such as the SAPS, emergency services, traffic officials, housing as well as human settlement departments of the local municipality, and in particular, community leaders and/or councillors of the area.

If the order is silent on relocation, the sheriff has the right to lodge an application to request the courts' guidance, as long as all parties are notified of the application.

So, the bottom-line really is this: you are providing a service, you are the face of the justice system and you are dealing with human beings. This is the most important part of being a sheriff.

There have been important developments affecting the sheriffs' profession such as the Judicial Matters Amendment Act (Act 8 of 2017) which was recently approved by Parliament.

The new section 17 of the Act, once it has been enacted, will make it possible to appoint an adjacent sheriffs to an area which is not viable and or where no suitable applicant was recommended.

The new section 18 will, once enacted, allow the Minister to describe one or more areas within the area of jurisdiction of a lower or superior court and

allocate any such area to a sheriff of that court or a sheriff of another court, after consultation with the Board and subject to written confirmation by the Board that it is prepared to issue a fidelity fund certificate to that sheriff.

Where two sheriffs have been appointed in an area, one for the High Court and one for the Lower Court and the High Court post, for example, becomes vacant it will be possible to allocate the service area of the High Court to the sheriff of the Lower Court.

Another important aspect relates to unclaimed funds in the trust accounts of sheriffs are estimated to run into millions. Although these funds belong to judgment debtors or creditors, they have not been claimed from the sheriffs concerned.

The new legislation, once enacted, will allow that money in the Fidelity Fund for Sheriffs may also be utilised for the payment, in deserving cases, of the costs for the enforcement of judgments of small claims courts by execution as contemplated in section 41 of the Small Claims Courts Act. This amendment is intended to assist successful judgment creditors who are unable to afford such costs.

The need to make the sheriffs' profession more representative in terms of race and gender was one of the factors I considered in the new appointments. Of the 33 appointed sheriffs, 18 are African (54%), 8 are White (24%), 4 are Coloured (13%) and 3 are Indian (9%). The 16 women appointed represent 48% of the new appointees and the 17 men 52%.

Twelve of the 33 appointed sheriffs were already holding office as sheriff in other smaller areas and will therefore not affect the demographics in terms of race and gender.

The new appointments will now bring the total number of permanent sheriffs countrywide to 289. Of these 289 sheriffs, 43% are African, 37% are White, 12% are Coloured and 8% are Indian.

There are 90 female sheriffs (thus 31% of the total sheriffs) and 199 male sheriffs (69%).

The majority of the new appointments will take effect from 1 September 2017 so as to enable the incumbent sheriffs to set up office, to employ personnel, to attend the compulsory prescribed training courses and to ensure a smooth handover of court documents.

Unfortunately some of the vacant offices could not be filled as either no applications were received or the Advisory Committees were not able to recommend fit and proper applicants, as the case may be.

This often occurs in small offices which are not economically viable and the Advisory Committees would therefore either recommend that the vacant offices be re-advertised, be allocated to an adjacent sheriff or that the sheriff's office for the high and lower court be merged.

Some of you have been appointed to offices that are not particularly viable. In terms of section 53 of the Sheriffs Act no sheriff shall, without the approval of the Minister, engage him or herself to perform remunerative work outside his or her office as sheriff. As with other powers, this has been delegated to the Deputy Minister, and let me state that I will consider applications for engaging in other remunerative work sympathetically, as long as it can be shown that the office in question is making a low income and that the additional work is not in conflict with the work of the sheriff.

All of the developments – the new legislation, the appointment of new sheriffs, the training programmes and so forth – show the importance of the role of the sheriff. These developments are all aimed at providing a better service and ensuring a justice system that works better.

I want to wish you all the best and to assure you of our support.

The Department will continue to support and strengthen the sheriffs' profession in order to ensure that justice is accessible to all.

I thank you.