

**Keynote Address by the Deputy Minister of Justice and Constitutional
Development,
the Hon JH Jeffery, MP
at the 4th Annual General Meeting of the South African Sheriff Society,
Port Elizabeth, 28 May 2016**

Ladies and gentlemen

Good morning and thank you for the opportunity to meet with you. I have been asked by SASS to share some thoughts with you on the theme "*Sheriffs - the Key to Civil Justice in South Africa.*"

Many of us may think that it's simply a nice slogan for an AGM – and then pay no further attention to it.

But only reflection, we see the importance of each element.

The term "sheriffs", in its original form in the Oxford Dictionary, was defined as being the chief executive officer of the Crown in a county, having various administrative and judicial functions. In other words, the sheriff was a representative of the King.

A history of the sheriffs' profession tells us the word "sheriff" is a joining of the term "*shire*" and "*reeve*". The term, in Old English, designated a royal official responsible for keeping the peace ("*reeve*") throughout a *shire* or county on behalf of the king.

The presence of the sheriff is well-documented, in fact, since the time of the Saxons. King Alfred, who was king in 871 AD, in the interest of the better administration of justice, allowed these sheriffs to have deputies.

So sheriffs have been important role-players since the Middle Ages and they continue to be so till this very day.

Now you may say everybody knows what a key is. Keys are incisions cut to fit the wards of a particular lock, which is inserted into a lock and turned to open or close it. In other words, a key has enormous power – it can open or close something. If there is no key, there is no access.

As writer Alan Bennett writes – “*Life is rather like a tin of sardines, and all of us are looking for the key.*” If there is no key, the object becomes useless, it cannot be enjoyed.

And what is meant by “civil justice”? The dictionary definition would obviously point to the administration of the law; in this case, civil as opposed to criminal law.

But look at other uses of the word “justice” – for example, “*to do justice to something*” means to treat something in a way that is accurate and fair and shows its true qualities. The word “*justice*” itself means the quality of being just, and righteousness and equitableness. The phrase “*in justice to*” means out of fairness to something.

Within the legal context of being a key to civil justice, an Australian judge, Judge Murray Kellam puts it beautifully when he says:

“The primary goal of a civil justice system is the just resolution of disputes through a fair, but timely, process at a reasonable expense. Delay and excessive expense will negate the value of an otherwise just resolution. Systemic delay and expense will render the system inaccessible.”

The sheriffs’ profession is a vital component of the administration of justice, and it is fitting that we meet in a forum such as this to discuss issues affecting justice, in general, and the sheriffs’ profession in particular.

AGM’s are generally a good time to reflect.

It is a good time to reflect on SASS’s vision and goals over the past year – goals which include -

- empowering and transforming the Sheriff's profession,
- training and research of the highest quality,
- assisting in developing staff and deputy sheriffs to their fullest potential,
- promoting a society of sheriffs founded on respect, integrity, diversity and gender equality, and
- promoting quality service from its members to the civil justice system.

Reflecting on these goals confirms why the sheriff is the key to civil justice in South Africa.

The position of a sheriff in South Africa is, of course, *sui generis*.

A 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 processes and attach and remove property.

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 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. And it is only after a sheriff has been suspended, or a court order has been obtained, that an acting sheriff may be appointed. Is that to the benefit of the public?

These are all questions which require ongoing and in-depth debate.

Because the sheriffs are a key institution, it is important that the enabling legislation be reviewed and updated. The Sheriffs Act of 1986 pre-dates the Constitution. As you know, certain sections of the Sheriffs Amendment Act came into effect not so long ago.

Our Department is currently undertaking a comprehensive review of the entire Act. We have called for inputs and we hope that SASS's inputs will be forthcoming soon.

Another important development is the new Judicial Matters Amendment Bill. This Bill contains clauses which have a significant impact on the sheriffs' profession.

Appointing sheriffs is generally an onerous process.

As you know, new magisterial districts for the Gauteng and North West were demarcated in December 2014. The demarcation of magisterial districts in other provinces is in the process of being finalised.

And it's not just us who have these issues affecting sheriffs. When I was reading about the history of the sheriffs' profession I noticed that before the reign of Queen Elizabeth, in the 1500s, some UK counties were joined with others lying next to them, for "*the ease of the service of the sheriff*", such as Sussex and Surrey, Devon and Cornwall. But then, due to demand, they were later separated, each county in the realm then having a distinct sheriff to itself.

I am pleased to note that the impact of the rationalization of courts and demarcation of magisterial districts on sheriffs was addressed in greater detail by Judge Van der Merwe.

In lucrative sheriffs' areas, the areas may be divided more equitably - if there is agreement between the sheriffs - or by making use of a vacant office within that magisterial district where the district has been divided into more than one sheriff's service area, as an acting sheriff has no vested right to a vacant office in which he or she is acting.

In non-viable areas, a person may very well be given more than one area, or another adjacent vacant area to make it more viable.

Another option is to appoint the same person for both the Lower Court and the Higher Court.

Section 3(2)(a) of the Sheriffs Act empowers the Minister to describe one or more areas **within** the area of jurisdiction of a lower or high court and allocate any such area to a sheriff of such court.

It is important to stress that sheriffs will be given an opportunity to comment on the recommendations made by Judge Van der Merwe.

I will be briefed by Judge Van der Merwe and the officials from our Department within the next two weeks, as I have requested further information, including maps and overlays of certain affected sheriff's areas. The first re-described sheriffs' areas that will be circulated for comment is Port Elizabeth.

As you know, we also not amenable to persons acting in positions for extended periods of time and I trust that the Report of Judge van der Merwe will go a long way in bringing finality to contested areas.

Another important issue is that of unclaimed trust funds. In a submission made to our Department by the South African Board for Sheriffs, unclaimed funds in the trust accounts of sheriffs are estimated to be approximately R80 to R100 million.

Although these funds belong to judgment debtors or creditors, they have not been claimed from the sheriffs concerned.

As mentioned, we are currently reviewing the Sheriffs Act in its entirety, which will include aspects relating to funds in trust accounts of sheriffs. It has, however, been suggested that, as an interim arrangement, excess funds in the trust accounts of sheriffs should be placed under the control of the Board for Sheriffs.

The Bill also aims to provide 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. This is another step in making make civil justice a reality for the poor.

While these litigants might ordinarily be successful in the small claims courts, their success is to no avail and justice will not prevail if they cannot enforce the judgments in their favour.

With regards to the conduct of sheriffs I have recently received 3 requests for the removal of office of particular sheriffs – all 3 matters pertain to trust accounts. I want to reiterate that we have a zero tolerance in this regard.

Our courts also have a zero tolerance, as was evident at the end of last year when the former sheriff of Khayelitsha was effectively jailed for three years after being found guilty of 15 counts of fraud involving more than R940 000.

The case arose from numerous complaints to the SA Board of Sheriffs that the sheriff had failed to pay over trust monies that were due to beneficiaries, and her failure to deposit trust monies into her trust bank account.

The magistrate said that the person had abused her position of trust as the sheriff in the community. She said the Fidelity Fund had fully compensated the aggrieved victims, but this did not count in the accused's favour, because she had not made any contribution herself towards the compensation.

Another sheriff was sentenced in January this year to a 5 year suspended sentence and 2 years community service, also for theft of trust monies.

For the past financial year, the Board received a total of 306 complaints. Most complaints were from Kwazulu-Natal, the Free State and Gauteng.

The other issue which requires our attention is where sheriffs do not have a valid tax clearance certificate. Depending on their reason, the Board has determined an appropriate grace period to allow sheriffs to sort out their tax matters.

This is a matter which requires ongoing attention, as it has a direct bearing on service delivery.

Also there are sheriffs who face ongoing challenges of debt collection and this affects the sustainability of the profession. Through its committees, the Board has lobbied various stakeholders to increase payments of fees owed to sheriffs.

Debt collection guidelines are being finalised to guide the sheriffs in claiming unpaid debts and also to deal with incidental matters like non-service and taking deposits.

Various initiatives are underway to further improve service delivery. A stakeholder satisfaction survey is planned which will assist the Board to get reliable stakeholder input from the sheriffs' profession as well as other stakeholders. This will be used for continuous process improvements.

Furthermore, a Fraud Framework was approved and the Board is investigating the cost effectiveness of implementing a fraud hotline.

Ladies and gentlemen

I want to conclude by wishing you all a very successful and productive AGM. I think what is important is that all of these developments show that we – together with all role-players in the sheriffs' profession – are continuously aiming at providing a better service to the public.

If the public lose trust in the sheriff, they lose trust in the entire justice system. If the key doesn't work, justice remains inaccessible, locked and of little value to our people.

The sheriff is indeed the key to accessible civil justice in our country.

I thank you.