

# THE MARITIME LAW ASSOCIATION OF SOUTH AFRICA

Affiliated to the Association of Law Societies of SA  
Member of the Comite Maritime International



Conference programme for the 2011 MLA AGM at Champagne Sports Resort,  
Drakensberg

Dates: Friday, 26 August to Sunday 28 August 2011

Dress: Smart Casual

## **FRIDAY, 26 AUGUST 2011**

13h00 Registration commences at Champagne Sports Resort Reception

TIME	SESSION & VENUE	SPEAKER/S & TOPICS
16h30		Welcome : Malcolm Hartwell – Chairman, MLA Durban Chapter
16h45	1 Ondini	Johnathan Webb : Holman Fenwick & Willan : <i>Hot Topics in Shipping Law – A London Perspective</i>
17h30	2 Ondini	Captain Alan Reid : P&I Associates & Captain Nicholas Sloane : Sloane Marine Ltd : <i>Anatomy of a casualty; mv "KIPEROUSA"</i>
18h15	3 Ondini	Riad Khan : CEO of Ports Regulator of South Africa : <i>Port Regulation and Development: Participatory democracy and the privatization of terminals</i>

19h00: Pre – Dinner Drinks: Cathkin Arms Bar

19h30: Dinner: Dining Room

**SATURDAY, 27 AUGUST 2011**

07h00: Breakfast for delegates and spouses

<b>TIME</b>	<b>SESSION &amp; VENUE</b>	<b>SPEAKER/S &amp; TOPICS</b>
9h00	4 Ondini	Michelle Linderman: Ince & Co. UK : <i>Sanctions Against Iran and their impact on Shipping and Insurance</i>
09h45	5 Ondini	Karl Socikwa : CEO of TPT : <i>Port and Terminal Development in South Africa : A TPT Perspective</i>
<b>10h30</b>	<b>TEA</b>	
11h00	6 Ondini	Angus Stewart SC: Australian Bar : <i>Recent developments in Maritime Law in Australia and the Australian approach to a marine insurance act</i>
11h40	7 Ondini	Andrew Robinson: Norton Rose South Africa: <i>Current status of the South African Marine Insurance Act</i>
12h10	8 Ondini	Presentation by Megan Harris of the new version of Shiptscene
<b>12h30</b>	<b>LUNCH</b>	
14h00	9 Ondini	Dr Janet Cotton : One Eighty (Pty) Ltd : <i>Catastrophic Material Failure : Case Studies</i>
14h45	10 Ondini	Henri Fouché: UNISA : <i>Piracy prevention and investigation: A South African perspective</i>

18:30 Pre-dinner drinks : Cathkin Arms Bar

19h00: Dinner: Zunckels

Speaker : Advocate Roy Gordon with a tribute to his father's contribution to maritime law

Honouree : Advocate David Gordon SC

**SUNDAY, 28 AUGUST 2011**

07h00 Breakfast

09h00: Annual General Meeting

10h30: Tea

11h00: Annual General Meeting continues

12h15: Conference closes. Lunch at the hotel will not be provided, but will be available upon individual request.

**THE MARITIME LAW ASSOCIATION  
OF SOUTH AFRICA**

**Affiliated to the Association of Law Societies of SA  
Member of the Comite Maritime International**



---

**From the office of the Secretary**

Unit 3, The Crescent  
Westway Office Park  
Westville  
Phone: +27-31-265 0651  
Fax: +27-31-0866046318  
e-mail: [anisa@vanveldendpike.com](mailto:anisa@vanveldendpike.com)

**MINUTES OF THE 93<sup>rd</sup> MEETING OF THE EXECUTIVE COMMITTEE OF THE MARITIME  
LAW ASSOCIATION HELD VIA TELECONFERENCE ON FRIDAY, 14 OCTOBER 2011  
AT 9H30.**

**PRESENT:**

Anisa Govender  
Colin Shaw  
Mike Wragge  
Brian Watt  
Gavin Fitzmaurice  
Peter Edwards  
Malcolm Hartwell  
James Mackenzie  
Edmund Greiner  
Patrick Holloway  
Janine Lee

**APOLOGIES:**

Roy Martin

## **1. WELCOME**

The President welcomed all present to this third EXCO meeting of 2011.

## **2. MATTERS ARISING FROM MINUTES OF THE 92<sup>nd</sup> EXCO MEETING HELD ON 20 JANUARY 2011**

### **2.1 AMENDMENTS TO THE AJRA**

An amended draft of the ACT has been made available to the subcommittee save for the wording in respect of the associated ship provisions. Mike Wragge will speak to Douglas Shaw in regard to Section 3(10)(b) of the Act.

### **2.2 WEBSITE**

Peter Edwards will update the newsletter and will be implementing a new system to update the website which will be cheaper.

### **2.3 SHERIFF SUBCOMMITTEE**

Malcolm Hartwell reported that the issue had been overtaken by the report circulated just before the AGM. A list has been sent to the Sheriff in regard to the removal of documents and a meeting will be held to discuss the list. Malcolm Hartwell will speak to Andrew Clark and Tony Edwards.

### **2.4 DRAFT SA MARITIME POLICY**

Mike Wragge, Brian Watt and Frank Ponnen met with the DOT. A note of the meeting is annexed marked "A".

Janine Lee reported that Tony Norton attend the Port Consultative Committee meeting where the increasing the number of vessels on the South African ships register was raised but at the expense of doing away with the associated ship provisions. Gavin Fitzmaurice reported that Jeremy Cronin had made this comment previously. There are at present only two exceptions to the associated ship provisions: Safmarine and Unicorn. The procedure involves vessels registering in South Africa and then applying to the Minister to declare the vessels exempt.

A discussion also ensued regarding various articles referring to 10 maritime lawyers in South Africa, all being white and educated in the UK.

It was resolved that:

- a. Mike Wragge would respond to the articles

- b. Edmund Greiner would make enquiries in regard to the SAMSA Mariner of the Year event.

### **3. TO CONSIDER AND RECEIVE FEEDBACK FROM THE SUB – COMMITTEES OF THE ASSOCIATION**

#### **3.1 Admiralty Practice (A Robinson / J Mackenzie / M Wragge / A Govender / A Clark / A Pike / P Balfour/P Edwards)**

##### **Admiralty Rules**

Peter Edwards is to arrange a meeting of the Admiralty Rules sub – committee.

Rule 8 and 21 need to be looked at.

Peter Edwards will send an email out to the members of the sub – committee inviting them to a meeting via video – conference.

#### **3.2 Marine Insurance (A Robinson / D Shaw / P Holloway / A Clark)**

Brian Watt and Mike Wragge met with Frank Ponnen. On 11 November 2011, there will be a meeting with AMUSA to discuss a draft Marine Insurance Act. Frank Ponnen is having discussions with the Financial Services Board in this regard.

#### **3.3 Ownership, Registration & Mortgage including small vessels (R Martin / L Dlamini / G Fitzmaurice)**

Mike Wragge will circulate a draft of the sale order. James Mackenzie will assist.

#### **3.4 Carriage of Goods (A Clark / M Wragge / A Govender / J Mackenzie)**

Nothing to report.

#### **3.5 Salvage Towage Wreck and General Average (J Mackenzie / A Robinson / R Martin / P Holloway / P Edwards / S Dwyer)**

Malcolm Hartwell is to speak to Andrew Robinson about the CMR equivalent of the CMI. Frank Ponnen did raise the issue at the meeting with the DOT but it was not discussed. Colin Shaw undertook to set up a meeting with Andrew Clark and Andrew Robinson.

#### **3.6 Pollution (A Robinson / J Mackenzie / P Holloway / P Balfour/B Watt)**

Brian Watt and Mike Wragge reported that there has been no movement on the legislation except for the money bills. Brian Watt will request copies of the bills. There was discussion at the meeting with the DOT of an 'umbrella bill" where the Merchant Shipping Act and Marine Pollution Act were to be redrafted. .

**3.7 Ship Operators and Crewing (M Hartwell / R Martin)**

Nothing to report.

**3.8 Safety at Sea and Navigation (M Hartwell / R Martin/B Watt)**

Nothing to report.

**3.9 Ports and Pilotage (M Hartwell / G Fitzmaurice / P Balfour / C Shaw)**

Nothing to report.

**3.10 Road and Rail Transport (A Clark / A Robinson / D Donnelly / C Shaw)**

Nothing to report.

**3.11 Limitation (D Shaw / M Wragge / A Robinson)**

Nothing to report.

**3.12 CMI Rapporteur (A Robinson / A Govender)**

Nothing to report.

**3.13 IMO Rapporteur (R Martin/B Watt)**

Brian Watt will circulate the latest IMO information on piracy.

**3.14 MLA Website (A Govender / P Edwards / E Greiner)**

Colin Shaw advised that the invoices in respect of advertising would go out with the membership invoices.

**3.15 Empowerment (A Clark / A Govender / D Donnelly / C Shaw)**

Anisa Govender reported that the Holland & Knight Scholarship programme was still on hold.

Mike Wragge reported that he had a meeting with Graham Bradfield at UCT and that there were a number of black students in the master's class, many from other African countries.

Malcolm Hartwell reported that Dan Archer's report will be published at the end of this year in regard to the master's programme at UKZN.

**3.16 The Steven Wallace Memorial Trust**

Gavin Fitzmaurice reported that the next step would be to inform members of the trust and to launch it. The trustees are to meet to discuss the trust's objectives. Gavin Fitzmaurice proposed that a letter be sent to all members from Mike Wragge and suggested a joint chapter meeting to discuss the objectives of the trust.

**3.17 Membership**

The current membership 234.

**3.18 To receive and consider the Treasurer's Report**

Colin Shaw advised that there was nothing new to report and that subscription invoices would go out to members in the next few weeks. It was suggested that a letter accompany the invoices inviting donations to the Steven Wallace trust.

**3.19 To receive and consider the Report of the Cape Chapter**

Nothing to report.

**3.20 To Receive and Consider the Report of the Durban Chapter**

Nothing to report.

**3.21 To Receive and Consider the Report of the Gauteng Chapter**

Brian Watt reported that the Gauteng Chapter membership was increasing.

**4. RECONSTITUTION OF SUB – COMMITTEES**

---

Peter Balfour is available to assist with matters relating to the port and Dusty Donnelly has resigned.

**5. MLA CONFERENCE AND AGM 2012**

Mike Wragge has been co-opted onto the organizing committee. The proposed venue is Shelley Point in late August 2012.

**6. GENERAL**

**6.1 CMI MEETING - CHINA 2012**

It was proposed that this item be placed on the agenda for the next EXCO meeting as South Africa was required to put forward official representatives.

**6.2 APPOINTMENT OF SHERIFF, CAPE TOWN**

It was resolved that the MLA would support Mark Withers in his quest to be appointed Sheriff.

**6.3 DONATION OF BOOKS TO THE SCA LIBRARY**

It was resolved that Mike Wragge would speak to Malcolm Wallis regarding his request.

**6.4 NAMIBIAN ADMIRALTY LEGISLATION**

Hilton Staniland has drafted an Act for Namibia. Edmund Greiner is to obtain a copy.

**7. DATE AND TIME OF NEXT EXCO MEETING**

It was resolved that the next EXCO meeting would be held towards the end of January 2012.

SECRETARY: .....

A. GOVENDER

DATE: .....

**Report on meeting with the Director General of the Department of Transport at the offices of the Department of Transport in Pretoria on Wednesday 5 October 2011.**

On Wednesday 5 October 2011 a Mike Wragge, Brian Watt and Frank Ponnen, representing the MLA, met with Hamida Fakier, Deputy Director General of the Department of Transport (Marine Legislation) and Karen Naidoo.

The purpose of the meeting was to tell the DDG a little about the MLA and to continue a practice established by Brian Watt for an annual meeting with the DDG to discuss pending legislation and other matters that may be important to the MLA membership.

The meeting was extremely cordial and lasted approximately one hour. An agenda had been prepared beforehand and had been sent to the DDG.

**The Green Paper on Maritime Policy**

The DDG explained that the Department was obliged to prioritize its objectives given that it has limited resources. It had been decided to shift the Department's immediate focus away from environmental and safety issues, although these clearly remained important, and to focus on commercial issues, more particularly:

- The growth of a South African ship's register;

- The development of coastal shipping;
- Job creation;
- The creation of a favorable environment for the local shipbuilding and repair industries;

In order to achieve these goals the Department considers that it will be necessary to review existing legislation. It is satisfied that the Ship Registration Act fulfills its function. However it considers that it will be necessary to review the Merchant Shipping Act and the Admiralty Jurisdiction Regulation Act to achieve the above goals.

The department also considers that it will also be necessary to ratify the 2006 Marine Labor Convention and the C188 Work in Fishing Convention, 2006, and to make these conventions part of municipal law.

The Department also recognizes that piracy is a key issue. There is a need to ratify the Geneva Convention and to realign the Draft Maritime Transport Security Bill so as to bring it into line with IMO guidelines and recommendations.

The question of the department's attitude to armed guards on board ships was raised. The DDG advised that the Department of Transport would be guided by the Department of Defence and IMO guidelines in this regard. Brian Watt pointed out that there are in fact three guidelines on the IMO website dealing with this aspect.

It is intended that the Green Paper will be published during the early part of 2012.

### Marine Pollution legislation

Karen Naidoo explained that, as matters stand, two out of the three bills (the MSA (Civil Liability Convention) Bill and the MSA (International Oil Compensation Fund) Bill are ready to be submitted to Cabinet, which is the next step in the legislative process. Once the bills have been submitted to Cabinet and have been approved at a Cabinet meeting, the bills then go before the Portfolio Committee on Transport. The problem is the MSA (International Oil Pollution Compensation (Contributions)) Bill, which provides for the collection of the contributions from the oil importers. DOT sees no point in submitting the bills to Cabinet piecemeal. All three bills will have to be submitted to Cabinet together. Ms Naidoo advised that before the three bills were to be sent to Cabinet the Department of Finance raised an objection to the Contributions Bill. There apparently is disagreement as to whether the contributions should be collected by SARS or by SAMSA. The Department of Finance was due to have produced their proposals for amendments to the bill by 30 September but did not do so. DOT is applying pressure on the Department of Finance in the hope that all three bills can be put before one of the two remaining Cabinet meetings that will take place later this year. If these cabinet meetings are missed then the matter

will have to stand over until next year. The DOT is aware of the urgency of the matter and will ensure that the bills go before the Portfolio committee as soon as they are approved by Cabinet.

#### Other legislation

The proposed amendment to section 11 of the Admiralty Act is set out in section 39 of the Judicial Matters Amendment Bill, 2010.

The DDG and Ms Naidoo advised that there had been some confusion between the Department of Transport and the Department of Justice as to who was going to reconsider the proposed amendment in the light of the objections that had been received from MLA members (and, presumably the comments of the Cape Bar Parliamentary Committee). This confusion was in the process of being resolved. Ms Naidoo assured us that the proposed amendment would be re-circulated for further comment before it was put before Cabinet.

The proposed amendment of section 261 of the Merchant Shipping Act is in the Merchant Shipping Amendment Bill 2009.

The DDG and Ms Naidoo advised that a complete overhaul of the Merchant Shipping Act was envisaged. The DOT did not see any purpose in a piecemeal amendment of the Act and therefore had no plans to table the Merchant Shipping Amendment Bill in the near future.

It was pointed out to the DDG and Ms Naidoo that the MLA would be happy to assist with comments on proposed legislation or in other ways, within limits, if this was possible. Ms Naidoo agreed that she would send me a schedule of matters that the DOT had on its list of matters to attend to so that we could see if there were any aspects that the MLA may be able to assist with.

## Lynn McLaughlin

---

**From:** Peter Edwards [petere@dawsons.co.za]  
**Sent:** 06 January 2012 04:18 PM  
**To:** 'Lynn McLaughlin'  
**Subject:** FW: MLA : FURTHER AMENDED AGENDA  
**Attachments:** Agenda 93rd meeting 14 October 2011.doc

Pls print for me

**Peter Edwards**  
**Dawson, Edwards and Associates**  
**Maritime and Commercial Attorneys**  
"De Hoop"  
2 Vriende Street, Gardens  
Cape Town  
E-mail : [petere@dawsons.co.za](mailto:petere@dawsons.co.za)  
tel : +27-21-4624340  
fax : +27-21-4624390  
mobile : +27-82-4951100  
vebsite : [www.oceanlaw.co.za](http://www.oceanlaw.co.za)

Security and reliability of internet e-mail cannot be guaranteed. If you prefer to communicate by fax or mail, please let us know.

### CONFIDENTIALITY NOTICE

The information contained in this e-mail and any accompanying attachments is confidential and may be subject to legal privilege. It is for the use of the named recipient only. If you are not the named recipient, you must not read, use, distribute or copy the contents of this e-mail. Please notify us immediately by reply e-mail or collect telephone to +27-21-4624340 and delete the original. Thank you for your co-operation.

---

**From:** Anisa Govender [<mailto:Anisa@vanveldenpike.com>]  
**Sent:** 13 October 2011 11:49 AM  
**To:** ([colin.shaw@bidports.co.za](mailto:colin.shaw@bidports.co.za)); ([gavin.fitzmaurice@webberwentzel.com](mailto:gavin.fitzmaurice@webberwentzel.com)); ([martin@admiralty.co.za](mailto:martin@admiralty.co.za)); Brian Watt ([brwatt@iafrica.com](mailto:brwatt@iafrica.com)); Edmund Greiner ; James Mackenzie ([mackenzie@capebar.co.za](mailto:mackenzie@capebar.co.za)); Malcolm Hartwell; [michaelw@netactive.co.za](mailto:michaelw@netactive.co.za); Patrick Holloway ([patrick.holloway@webberwentzel.com](mailto:patrick.holloway@webberwentzel.com)); Peter Edwards ([petere@dawsons.co.za](mailto:petere@dawsons.co.za)); [jlee@ens.co.za](mailto:jlee@ens.co.za)  
**Subject:** MLA : FURTHER AMENDED AGENDA

**Anisa Govender**

**PARTNER**

# VAN VELDEN PIKE & PARTNERS

In association with *de*MERITIS-Advogados, Mozambique

[anisa@vanveldenpike.com](mailto:anisa@vanveldenpike.com)

**Tel:** +27 (0) 31 265 0651  
**Mobile:** +27 (0) 71 481 9543  
**Fax:** +27 (0) 86 604 6318

Unit 3 West, The Crescent  
Westway Office Park  
Spine Road, Westville  
DURBAN, RSA

Get free legal updates by email from [www.vanveldenpike.com](http://www.vanveldenpike.com)

**THE MARITIME LAW ASSOCIATION  
OF SOUTH AFRICA**

**Affiliated to the Association of Law Societies of SA  
Member of the Comité Maritime International**



---

**From the office of the Secretary**

Anisa Govender  
Unit 3, The Crescent,  
Westway Office Park, Westville  
Phone : +27-31-265 0651  
Fax : +27-(0)866046318  
e-mail : [anisa@vanveldenpike.com](mailto:anisa@vanveldenpike.com)

06 January 2012

**NOTICE IS HEREBY GIVEN OF THE 93<sup>RD</sup> MEETING OF THE EXECUTIVE COMMITTEE OF THE MARITIME LAW ASSOCIATION TO BE HELD VIA VIDEO CONFERENCE ON 14 OCTOBER 2011 AT 9H00, FOR THE PURPOSE OF TRANSACTING THE FOLLOWING BUSINESS:**

1. Welcome by the President.
2. Apologies.
3. To confirm, with or without amendment, the minutes of the 92<sup>ND</sup> meeting of the Executive Committee of the Maritime Law Association of South Africa held on 20 May 2011.
4. To consider any matters arising from the minutes.
5. To reconstitute sub-committees
6. The Steven Wallace Trust: Funding and use of trust funds
7. Donation of Books to the SCA Library.
8. National Port Consultative Committee
9. Namibian Admiralty legislation.
10. Date, time and venue of next EXCO meeting

Yours sincerely,

**ANISA GOVENDER  
SECRETARY  
MARITIME LAW ASSOCIATION OF SOUTH AFRICA**

## Lynn McLaughlin

---

**From:** Peter Edwards [petere@dawsons.co.za]  
**Sent:** 06 January 2012 04:30 PM  
**To:** 'Lynn McLaughlin'  
**Subject:** FW: re 2011 MLASA AGM Minutes  
**Attachments:** MINUTES - AGM AUGUST 2011.doc

**Peter Edwards**  
**Dawson, Edwards and Associates**  
**Maritime and Commercial Attorneys**  
"De Hoop"  
2 Vriende Street, Gardens  
Cape Town  
E-mail : [petere@dawsons.co.za](mailto:petere@dawsons.co.za)  
tel : +27-21-4624340  
fax : +27-21-4624390  
mobile : +27-82-4951100  
website : [www.oceanlaw.co.za](http://www.oceanlaw.co.za)

Security and reliability of internet e-mail cannot be guaranteed. If you prefer to communicate by fax or mail, please let us know.

### CONFIDENTIALITY NOTICE

The information contained in this e-mail and any accompanying attachments is confidential and may be subject to legal privilege. It is for the use of the named recipient only. If you are not the named recipient, you must not read, use, distribute or copy the contents of this e-mail. Please notify us immediately by reply e-mail or collect telephone to +27-21-4624340 and delete the original. Thank you for your co-operation.

---

**From:** Anisa Govender [<mailto:Anisa@vanveldenpike.com>]  
**Sent:** 06 January 2012 04:27 PM  
**To:** Peter Edwards  
**Subject:** RE: re 2011 MLASA AGM Minutes

Hi Peter

Thank you, my leave was short but spent quality time with the family. All the best to you and your family for 2012!

Please see the minutes attached.

Regards

**Anisa Govender**

**VAN VELDEN PIKE INC.**

**Maritime, logistics and corporate lawyers, South Africa**

**In association with deMERITIS-Advogados, Mozambique**

[anisa@vanveldenpike.com](mailto:anisa@vanveldenpike.com)

**Tel:** +27 (0) 31 265 0651  
**Cell:** +27 (0) 71 481 9543  
**Fax:** +27 (0) 86 604 6318

Unit 3 West, The Crescent  
Westway Office Park  
Spine Road, Westville  
DURBAN, RSA  
[www.vanveldenpike.com](http://www.vanveldenpike.com)

Visit our Facebook page at [www.facebook.com/VanVeldenPike](http://www.facebook.com/VanVeldenPike)

---

**From:** Peter Edwards [<mailto:petere@dawsons.co.za>]  
**Sent:** Friday, January 06, 2012 4:22 PM  
**To:** Anisa Govender  
**Subject:** re 2011 MLASA AGM Minutes

Hi Anisa

I hope you had a some enjoyable time off and that you have a wonderful 2012.

Could you email to me a copy of the minutes of the 2011 AGM as I can't find them and I want to at long last update the website.

Thanks

**Peter Edwards**  
**Dawson, Edwards and Associates**  
**Maritime and Commercial Attorneys**  
"De Hoop"  
2 Vriende Street, Gardens  
Cape Town  
E-mail : [petere@dawsons.co.za](mailto:petere@dawsons.co.za)  
tel : +27-21-4624340  
fax : +27-21-4624390  
mobile : +27-82-4951100  
website : [www.oceanlaw.co.za](http://www.oceanlaw.co.za)

Security and reliability of internet e-mail cannot be guaranteed. If you prefer to communicate by fax or mail, please let us know.

**CONFIDENTIALITY NOTICE**

The information contained in this e-mail and any accompanying attachments is confidential and may be subject to legal privilege. It is for the use of the named recipient only. If you are not the named recipient, you must not read, use, distribute or copy the contents of this e-mail. Please notify us immediately by reply e-mail or collect telephone to +27-21-4624340 and delete the original. Thank you for your co-operation.

# THE MARITIME LAW ASSOCIATION OF SOUTH AFRICA

Affiliated to the Association of Law Societies of SA  
Member of the Comite Maritime International



---

From the office of the Secretary

Unit 3, The Crescent,  
West Way Office Park  
Westville, 3629  
Phone: +27-31-265 0651  
Fax: +27-86 604 6318  
e-mail: [anisa@vanveldenpike.com](mailto:anisa@vanveldenpike.com)

## MINUTES OF THE ANNUAL GENERAL MEETING OF THE MARITIME LAW ASSOCIATION OF THE REPUBLIC OF SOUTH AFRICA HELD AT CHAMPAHNE SPORTS RESORT, DRAKENSBERG, ON SUNDAY 28 AUGUST 2011 COMMENCING AT 9H00

### 1. Welcome

The President welcomed all present to the Annual General Meeting.

### 2. Present / Apologies

#### Present

Anisa Govender  
Mike Wragge SC  
Patrick Holloway  
Peter Edwards  
Paul Wallis  
Ken McIntosh  
Mark van Velden  
Bernard Maphela  
Edmund Greiner  
Paul Coxon  
Glenn Thatcher  
Stephen Mullins SC  
John Kirkpatrick  
Hellen Antoniou  
Shane Dwyer  
Michael Tucker

James MacKenzie  
Malcolm Hartwell  
Carol Holness  
Peter Lamb  
Lisa Olsen  
Andrew Robinson  
Portia Ndlovu  
Gavin Fitzmaurice  
Michelle Linderman  
Nishkal Ratan  
Judge Graham Lopes  
Andrew Pike  
Andre Bowley  
Janine Lee  
Jacqui Kaufmann  
Brian Watt

Henri Fouche

Patrick Vrancken

**Apologies**

Roy Gordon  
Lara Kahn  
Douglas Shaw QC  
Colin Shaw  
Craig Cunningham  
Alan Reid  
Ryan Reddy  
Arthur James  
A M Stewart SC  
Kavisha Baboolal  
Alistair Hay  
Roy Monk  
Russell MacWilliam SC  
Nicholas Sloane  
Simon Aggett  
Jan Henrik Senekal  
Bentley Cook  
Len Rambusch  
Mike Posemann

David Gordon SC  
Marius Diemont  
John Hare  
Krish Reddy  
Pre Prinsloo  
Tony Edwards  
Colin Flockhart  
John Swart  
Alistair Dickson SC  
Tony Norton  
Kate Pitman  
Graham Charnock  
Lance Burger SC  
Jeremy Gauntlett SC  
Berning Robertson  
Hajra Ganie  
Sean Durr  
Gardner van Niekerk SC  
Andrew Clark

3. **To confirm with or without modification the Minutes of the Annual General Meeting of the Maritime Law Association of the Republic of South Africa held at Le Franschhoek Hotel on Sunday, 22 August 2011 at 09h30.**

The minutes were confirmed without modification, proposed by Jenny MacIntosh and seconded by Brian Watt.

3. **The consideration of any matters arising from the minutes**

There were no matters arising from the minutes.

4. **President's Report**

Mike Wragge read out his report, annexed hereto marked "A", simultaneously reporting on the activities of various subcommittees. To the extent that particular subcommittees were not dealt with in the President's Report, they are specifically dealt with below:

5. **Subcommittee Reports :**

5.1 **Admiralty Practice and Admiralty Jurisdiction Regulation Act**

Andrew Robinson thanked those members who had commented on the proposed AJRA amendments i.e. Advocate Stephen Mullins SC, Advocate Douglas Shaw QC and Advocate Gys Hofmeyr SC. A memorandum was also submitted by Judge Malcolm Wallis which was greatly appreciated by the MLA. The proposals are going to be reformulated and circulated.

In regard to the Admiralty Rules, a copy of the report by Peter Edwards is annexed hereto marked "B".

5.2 **Marine Insurance**

A report from Andrew Robinson is annexed marked "C".

5.3 **Ownership, Registration & Mortgage, including small vessels**

Nothing to report.

5.4 **Carriage of Goods**

An report from Anisa Govender is annexed marked "D".

5.5 **Salvage, Towage and Wreck and General Average**

A report was submitted by Peter Edwards and is annexed marked "E".

5.6 **Pollution**

A report was submitted by James Mackenzie and is annexed hereto marked "F".

5.7 **Ship Operators and Crewing**

A copy of the report by Malcolm Hartwell is annexed hereto marked "G".

5.8 **Safety at Sea and Navigation**

A copy of the report by Brian Watt is annexed hereto marked "H".

5.9 **Ports and Pilotage**

A copy of the report by Malcolm Hartwell is annexed hereto marked "I".

5.10 **Road and Rail Transport**

A report by Colin Shaw is "J".

5.11 **Limitation**

Nothing to report.

5.12 **CMI**

A report from Andrew Robinson is annexed marked "K".

5.13 **IMO**

A report from Brian Watt is annexed marked "L".

5.14 **Website**

A copy of the report by Peter Edwards is annexed hereto marked "M".

5.15 **Empowerment**

A copy of the report by Anisa Govender and email from Len Rambusch of Holland & Knight is annexed marked "N".

6. **To consider the Association's annual levies**

It was resolved that the annual membership subscription fee remain at R750.00.

**7. The consideration of the President's Report**

Mr Mike Wragge tabled a written report annexed hereto marked "O". In summary: Mike Wragge reported that the Durban, Gauteng and Cape Chapters had been very active. A frustrating issue was the effort involved in obtaining a meeting with the Department of Transport to discuss the issue of the legislation that has been "stuck" for years. Progress has been made in that a meeting has been arranged with the Deputy Director of the Department of Transport in November 2011.

The main highlight of Exco's efforts over the past year has been the establishment of the Steven Wallace Trust.

**8. The consideration and adoption of the Treasurer's Report and the Association's Annual Levies**

Mr Andrew Clark tabled a written report which is annexed marked "P".

**9. To elect two members to the Executive Committee of the Association**

Nominations were received as follows:

Executive Committee: Janine Lee

Treasurer: Colin Shaw

All nominees accepted the nominations and it was unnecessary to call for a vote. Brian Watt proposed that the nominations stand and Andrew Robinson seconded the proposal.

The EXCO now consists of the following members:

*President:* Advocate Michael Wragge SC, Advocate Cape Bar, 617 Huguenot Chambers, 40 Queen Victoria Street, Cape Town, 8001, Phone: +27-21-423 4389, Fax: +27-21-424 1821, Mobile: +27-83-310-1744, E-mail: [michaelw@netactive.co.za](mailto:michaelw@netactive.co.za)

*Vice – President:* Captain Roy Martin, Admiralty Shipbrokers and Consultants, 59 Westville Road, Westville, Durban, 3630, P O Box 442, Westville, 3630, Durban, Phone: +27 31 267 1795, Fax: +27 31 267 0316, Email: [martin@admiralty.co.za](mailto:martin@admiralty.co.za)

*Secretary:* Anisa Govender, Van Velden Pike & Partners, Unit 3, The Crescent, Westway Office Park, Spine Road, Phone: +27-31-265 0651, Fax: +27-(0)-86 604 6318, Mobile: +27-71 860 4222, E-mail: [anisa@vanvelddenpike.com](mailto:anisa@vanvelddenpike.com)

*Treasurer:* Colin Shaw, 1<sup>st</sup> Floor Millweed House 169 – 175 Maydon Road, Maydon Wharf Durban 4001, Phone: + 27 31 274 2503, Fax: +27 86 510 8978, Cell: +21 82 374 1905, Email: [colin.shaw@bidports.co.za](mailto:colin.shaw@bidports.co.za)

Executive Committee:

Janine Lee, Edward Nathan Sonneberg, 1 Richefond Circle, Ridgeside Office Park, Umhlanga, Durban, 4320, P O Box 3652, Durban, 4000, Phone: +27 21 301 9340, Email: [jlee@ens.co.za](mailto:jlee@ens.co.za)

Peter Edwards, Dawson Edwards & Associates, 'De Hoop', 2 Vriende Street. Gardens, Cape Town, 8001, P O Box 12425, Mill Street, Cape Town, 8010, Phone: +27 21 462 4340, Fax: +27 21 462 4390, Cell: +27-82-4951100 Email: [petere@dawsons.co.za](mailto:petere@dawsons.co.za)

Patrick Holloway, Webber Wentzel, 15th Floor, Convention Tower, Heerengracht, Cape Town, 8001, Tel: +21 21 431 7000, Fax: +27 21 431 8000, Email: [patrick.holloway@webberwentzel.com](mailto:patrick.holloway@webberwentzel.com)

James Mackenzie, Cape Bar 3rd Floor, Bank Chambers, Tel. +27 21 4244274, Cell: +27 82 460 4708, Email: [mackenzie@capebar.co.za](mailto:mackenzie@capebar.co.za)

Edmund Greiner, Shepstone & Wylie, International Transport and Trade Department 18th Floor, 2 Long Street CAPE TOWN, 8000 PO Box 7452 Roggebaai, 8012 Docex 272 Cape Town: Tel: (+27) 21 419 6495; Fax: (+27) 21 418 1974; Mobile Mobile (+27) 82 33 333 59; Email [greiner@wylie.co.za](mailto:greiner@wylie.co.za)

Malcolm Hartwell, Deneys Reitz, 3 Pencarrow Crescent, La Lucia Ridge 4051, P O Box 5003, Pencarrow Park 4019. Tel: +27 31 582 5622; Fax: +27 31 582 5722, Docex 90 Durban, Email: [malcolm.hartwell@deneysreitz.co.za](mailto:malcolm.hartwell@deneysreitz.co.za)

Ex Officio Chapter Chairpersons

Brian Watt, Brian Watt Maritime Consulting CC, P O Box 38128 Faerie Glen 0043, Phone: +27 12-9913947, Fax: +27 12-9916253 / 0866-153783 Email: [brwatt@iafrica.com](mailto:brwatt@iafrica.com)

Gavin Fitzmaurice, Webber Wentzel, 15th Floor, Convention Tower, Heerengracht, Cape Town, 8001, Tel: +21 21 431 7000, Fax: +27 21 431 8000, Email: [gavin.fitzmaurice@webberwentzel.com](mailto:gavin.fitzmaurice@webberwentzel.com)

Malcolm Hartwell, Deneys Reitz, 3 Pencarrow Crescent, La Lucia Ridge 4051, P O Box 5003, Pencarrow Park 4019. Tel: +27 31 582 5622; Fax: +27 31 582 5722, Docex 90 Durban, Email: [malcolm.hartwell@deneysreitz.co.za](mailto:malcolm.hartwell@deneysreitz.co.za)

**10. Report received of the Secretary on Membership**

Mrs Anisa Govender tabled a written report which is annexed marked "Q".

**11. To receive the report of the Chairperson of the Durban Chapter**

Mr Malcolm Hartwell tabled a written report which is annexed marked "R"

**12. To receive the report of the Chairperson of the Cape Chapter**

Report received from Gavin Fitzmaurice which is annexed marked "S".

**13. To receive the report of the Johannesburg Chapter**

Report received by Brian Watt which is annexed marked "T".

**14. Tribute to Phillip Shaw**

Hellen Antoniou read out a letter from Karin Shaw in tribute to Phillip Shaw.

**15. To approve the reimbursement of the expenditure incurred by members of the Executive Committee in terms of Clause 7.10 of the Constitution.**

The reimbursement of EXCO members was approved, proposed by Patrick Holloway and seconded by Roy Martin.

**16. General**

16.1 A further draft of the Admiralty Regulation Jurisdiction Act, taking into account the comments made at this AGM will be produced.

16.2 Adv Greg Harpur rendered a vote of thanks to the organising committee for their effort in arranging the conference.

The meeting was declared closed at 11:30pm.

PRESIDENT: ..... DATE: 28 August 2011

## Lynn McLaughlin

---

**From:** Peter Edwards [petere@dawsons.co.za]  
**Sent:** 06 January 2012 04:42 PM  
**To:** 'Lynn McLaughlin'  
**Subject:** FW: MLA 2011 AGM MINUTES - ANNEXURES  
**Attachments:** Admiralty Rules.pdf; CAPE CHAPTER Chairman\_s Report 25 August 2011.doc; DURBAN CHAPTER REPORT.doc; London Chapter.pdf; MLA SubCommittee Report \_ Ports and Pilotage 23 08 11.doc; REPORT ON MEMBERSHIP 2011.doc; Road Rail Report 2011 .pdf; SUBCOMMITTEE REPORT - CARRIAGE OF GOODS BY SEA.doc; SUBCOMMITTEE REPORT - EMPOWERMENT - HOLLAND & KNIGHT TRAINEESHIP.doc; Subcommittee Report - Pollution and Wreck & Salvage.pdf; Treasurer's Report.pdf; Website.pdf

Peter Edwards  
Dawson, Edwards and Associates  
Maritime and Commercial Attorneys  
"De Hoop"  
? Vriende Street, Gardens  
Cape Town  
E-mail : [petere@dawsons.co.za](mailto:petere@dawsons.co.za)  
tel : +27-21-4624340  
fax : +27-21-4624390  
mobile : +27-82-4951100  
website : [www.oceanlaw.co.za](http://www.oceanlaw.co.za) <<http://www.oceanlaw.co.za>>

Security and reliability of internet e-mail cannot be guaranteed. If you prefer to communicate by fax or mail, please let us know.

### CONFIDENTIALITY NOTICE

The information contained in this e-mail and any accompanying attachments is confidential and may be subject to legal privilege. It is for the use of the named recipient only. If you are not the named recipient, you must not read, use, distribute or copy the contents of this e-mail. Please notify us immediately by reply e-mail or collect telephone to +27-21-4624340 and delete the original. Thank you for your co-operation.

-----Original Message-----

**From:** Anisa Govender [<mailto:Anisa@vanveldenpike.com>]  
**Sent:** 06 January 2012 04:29 PM  
**To:** Peter Edwards  
**Subject:** MLA 2011 AGM MINUTES - ANNEXURES

Your message is ready to be sent with the following file or link attachments:

Admiralty Rules  
CAPE CHAPTER Chairman\_s Report 25 August 2011 DURBAN CHAPTER REPORT London Chapter MLA SubCommittee Report \_ Ports and Pilotage 23 08 11 REPORT ON MEMBERSHIP 2011 Road Rail Report 2011 SUBCOMMITTEE REPORT - CARRIAGE OF GOODS BY SEA SUBCOMMITTEE REPORT - EMPOWERMENT - HOLLAND & KNIGHT TRAINEESHIP Subcommittee Report - Pollution and Wreck & Salvage Treasurer's Report Website

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

# MEMO

To: **MARITIME LAW ASSOCIATION OF SOUTH AFRICA**

From: **MR PETER EDWARDS ON BEHALF OF THE ADMIRALTY RULES SUB  
COMMITTEE**

Date: **23 AUGUST 2011**

RE: **ADMIRALTY RULES SUBCOMITTEE REPORT TO AGM**

---

Dear All

Since the last AGM there has been little further progress on the proposed changes to the admiralty rules which were tabled and discussed at the 2010 AGM. Such proposed changes related to caveats, the service of release warrants, and Rule 21.

There has however been a development which arises from a letter written by the Sheriff of Cape Town to Maritime Attorneys as well as a letter from the Association of Maritime Sheriffs of Southern Africa to the rules board for Courts of Law. The Sheriff's submissions relate to a proposed amendment to Rule 4 of the rules as well as to the procedure which will be followed (at least by the Cape Town Sheriff) with regard to the Sheriff protecting himself from liability for preservation costs.

Advocate Wragge has responded with comments regarding the proposed amendment to the rules by the Sheriff and the proposed amendment was debated at a recent Cape Chapter meeting on 21 July 2011. Copies of the Sheriff of Cape Town's letter to maritime practitioners and the letter from the Association

of Maritime Sheriff's together with Mike Wragge's comments are attached hereto marked ""PE1", "PE2" and "PE3".

If the debate at the Cape Chapter level is anything to go by, generally practitioners feel that the Sheriff is sufficiently protected by the "Argun" judgment with regard to exposure to preservation costs whereas the Sheriff is of the view that he has insufficient protection and the rules should be amended to coincide with common law and the previous rules.

This issue along with the other proposed amendments to the admiralty rules and any further amendments which the subcommittee members propose need to be further work shopped in the coming year.

With closure hopefully occurring on the proposed changes to the Admiralty Jurisdiction Regulation Act the rules should be next in line to be reviewed in a similar manner.

Best regards

**PETER EDWARDS**



# BALJU VIR KAAPSTAD SHERIFF FOR CAPE TOWN

HW HURTER ADJURIS  
LIE VAN DIE SA INSTITUTE VIR BALJU S  
MEMBER OF THE SA INSTITUTE FOR SHERIFFS

MANDATUMGEBOU/BUILDING  
BAHRACKSTRAAT/STREET  
KAAPSTAD/CAPE TOWN  
8001

POSBUS/PO BOX 694  
KAAPSTAD/CAPE TOWN  
8000  
TELEFON/TELEPHONE (021) 465-7560  
TELEFAX/TELEFAX (021) 461-1540  
E. POS/E. MAIL cpl@sheriff.org.za

"PEI"

The President of the Maritime Law Association of South Africa  
Advocate Michael Wragg

Email: [michaelw@netactive.co.za](mailto:michaelw@netactive.co.za)

17 May 2011

Dear Sir

## URGENT NOTICE TO ALL MARITIME ATTORNEYS REGARDING PRESERVATION EXPENSES FOR VESSELS UNDER ARREST OR ATTACHMENT IN TERMS OF THE ADMIRALTY JURISDICTION REGULATION ACT NO 105 OF 1983 ("AJRA")

In a recent arrest of a vessel, our office became exposed to preservation costs in respect of such vessel, which had to be paid by our office, notwithstanding demand to the arresting creditor. If it had not been for our office securing an undertaking from the attorneys for the owners of such vessel immediately prior to her release, our office would most likely have been in a position of being unable to recover such expenses from the foreign arresting creditor.

This matter has been a stark reminder to our office that the Admiralty Rules require urgent amendment to provide better protection for the sheriff's office with respect to its exposure to preservation costs.

The SCA Argun judgment does give some protection to the sheriff, but there are certain circumstances which may arise where the sheriff is forced to pay preservation expenses without having had an opportunity of applying and enforcing the Argun ruling. It is clearly in the interest of justice that sheriffs performing their statutory duties in terms of Rule 21 should not have a risk of exposure to such preservation expenses, which can in certain circumstances be considerable amounts.

In the circumstances, our office has decided to adopt the following approach in an attempt to solve this serious problem:

- 1) Firstly, we will be requesting an amendment to the Admiralty Rules, probably Rule 4, along the following lines:

*"The service of a warrant of release in order to release property under arrest or attachment shall only be effected by the sheriff on payment to the sheriff of all expenses incurred by the sheriff in maintaining the custody and preservation of such property in terms of Admiralty Rule 21 "*

- 2) Pending such amendment to the Rules, we hereby request that all security arrests or attachment orders and other arrest orders granted by a judge contain a similar provision that the vessel/property arrested shall not be released from arrest until all the preservation costs of the sheriff have been paid in full;
- 3) In respect of all admiralty arrests and attachments where statutory duties arise for our office in terms of Admiralty rule 21, our office will, *inter alia* and without limitation of our rights, apply the following procedure:
  - 3.1 In the event of any preservation costs being required to be paid for a vessel/property under arrest, we shall as soon as possible after becoming aware thereof, give the arresting creditor 7 (seven) days notice to place us in funds for such expenses (or apply a shorter notice period depending on the circumstances);
  - 3.2 In the event of such preservation costs not being paid within the time period requested, we shall immediately apply to court on an urgent basis for an order that the vessel/property be released from arrest due to the non-payment of the preservation expenses by the arresting creditor, and the arresting creditor shall be liable for the costs of such application;
  - 3.3 Should, through the circumstances of a particular matter, our offices be forced to make payment of preservation expenses before being given an opportunity to place the arresting creditor on terms or bring such an urgent court application, then, after payment of such expenses, the arresting creditor will be again placed on notice to reimburse our office for such expenses within an appropriate time, failing which our office will bring an urgent court application in terms of Section 5(2)(c) of the AJRA requesting the court to make the arrest or attachment subject to the condition that the vessel/property shall not be released from such arrest or attachment until the preservation costs of the sheriff have been paid in full; and/or we shall request such other conditions to protect our interests and as to the court appears just. Again, the cost of this application will be for the account of the arresting creditor.

- 3.4 In effect, where our office has expended preservation expenses for a vessel under arrest, through court intervention, we shall ensure that such vessel is not released from arrest until such preservation costs have been reimbursed to our office


The aforesaid measures which we intend to implement are in no way to be construed as a waiver of any of our other rights or remedies which we may follow in law to protect our interests.

In closing, the position of the sheriff with regard to preservation costs is a long standing issue which *inter alia* should be seriously addressed by the Maritime Law Association of South Africa to ensure the workshopping of equitable amendments to the Admiralty Rules for the protection of the sheriff.

In any event, our office will be forwarding its own proposed changes to the Rules to the relevant authority. The support of admiralty practitioners would be appreciated.

Kindly be advised accordingly.

Yours faithfully

  
H W HURTER  
SHERIFF OF CAPE TOWN

4272  
"PE2"

**ASSOCIATION OF MARITIME SHERIFFS OF  
SOUTHERN AFRICA  
VERENIGING VAN MARITIME BALJU'S VAN SUIDER AFRIKA**

**CHAIRPERSON / VOORSITTER: HENNIF HURTER**  
P O BOX / POSBUS 696  
CAPE TOWN / KAAPSTAD 8000  
SOUTH AFRICA  
TEL +27-(0)21 461 2620  
FAX +27-(0)21 461 1540  
e mail : ept@sheriff.org.za

**SECRETARY / SEKRETARIS: RITCHIE MARÉE**  
P O BOX / POSBUS 986  
DURBAN 4000  
SOUTH AFRICA  
TEL +27-(0)31 305 8444  
FAX +27-(0)31 305 8443  
e mail : sheriff@durban@marreejr.co.za

**THE RULES BOARD FOR COURTS OF LAW ("THE BOARD")  
BY COURIER**

24 May 2011

The Chairperson

**AMENDMENT TO RULE 4 OF THE RULES REGULATING THE CONDUCT OF  
ADMIRALTY PROCEEDINGS**

**1. INTRODUCTION:**

- 1.1 The Sheriffs along the coast are responsible for the service of Admiralty Jurisdiction process / Court Orders issued out of the High Court which has admiralty jurisdiction in terms of the Admiralty Jurisdiction Regulation Act, No. 105 of 1983 ("AJRA").
- 1.2 With regard to the admiralty jurisdiction of the Court, certain Rules regulating the conduct of the admiralty proceedings in Courts exercising admiralty jurisdiction, came into operation on the 19<sup>th</sup> May 1997 following publication in Government Gazette No. 5907 dated the 18<sup>th</sup> April 1997 ("The Admiralty Rules").
- 1.3 In particular, Rule 4 of Admiralty Rules relates to the procedure for the arrest and release of vessels and other admiralty property as defined in the AJRA.
- 1.4 In order to protect its interests, our Association requests the amendment of Rule 4 by the insertion of a new paragraph 4(10) as follows:  
  
"4(10) The service of a warrant of release in order to release property under arrest or attachment shall only be effected by the sheriff on payment to the sheriff of all expenses reasonably incurred by the sheriff in taking all such steps appropriate for the custody and preservation of such property in terms of Admiralty Rule 21."

**2. MOTIVATION FOR AMENDMENT**

- 2.1 It is common cause that Admiralty Rule 21(1) imposes a duty on the sheriff to take into its custody and preserve the property arrested or attached and as such to incur the necessary costs relating thereto.

- 2.2 It is submitted that neither the AJRA nor the Admiralty Rules contain express provisions providing for the sheriff to recover preservation expenses incurred in terms of Admiralty Rule 21. Only, once the property arrested has been sold and a fund established in terms of the AJRA, is the sheriff entitled to lodge a claim against such fund in terms of Section 11(4)(a) of the AJRA
- 2.3 Under the SCA Judgment of the MT "Argun" (case numbers 166/2003 and 209/2000 heard together), the following was held.
- 2.3.1 The sheriff is entitled to payment of his preservation expenses by the arresting creditors;
- 2.3.2 The sheriff is entitled to apply to the Court in terms of Section 5(2)(c) of the AJRA for an order that the continued arrest of property is conditional upon the arresting creditor reimbursing the sheriff / providing the sheriff security for the sheriff's reasonable expenses required for the preservation of the vessel as contemplated in Rule 21(1);
- 2.3.3 Pending litigation and while the vessel is still detained under arrest, the owners of the arrested property are not liable to pay the sheriff's preservation costs.
- 2.4 At paragraph 28 of the judgment, Judge Scott J.A. makes the following *obiter dictum*:
- "It was common cause between counsel that in the latter event, the expenses would be recoverable from the owners who would be obliged to pay the outstanding amount in order to procure the release of the vessel, but that is not an issue which requires to be determined in the present appeal." *[our emphasis]*
- 2.5 Accordingly, what was not determined in the "Argun" judgment was whether the sheriff would be entitled to hold back on the service of the warrant of release of arrested property until he had received payment of his preservation expenses incurred in terms of Admiralty Rule 21.
- 2.6 Therefore, the AJRA, Admiralty Rules and the decision in the "Argun" judgment does not provide protection to the sheriff's office in circumstances where they are obliged to make payment of preservation expenses out of their own funds before having obtained security or cover from the arresting creditors. Due to the nature of vessels and urgent circumstances which can arise relating from the preservation of such vessels, sheriff's offices can be called upon to make payment of urgent preservation expenses without them having had the opportunity of exercising their rights of recovery against the arresting creditors as provided for in the "Argun" judgment.
- 2.7 In such cases where sheriffs have already incurred the preservation expenses it can be difficult to obtain payment from the arresting creditors who could, having settled with the owners of the vessel,

suddenly request the service of a release warrant on the vessel without having settled the preservation costs.

As stated previously, the "Argun" judgment did not determine the question as to whether sheriffs can hold back on the service of a release warrant pending payment of preservation expenses and in a recent case the Cape Town Sheriff was in fact placed on demand by the attorneys for both the arresting creditor and the owners of the vessel to serve a release warrant notwithstanding the fact that he had incurred preservation expenses and had not been reimbursed by the arresting creditor. The arresting creditor's attorneys as well as the owner's stated that the Sheriff's office had no right to hold back on the service of the release warrant pending payment of preservation expenses.

- 2.8 It is important to make mention at this stage that, often in the case of vessels being arrested, the arresting creditor is a foreign litigant and it cannot be expected of the sheriff to litigate against such arresting creditor in a foreign jurisdiction for the recovery of such preservation costs, particularly as such creditors often have no assets and are merely trading companies. This exact circumstance in fact occurred in the "Argun" matter where the arrests against the vessel were released and the sheriff was left with merely a right to recover against arresting creditors in foreign jurisdictions i.e. Singapore in this matter.
- 2.9 Accordingly, the law as it stands (including the Admiralty Rules) exposes the sheriff's office to the incurring of preservation expenses on arrested property (mainly vessels) without the prospect of recovery thereof. With the sheriff as an Officer of the Court and having a statutory obligation in terms of Rule 21 to preserve vessels, in our view this lacuna is a breach to fair, efficient and expeditious administration of justice.
- 2.10 The proposed amendment to the Rules effectively addresses such lacuna without materially affecting the current practice under the AJRA and Admiralty Rules other than to protect the sheriff against the exposure to unrecoverable preservation expenses.
- 2.11 It can only be in the interest of all admiralty legal practitioners as fellow officers of the court that the sheriff is reimbursed its preservation expenses.
- 2.12 The said proposed amendment also has legal grounding as follows:
  - The Vice Admiralty Rules, which remained in force in South Africa from 1883 until November 1986 provided the exact same protection for the sheriff as proposed in our current amendment. In particular, Vice Admiralty Rule 53 stated as follows:

"53. On service of the release and on payment to the Marshall of all fees due to and charges incurred by him in respect of the arrest and custody of the property, the property shall be at once released from arrest."

These Vice Admiralty Rules in fact are still in practice in the Republic of Namibia. Unfortunately this provision of the Vice Admiralty Rules for some reason was omitted from the current Admiralty Rules. However, it is submitted that, prior to the current Admiralty Rules, the Vice Admiralty Rules including the aforesaid Rule 53 were in existence and in practice for over a century.

- The decision in the "Argun" judgment was based on our Roman Dutch common law and in particular with reference to Peckius Paragraph 18 of the judgment deals with this common law. Although the common law related to arrested persons and the cost of maintaining an arrested debtor while in jail, the court in the "Argun" matter extended these principals to the maintenance of an arrested vessel. In addition, when discussing the very same common law, the Court also referred to the follow further protection to the "Deur Waerder" (the sheriff) as follows:

"The Deur Waerder was afforded the further protection of being entitled to refuse to release the debtor until he had been paid his expenses in maintaining the debtor."

Therefore, in our view, it follows that whereas the Supreme Court of Appeal applied the common law to the liability of the arresting creditor, the further protection provided in the common law should also apply and allow the sheriff not to release an arrested vessel until his expenses have been paid.

- The legal position of the Admiralty Marshal under English law is that the solicitor is to furnish security for the marshal's costs and as such, if the marshal requires a payment on account of his expenses while a ship is under arrest, he may look to the arresting party's solicitor in terms of the solicitor's undertaking. The marshal is therefore fully protected. Similar protective provisions are also found in Australia, United States and New Zealand.

Unlike in the aforesaid foreign jurisdictions, the sheriff's office is not looking to hold the arresting attorney or his / her firm liable for such costs, but is merely requiring the aforesaid amendment to Rule 4 to ensure that the vessel is not released prior to the sheriff's costs being paid.

### 3. CONCLUSION:

- 3.1 In conclusion, it is submitted that the requested amendment to the Admiralty Rules is substantially justified by our common law, case law, the position of the Admiralty Marshal in foreign jurisdictions and the dictates of fair and efficient Administration of Justice.
- 3.2 It is submitted that the Board has the necessary powers in terms of Section 6 of the Rules Board for Courts of Law Act 107 of 1985 to make the aforesaid amendment to Rule 4.

- 3.3 We accordingly request the Board to make such amendment in terms of its powers.
- 3.4 For the Board's ease of reference, we attach hereto a copy of the following:
- 3.4.1 AJRA,
  - 3.4.2 Admiralty Rules,
  - 3.4.3 The SCA "Argun" Judgment,
  - 3.4.4 Vice Admiralty Rules;

Should you have any queries, requests for information or require additional representations, please do not hesitate to contact us.

Yours faithfully



H W HURTER

CHAIRMAN: ASSOCIATION OF MARITIME SHERIFFS OF SOUTHERN AFRICA

"PE3"

**AMENDMENT OF ADMIRALTY RULES:**

**COMMENT ON THE SHERIFF FOR CAPE TOWN'S LETTER DATED 17 MAY 2011**

1. Ed Greiner has circulated the Sheriff's letter dated 17 May 2011 addressed to me to members of the Cape Chapter for discussion at the Chapter meeting on 21 July 2011.
2. The letter was handed to members of the MLA exco at the meeting held on 20 May 2011 by Peter Edwards who acts for the Sheriff. According to the minutes of the meeting it was decided that the letter would be circulated to the MLA membership for comment, whereafter I would address a letter to the Sheriff embodying members' comments.
3. It seems that the letter has been circulated to some firms (such as Bowman Gilfillan), but not to others (such as Shepstone & Wylie). Be that as it may, through Ed, the letter has now been circulated to all Cape Chapter members. Thursday's meeting will provide a good forum to discuss its contents.
4. I believe that it may be of some benefit to Cape Chapter members if I set out my own personal thoughts on the contents of the letter ahead of Thursday's meeting.
5. The Sheriff proposes that the Admiralty Rules be amended so as to provide that property arrested may only be released upon payment to the Sheriff of all expenses incurred by him/her in maintaining the custody and preservation of the arrested property.
6. The first problem that I have with this proposed amendment is that it flies in the face of the first "Argun" SCA judgment (2001 (3) SA 1230 (SCA)) which made it clear that the party responsible for reimbursing the Sheriff for his expenses is the arresting creditor. The effect of the proposed amendment will be to oblige the shipowner to pay the Sheriff's expenses as this is the only way that the owner will be able to procure the release of his vessel. This is not only contrary to the existing law but also, in my view, unfair to the shipowner.
7. The second problem that I have is that the proposed amendment provides no mechanism for determining the reasonableness of the

Sheriff's charges. I do not for a moment suggest that the Cape Town Sheriff attempts to pass on unreasonable expenses as preservation costs, but the proposed amendments will also entitle future Sheriffs to recover expenses. Future Sheriffs may not be as careful as the Cape Town Sheriff currently is in this regard. I do not believe that one can simply impose an obligation to pay the Sheriff's expenses without providing some mechanism to enable the person liable to make payment an opportunity to challenge the reasonableness of the expenses.

8. I have the same problems with the Sheriff's request that arrest orders include a provision that the property arrested shall not be released from arrest until all of the Sheriff's preservation costs are paid.
9. As I see it the Sheriff's letter has imposed on members of the Cape Chapter who move arrest applications a duty, as part of the obligation to make full disclosure, to advise the Court of the Sheriff's request. If instructed to do so I would advise a Judge that, notwithstanding the request, a provision of this nature in the order is not appropriate, and that its effect is contrary to the current law.
10. I, as I am sure most, if not all, Cape Chapter members do, recognise that it is important that the Sheriff be able to discharge his/her duties without the risk of being left out of pocket for preservation expenses legitimately incurred. I have no difficulty with the procedure described in paragraph 3 of the Sheriff's letter as it is in accordance with the "Argun" judgment. It seems to me that, if the Sheriff is vigilant, the procedure outlined in this paragraph should protect him/her from exposure to unpaid or unsecured preservation expenses.
11. To sum up, therefore, I do not believe that the amendment to the rules proposed by the Sheriff is appropriate and I do not believe that the MLA should support it. I also do not believe that it is appropriate that arrest orders include the provision suggested by the Sheriff.
12. If the Sheriff and his representatives are able to come up with a proposed amendment that affords more protection to the Sheriff from exposure to irrecoverable preservation costs without effectively transferring liability for these costs to the shipowner, I would certainly give consideration to supporting such an amendment.

Mike Wragge.

# THE MARITIME LAW ASSOCIATION OF SOUTH AFRICA

Affiliated to the Association of Law Societies of SA  
Member of the Comite Maritime International

CAPE CHAPTER



---

## CHAIRMAN'S REPORT: 25 AUGUST 2011 2010/2011

The present committee has held office since 4 November 2010. It is comprised of:

Gavin Fitzmaurice (Chair)  
Roy Gordon (Vice-Chair)  
Edmund Greiner (Secretary)  
Darryl Cooke  
Anneke Viljoen  
Gavin Brown

Since the last MLA Annual General Meeting which members will recall was hosted by the Cape Chapter in Franschoek last August, the Chapter has continued to focus on retaining member interest and involvement via Chapter meetings on as regular basis as possible, and enhancing ties with other industry bodies and organisations, including Saimena, the Institute of Chartered Ship Brokers, and the Marine Insurance Club. Chapter members have also participated in the National Exco of the MLA and in its subcommittee work. In this regard, we are well represented by Mike Wragge (the incumbent President) and also by the other Cape members of the National Exco being Patrick Holloway, Peter Edwards, James Mackenzie and Edmund Greiner.

Our membership over the past year has risen to 83. Chapter meetings over the period under review have included:

- A fascinating talk by forensic scientist Dr David Klatzow entitled "The difference between real forensic science and CSI" in which he spoke about, amongst other things, the crash of the SA "Helderberg";

- A presentation by Mr Brendan Hughes, the founder of Infology, the electronic filing system, which has, *inter alia*, been used successfully in the process of receiving and distributing claims in respect of various sale funds;
- A workshop discussion in relation to an amendment proposed by the sheriff for Cape Town to the Admiralty rules so as to prevent the release of arrested property until the sheriff has been paid in full;
- An inspiring presentation by Brian Ingpen of the South African Maritime Training Academy (SAMTRA) and Fairhill Maritime School who spoke about "Nationalisation, ship owning and training", and inspired Chapter members to consider ways in which the MLA can actively contribute to empowerment in the maritime industry;

Discussions following the last-mentioned Chapter meeting have demonstrated a real enthusiasm by Chapter members to contribute to and develop empowerment initiatives in a meaningful way. Certain of the Chapter's National Exco representatives (with the assistance of Colin Shaw and Andrew Robinson) have helped establish the Steven Wallace Maritime Trust. The Chapter members are hopeful that this Trust can be used as a vehicle to develop such initiatives possibly including if agreeable to the trustees, contributing to SAMTRA's programmes.

After some discussions with the Gauteng Chapter regarding the possibility of their hosting the AGM in 2012, the Cape Chapter has agreed to host next year's AGM and very much looks forward to welcoming you all to the Cape most probably during August next year and quite possibly (subject of course to canvassing everyone's views) somewhere along the West Coast.

I take this opportunity of thanking our secretary, Ed Greiner for his invaluable and much appreciated assistance throughout the year and also the balance of the Chapter committee for their contributions. I particularly wish to thank Mike Wragge, Anisa Govender and Colin Shaw for their tireless efforts in the running of the national body.

**GAVIN FITZMAURICE**

**CHAIRMAN**

25 August 2011

## REPORT OF THE CHAIRMAN OF THE DURBAN CHAPTER TO THE NATIONAL AGM 28 AUGUST 2011

The Durban Chapter committee this past year has consisted of:

- Roy Martin – Admiralty Consultants.
- Anisa Govender – Van Velden Pike.
- Tony Edwards – Shepstone & Wylie.
- Colin Shaw – Bidfreight Port Operations.
- Keran Smallie – Cox Yeats.
- Malcolm Hartwell – Norton Rose.
- Peter Lamb – Norton Rose.
- Dusty Donnelly – Advocate.
- Janine Lee – Edward Nathan Sonnenbergs

### 1 Meetings

- 1.1 The Durban Chapter Exco attempted to meet on a monthly basis, generally for breakfast meetings as these tend to be the most convenient. Regular meetings were held even though there were a number of changes in the composition of Exco and a few were missed while Roy Martin was in hospital.
- 1.2 Dusty Donnelly resigned from Exco as a result of her decision to take a sabbatical and she was replaced by Keran Smallie. Exco is mindful of the absence of a member of the bar on the committee which is unfortunate given the importance the bar plays in maritime law. We hope however, to remedy this during the course of the next year.
- 1.3 Following Roy Martin's horrific accident and remarkable recovery Roy advised that he felt that he could no longer act as chairman of Exco due to his need for extensive rehabilitation and, for a while, lack of transport. I offered to stand in for Roy pending his full recovery or a further decision of Exco and this was accepted by the Exco members. Although I value their support I suspect that, as seasoned Exco members, they thought it would be amusing to thrust a neophyte into the chairman's role knowing that I would have to bear the responsibility for arranging the AGM.
- 1.4 Tony Edwards also stepped down from Exco as a result of work commitments but continued his invaluable role in attempting to resolve the arrest problems experienced in Durban and Richards Bay discussed below. He was replaced by Peter Lamb.

- 1.5 Tony had a number of meetings with the sheriff and the Board of Control Operational Co-ordinating Committee ("BCOCC") requesting a waiver of the OPL requirements where the sheriff is required to serve papers on vessels outside the port. The chairman of the BCOCC advised that he was working on a draft standard operating procedure for OPL movements and he would consult with all parties regarding those procedures. This was some months ago and we have heard nothing further but a decision was taken to await the procedure before making any further submissions.
- 1.6 The sheriff agreed that it was inappropriate for his deputies to remove operational documents such as logbooks and that the deputies were not entitled to remove personal documents such as seaman's books or passports. A list of documents was provided to the sheriff on the basis that the members recommended to the sheriff that he remove those documents in circumstances where he, either in consultation with the arresting attorneys or pursuant to a court order, is of the view that removal of the documents will assist him in ensuring that the vessel does not flee.
- 1.7 The Durban Chapter AGM was held at the offices of Shepstone & Wylie, whose hospitality was up to its usual generous standard. It was well attended by members.

## 2 Talks

Driven largely by Dusty Donnelly, a series of talks were held at our offices designed to assist younger members of the practice and in particular those at the bar, to obtain a basic understanding of certain admiralty law issues. These included a talk by Andrew Robinson on actions in rem, by Malcolm Wallis on security arrests and associated ships, by Mark Van Velden on charterparties and by me on bills of lading and international trade. The talks were all well attended as were the cocktail parties that followed each of them. Our thanks to Dusty and the speakers.

## 3 General

- 3.1 Roy Martin's accident and recovery deserves another mention partly because the recovery was so remarkable but mainly because Gwen and Roy would like to thank all of the members of the MLA for their support and prayers following the accident.
- 3.2 The Durban Chapter committee members have provided unwavering and enthusiastic support for the various activities and for this I thank them. The burden of arranging this year's MLA AGM at Champagne Sports Resort fell mainly on the willing and now slightly weary shoulders of Anisa and Colin and my particular thanks go to them. I suspect that Anisa now regrets her cost saving drive which led to the decision not to appoint a conference organiser but I am sure that the members appreciate the extra money in the kitty and all her and Colin's hard work. They were ably assisted by Peter Lamb and Keran Smallie with me being reduced to offering the occasional word of encouragement.

Yours faithfully

Malcolm Hartwell  
Acting Chairman Durban Chapter