



LAW SOCIETY
OF SOUTH AFRICA
PRESS RELEASE

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LAW SOCIETY APPEALS TO CONSTITUTIONAL COURT ON CONSTITUTIONALITY OF ROAD ACCIDENT FUND AMENDMENT ACT WHICH DEPRIVES VICTIMS OF RIGHTS, PROPER TREATMENT AND COMPENSATION

The Law Society of South Africa (LSSA) and ten other applicants have applied to the Constitutional Court for leave to appeal the judgment of the North Gauteng High Court of 31 March 2010. The Court dismissed the Law Society's application challenging the constitutionality and legality of the Road Accident Fund Amendment Act, 2005 and some of its regulations, which came into effect in August 2008.

The LSSA and the other applicants have decided to appeal direct to the Constitutional Court because of the substantial public interest in finalising the matter urgently. 'Each year between 170 000 and 265 000 road accidents occur that lead to claims under the Act. Those accidents are happening every day, and claims are being made every day. Thousands of people every week have their claims now treated by the Road Accident Fund (RAF) in terms of the new scheme, and are unable to recover their loss from wrongdoers. How their legal representatives and the courts are to proceed in these circumstances is also very problematical. It is, therefore, of great public importance that an authoritative and conclusive judgment on the constitutional issues involved be provided by the Constitutional Court as early as is reasonably possible,' says Jacqui Sohn, the Chairperson of the LSSA's RAF Committee.

Despite the Gauteng High Court judgment, the LSSA continues to contend that the scheme in terms of the RAF Amendment Act

- irrationally deprives victims of their fundamental common-law rights to claim compensation against those who caused their injuries, and to claim for substantial damages now no longer covered by the new Act;
- radically reduces the benefits which the RAF pays to victims of road accidents; and
- deprives many road accident victims of their ability to obtain effective medical treatment for the injuries which they have suffered.

The LSSA and the other applicants (the South African Association of Personal Injury lawyers, the Quadpara Association of South Africa, the National Council for Persons with Physical Disabilities in South Africa and seven road accident victims) indicate that not only are the above changes unconstitutional, their combined effect is devastating for

members of the public, particularly those who are further disadvantaged by poverty, in that they are left without any adequate remedy.

'The LSSA contends that the abolition of the common-law claim is at odds with the governmental policy to reduce poverty. The reduction of benefits provided to victims of road accidents – a substantial proportion of whom are poor – and the protection now afforded to wrongdoers (some 40% of whom on the evidence are insured, excluding State employees for whose accidents the State is in any event vicariously liable at common law), is clearly counterproductive. Most poor victims will now receive no practical benefit from the RAF in addition to that to which they are already entitled by virtue of the Constitution and the National Health Act. They must contribute to the RAF while obtaining no real benefit from it.' says Ms Sohn.

The LSSA has simultaneously filed leave to appeal to the Supreme Court of Appeal, should its application for leave to appeal direct to the Constitutional Court be declined.

- [Link to the LSSA's Founding Affidavit.](#)
- [Link to comparative table of major differences between the Road Accident Fund Act, 1996 and the Road Accident Fund Amendment Act, 2005.](#)
- For full access to court documents in this matter, including the North Gauteng High Court judgment of 31 March 2010, see <http://raf.lssa.org.za>

ISSUED ON BEHALF OF THE LAW SOCIETY OF SOUTH AFRICA

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Editor's note:

The Law Society of South Africa brings together its six constituent members – the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces, the Black Lawyers Association and the National Association of Democratic Lawyers – in representing South Africa's 19 000 attorneys and 4 900 candidate attorneys.

In Afrikaans items, please refer to the 'Prokureursorde van Suid-Afrika'.