



LAW SOCIETY OF SOUTH AFRICA

MEDIA RELEASE

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LSSA welcomes Constitutional Court RAF judgment

The Law Society of South Africa (LSSA) welcomes the judgment by the Constitutional Court declaring the 14-day affidavit required for compensation by the Road Accident Fund in the case of a hit-an-run accident invalid. 'As the court stated, there has been much litigation on this regulation, and many people – in many cases poor and unsophisticated citizens – have been prejudiced as they have not been aware of the regulation or have not been in a position to institute their claims in the very short period required by the regulation,' says LSSA Chief Executive Officer Raj Daya.

Although the LSSA acknowledges that special time limits governing the institution of litigation are a necessary part of our law, the Court's decision that the fourteen-day period is not reasonable or justifiable in an open and democratic society based on human dignity, equality and freedom, is welcomed.

'The fact that the Constitutional Court has unanimously found in favour of an individual who was prepared to take on what the Court has referred to as "the imperious character of the legislation" and the state machinery, including the Minister of Transport and the Road Accident Fund, is laudable. Also notable is the fact that the Constitutional Court has stated that the "excuse" of inefficiencies in the police service do not justify the drastic attenuation of the important constitutional right of access to the courts,' said Mr Daya.

The LSSA has cautioned the Department of Transport that there are several draft regulations to the Road Accident Fund Amendment Act 19 of 2005 that may also not meet the constitutionality

test. 'The LSSA, through its specialist Motor Vehicle Accident Committee, earlier this year made submissions to the Department. It has also sought the opinion of senior counsel on the constitutionality of the draft regulations in an effort to avert the long road that constitutional challenges normally take,' says Mr Daya. The LSSA has cautioned the Department of Transport of the dire consequences of implementing the draft regulations which deal, among other matters, with the assessment of serious injuries and what could be interpreted as an attempt to remove the 'benchmarking' of compensation from the hands of the courts.

'The committee believes that the regulations may well be a forerunner to the vision contained in the Satchwell Commission Report on the Road Accident Fund, which was recently approved by Cabinet as a possible benefit scheme. The committee also warned the Department that, should the amendment Act and the draft regulations come into effect as an interim measure, government would be faced with the considerable cost of and practical difficulties of maintaining, over a number of years, three concurrent schemes. If the amendment Act and/or the regulations are challenged, either on the basis of the regulations being *ultra vires*, or the combination being unconstitutional, road accident victims would be further prejudiced pending resolution,' says Mr Daya.

Among the issues raised by the LSSA committee are the following:

- It appears to be impossible – logistically and administratively – for the RAF to manage and oversee the process of assessment of injuries. The RAF's operations and capacity would have to be increased, with the concomitant cost implications. The committee believes the cost of the proposed accreditation framework will be too substantial, time-consuming and expensive to maintain. 'If it is the intention to "accredit" every "health care professional" employed by the state, then no assessments would ever take place. Currently the state cannot even treat its existing patients adequately. Under the existing system considerable difficulty is experienced in obtaining completion of medical reports and copies of patient records. This is done without a physical examination of the patient and based on the patient records. Because of the pressure on state hospitals, the records are often inadequate and inaccurate and injuries are more often than not missed or their effects under-evaluated,' says Mr Daya.
- The RAF envisages that the accident victim will be seen and examined by any 'accredited health care professional', who need not necessarily be a doctor. This is the 'evaluation' stage of a two-tier system. The evaluation report is referred to the RAF for 'assessment'. For this purpose the RAF will have to employ in-house qualified doctors or other registered professionals. Alternatively the RAF will have to contract this out to consultants. If there is a dispute, then the RAF may refer the matter to a third party for a 'specialist assessment'.

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 17 000 attorneys and 4 500 candidate attorneys.

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