



29 July 2008: For immediate release

**LAW SOCIETY INSTITUTES URGENT APPLICATION TO SET ASIDE
UNLAWFUL ROAD ACCIDENT FUND CHANGES**

The Law Society of South Africa – constituted by the statutory provincial law societies (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, and representing more than 18 000 attorneys countrywide – has today instituted an urgent application to set aside as unlawful a decision announced on one week’s notice by the Road Accident Fund (RAF).

The decision is aimed at eliminating the current system of paying compensation awards for road accident victims to their authorised attorneys.

Overwhelmingly road accident victims in South Africa are poor people, often seriously disabled by their injuries, and unable themselves to institute their claims, prove the liability of the RAF, and prove the extent of their losses. Attorneys up to now have acted for them on the basis that they will have to pay from their own pockets substantial costs needed to mount the claims, and to run the risk of the claims failing.

Currently sums owing to claimants by way of compensation and costs are paid into the trust accounts of attorneys with powers of attorney signed by their client directing the RAF to do so. From those payments attorneys – who are under the supervision of their law societies and who are backed by the Attorneys Fidelity Fund – deduct what they have already advanced in payment of medical, actuarial and other experts and counsel.

The decision is not one which has been made by the Minister of Transport and implemented by regulations made under the Road Accident Fund Act. Instead the decision has been made by the RAF itself, and announced in a newspaper advertisement. Moreover, it appears that the decision was taken as long ago as 30 October 2007, and kept secret until the public announcement on 21 July 2008. The consequence has been to make it impossible for the decision to be challenged in court prior to the date it purports to take effect.

The LSSA has decided to challenge the decision on many grounds, detailed in its application. These include its concern that direct payments into bank accounts of indigent and often illiterate claimants will afford them less, not more, legal protection

against abuses than at present. The decision will also make it impossible for many legal practitioners to continue to represent road accident victims, because they cannot afford to continue to provide upfront funding of the costs of the case without the security of being covered by a payment from the RAF in due course for this. Without proper legal representation, the already highly criticised system of compensation in operation in South Africa will be further weakened, and access by the most vulnerable to the courts seriously diminished.

The RAF has been called upon to undertake to defer implementation of its decision pending a review by the courts. To date it has failed to give that undertaking. The LSSA which is the first applicant – is joined by the second applicant, the South African Association of Personal Injury Lawyers and by the third applicant, an individual claimant, Mr Luvuyo Nicolaas Mbele – has accordingly had to seek an urgent order interdicting the implementation of the decision until its validity can be fully determined.

The urgent application has been set down for hearing in the Cape High Court on Friday 8 August 2008.

The full application will be posted shortly on the LSSA website at www.lssa.org.za.

***ISSUED ON BEHALF OF THE ROAD ACCIDENT FUND COMMITTEE
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 18 200 attorneys and 4 700 candidate attorneys.

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