



LAW SOCIETY
OF SOUTH AFRICA

MEDIA STATEMENT

8 August 2008: For immediate release

**LAW SOCIETY GRANTED COURT INTERDICT
TO STOP ROAD ACCIDENT FUND DIRECT PAYMENTS**

Court order is welcome and justified relief for poor claimants who would otherwise not be able to utilise the services of attorneys on a contingency fee basis.

The Cape High Court this afternoon issued a country-wide interdict against the Road Accident Fund (RAF) not to implement its decision to refuse compensation awards and settlements to attorneys authorised by road accident victims to receive them.

Acting Judge President Jeanette Traverso also took the rare step of not only ordering the RAF to pay the applicants' legal costs, but to do so on the punitive attorney-and-client scale, and including the costs of two counsel.

The three applicants were the Law Society of South Africa (LSSA), representing some 18 200 attorneys, the South African Association of Personal Injury Lawyers (Saapil) and a paraplegic claimant, Mr Luyiso Mbele.

The interdict will apply pending the final determination of a review application already issued by the applicants, to be heard in some months. The grounds for the review include the fact that the decision (made not in terms of regulations, but through newspaper advertisements) was not authorised by law, conflicts with the express recognition of attorneys' roles in the Road Accident Fund Act and the Contingency Fees Act, and is in contravention of the right of access to courts under the Constitution and others.

The RAF admitted that it had taken its decision on 30 October 2007, but had kept it secret until announcing it on 21 July 2008, just ten days before its implementation date. The court heard evidence of chaos caused to courts across the country, and the inability of attorneys to act for poor claimants without the security of being able to deduct the costs of expert medical, actuarial and other witnesses and consultants, and of counsel engaged by them, from compensation recovered. In argument, the RAF's counsel admitted that many claimants are in the position of Mr Mbele, dependent on attorneys to

take the risk of running their cases on a contingency basis and having, in the meantime, to pay out of their own funds hundreds of thousands of rands for current medical and legal costs.

The applicants had sought to avoid the application by asking the RAF to undertake not to implement the new system – which would change the practice which has operated since 1942 – before a court can rule on its lawfulness in the pending review. The request was ignored for a week, and then refused by RAF’s Chief Executive Officer, Mr Jacob Modise.

Mr Modise admitted in an affidavit that Mr Mbele – a passenger in a bus collision – was very likely to succeed in his claim, instituted two years ago. He said that he was expecting a ‘recommendation’ in relation to it, which – although it did not exist and thus he had not considered it – he would act on.

This court order is a welcome and justified relief for poor claimants who would otherwise not be able to utilise the services of attorneys on a contingency fee basis.

Justice Traverso indicated that she would issue her full reasons for the ruling shortly.

**ISSUED ON BEHALF OF THE LAW SOCIETY OF SOUTH AFRICA’S
ROAD ACCIDENT FUND COMMITTEE**

by Barbara Whittle

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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’.