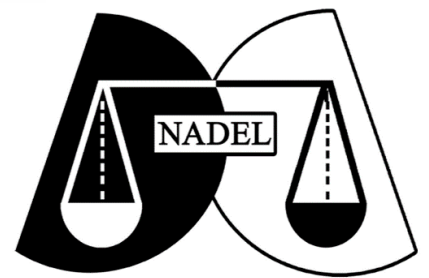


CRISIS AT THE ROAD ACCIDENT FUND
JOINT MEMORANDUM BY THE LEGAL PROFESSION

30/08/2023



LAW SOCIETY
OF SOUTH AFRICA



Equality & Justice



**LEGAL PRACTICE
COUNCIL**



PRETORIA ATTORNEYS ASSOCIATION
PRETORIASE PROKUREURSVERENIGING
MOKGATLHO WA BAEMEDI BA PRETORIA



EST 2006
SAWLA
The South African Women Lawyers Association
"The voice of South African Women Lawyers"



**WESTRAND
ATTORNEYS
ASSOCIATION**



The South African Medico-Legal Association

INTRODUCTION

The Law Society of South Africa (LSSA) constitutes the collective voice of approximately 31 000 practicing attorneys and almost 7 000 candidate attorneys within the Republic. It brings together the Black Lawyers Association, the National Association of Democratic Lawyers and the independent attorneys associations in representing the attorneys profession and the public interest. It also speaks on behalf of all ten of the above bodies who have come together as a collective to speak in one voice regarding the current state of affairs prevailing at the Road Accident Fund and the impact that this is having on the administration of justice throughout the country.

Trial dates for Road Accident Fund cases were being allocated in 2026 in Gauteng Courts and will be allocated in 2025 in Cape Town as 2024 is already full. Many claimants will die before their cases come to court. The long delay negatively impacts claimants in that, those with serious injuries are unable to secure gainful employment to take care of their household necessities like providing food, health care and education for their dependents. This is a violation of human rights.

On 29 June 2023 we addressed the attached memorandum, *inter alia* to the Ministers of Justice & Correctional Services and Transport in an attempt to engage with them with a view to finding urgent and meaningful solutions to the current untenable situation that prevails at the Road Accident Fund, which, in turn, has seriously undermined the efficiency of the court system and materially impacted on the administration of justice for all litigants, not only those claiming from the Road Accident Fund. We have received no response from either. On a follow up letter was addressed, a copy whereof is attached. This has also been met with silence.

CONTEXT

On 15 August 2023 the below comment was posted by **Judges Matter** on their website:

In the last few weeks, two extraordinary events happened which laid bare the severe shortage of judges in our courts.

The first, was last week's (25 July 2023) [announcement](#) by Judge Robert Henney that several gang-related murder trials couldn't proceed because there were just no judges available to try them at the Western Cape High Court division. He postponed the trials to 2024 and 2025 respectively.

The second, was this week's (31 July 2023) [notice to the legal profession](#) by Gauteng High Court Deputy Judge President Roland Sutherland announcing that, in the 9 week term that began on 17 July, the Johannesburg court would recruit 29 legal practitioners as [paid] acting judges, and 46 more to act pro bono. That is to supplement the 40 permanent judges there, a quarter of whom will be on long-leave or acting in appellate courts.

Both the Western Cape and Gauteng high courts have the largest number of judges deployed there (30 and 80, respectively) and for good reason: both courts have the highest caseloads. According to the [Judiciary Annual Report 2021/2022](#), Gauteng finalised 55 578 civil and 1 031 criminal cases, while Western Cape finalised 14 816 civil and 5 266 criminal cases. However, both courts, like the rest of the judiciary need many more judges to carry this load – it is a nationwide problem.

While we wait for the Moseneke Committee to come up with a long term solution and tell us exactly how many more permanent judges we need, there needs to be more (paid) acting judges appointed.

The Gauteng High Court is already recruiting 29 acting judges for the next term just to prevent a complete collapse of its functions. It's unsustainable — and probably risky for the independence of the judiciary — to rely so heavily on pro bono judges. We need money.

It goes without saying that the national fiscus is under severe pressure, and the economic situation is deteriorating. However, the rule of law and people's confidence in the justice system are indispensable ingredients to

economic growth and achieving social justice. You can't grow any business in a lawless country. We need more judges and we need them now.

In April and July 2023 the Honourable Deputy Judge President of the Gauteng Division, Johannesburg of the High Court issued two notices. Copies are attached.

The salient facts in the notices are:

1. The compliment of the court is 40 permanent judges;
2. As at July 2023, 11 of those judges were not available to serve in this division having been redeployed to other courts or on long leave;
3. 6 of the available judges preside over criminal courts and the rest are engaged in civil matters;
4. In the 26 April 2023 notice it was recorded that there was an unacceptable lead time for RAF default judgement cases and RAF trials. At that time the **default judgment roll reached May 2025** and the **defended trial roll reached August 2025**.
5. This predicament resulted from the sheer volume of cases for the available capacity. In order to address this a dedicated Road Accident Fund Default Judgment Court was established to be introduced in two phases. The details appear in the attached notice. The operation of this default judgment court is dependent on the recruitment of pro bono acting judges willing to serve at a week at a time and an appeal was issued for volunteers to serve in the third and fourth terms of 2023;
6. In the 31 July 2023 notice it was recorded that 29 practitioners have been appointed in stipendiary capacities to substitute for the absent judges and 46 practitioners have volunteered to serve pro bono.
7. In unopposed motion court 600 cases per week are heard by six judges and in the dedicated RAF default judgment court 200 cases are heard per week. In

opposed motion court 50 cases per week are heard by 5 judges and 24 special opposed motions are set down. The urgent motion court comprising two judges hears uncapped number of matters, often as much as 60 cases per week. The list goes on;

8. It was noted that in order to improve lead times, no time was allocated for case preparation or writing of judgement which would have to be done after hours and on weekends.
9. After the April intervention the anticipated lead times reduced. There is now an anticipated lead time in the dedicated Road Accident Fund default judgment Court of 5 months and approximately 9 months for defended trials. Whether it will be possible to achieve and maintain these lead times remains to be seen having regard the sheer volume of Road Accident Fund cases that do not settle and have to proceed to a hearing.
10. The above reduced lead times are as a result of special steps being taken in one division. Not all divisions are in the same position.
11. In the Pretoria High Court for example trial dates are currently being allocated for May 2026 (lead time of 32 months) and default hearing dates for April 2025 (lead time of 18 months). Civil appeals from the Magistrate's court are being allocated dates in February 2024 and Full Bench appeals in November 2024.
12. The July notice ends up saying that until the Executive Government applies its mind to these stresses under which the High Court endeavors to function the Courts will continue to rely on the commitment and support of those members of the profession willing to serve pro bono.

After the Road Accident Fund was left entirely unrepresented for approximately a year the State Attorney's office was appointed to represent the Road Accident Fund. To cope with the thousands of current litigated cases dedicated attorneys were appointed to the office of the State Attorney. However, the numbers appointed were and remain woefully inadequate to deal with the workload. In addition those

attorneys are dependent on instructions from claims handlers, which are often only forthcoming at the 11th hour, if at all.

Because the courts have in effect become the custodians of the public funds administered by the Road Accident Fund (more than R40 billion per year) extraordinary measures have been implemented in many courts to assume this additional responsibility, placing even more strain on already overburdened system.

The Heads of Court have decided that no Road Accident Fund matters, whether opposed or unopposed shall be heard by a judge without Road Accident Fund representation by the State Attorney. The State Attorney is now required to inform the registrar of the details of the attorney allocated by it to deal with Road Accident Fund matters. A summons or application commencing proceedings is to be served on the State Attorney as well as the Road Accident Fund local office. All subsequent pleadings and notices are also to be served on the State Attorney as well as the Road Accident Fund. Practice directives have been revised to include this and other decisions aimed at managing the volume and to ensure that the Road Accident Fund is represented by attorneys. The additional workload on the State Attorney will require significantly more resources as they are already overstretched.

The vast majority of Road Accident Fund claimants are poor and disempowered. In many cases a breadwinner has been injured or killed leaving the family in even more desperate straits. Often, they are unable to provide care for seriously injured family members. To deny such persons access to justice and the courts is an infringement of their constitutionally protected human rights.

All litigants are entitled to have their cases adjudicated within a reasonable time period. To wait two years or more after the close of pleadings for the allocation of a pre-trial date and often another year or more to obtain a declaration of trial readiness and then another year for a trial date is not access to justice.

KEY ISSUES

The underlying problem with the proliferation of Road Accident Fund cases lies, in the main, with the malfunctioning of the Road Accident Fund, which instead of working constructively with claimants and their attorneys to investigate and process claims efficiently and effectively is intent on creating artificial and often unlawful barriers for claimants to attempt to negotiate. As a result of the implementation of Board Notice 271 in July 2022 we are advised by the Chief Executive Officer that 97% of claims tendered for lodgment are rejected. Based on statistics for previous years this will translate into approximately 100 000 claims per annum. Most of these claims (which are not even registered by the Road Accident Fund as potential claims) are perfectly valid. The vast majority of claimants are represented by attorneys who will not abandon rejected claims and whose only remedy to pursue recovery for their clients is to institute proceedings. Because the claims have been rejected as non-compliant there is no prospect of a settlement. The potential further impact on the courts is obvious.

Claimants are entitled to prosecute their claims and for as long as the Road Accident Fund fails to administer those claims the burden passes to the courts as a claimant's only remedy.

As at the present time, many courts are unable to meet this challenge further compounding the plight of already compromised and vulnerable road accident victims.

In terms of an internal management directive issued in June 2022 the claims of all undocumented foreign nationals or any foreign national who does not have "stamps" showing entry and exit around the time of the accident are rejected. Even those foreign nationals who have court orders are denied payment unless they can produce documentary proof that they were in the country legally at the time of the accident. This is in flagrant disregard for the provisions of the Constitution.

RECOMMENDATIONS FOR CONSIDERATION

1. Urgent attention be given via the Ministry and Department of Justice to addressing the lack of resources in many courts;
2. Urgent attention be given to increasing the number of judges, either full time or acting, to supplement those already appointed in any division;
3. Additional courts need to be created and staffed in those divisions that require additional judges;
4. Consideration be given to establishing specialist courts to deal with personal injury cases;
5. Urgent attention be given to filling staff vacancies;
6. No doubt, because they are stretched to the limit, some court officials and staff are not performing their allocated duties in many divisions of the High Court and are obstructive. This needs to be addressed. Proper performance management and disciplinary measures need to be implemented and enforced;
7. Increasing capacity at the offices of the State Attorney to deal with Road Accident Fund claims;
8. The constitutionally protected rights of foreign nationals to be addressed with the Minister of Transport and/or the Transport Portfolio committee.