



## ***COUNTRY REPORT - SOUTH AFRICAN***

In order to address congestion on the trial rolls nationwide the office of the chief Justice of South Africa has amended the rules of the High Court. The amendments aim to ensure that parties engage meaningfully with each other early in the litigation in order to either reach settlement or alternatively consensus on the issues in dispute so as to narrowing the issues and reduce the length of the trial.

However, this has meant that costs of litigation will increase as the administrative aspect of the litigation process has been substantially increased. The amendments put in place a judicial management system in which a Judge, which is not the Judge who will oversee the trial, assists the parties meet all the procedural/ administrative/ evidentiary requirements prior to the matter being allocated a trial date. These requirements include sharing and exchanging all medico legal reports, meeting to narrow issues in dispute, ensuring that like experts have met and compiled joint minutes and preparing a comprehensive minute setting out issues in dispute and

those which are common cause. The process amounts to litigation by correspondence.

Currently, some of the busier courts in the country such as Johannesburg and Pretoria have as many as 200 trial matters set down in a day mostly involving Road Accident Fund matters (motor vehicle accident collisions) and claims against the national railway.

In addition, medical malpractice matters have been included in these relevant amendments.

Separately, Parliament has recently promulgated the National Health Insurance Bill. The purpose of the bill is to “achieve a sustainable and affordable universal access to quality health care services”. However, there is no reference to the potential costs or how this will be made affordable or sustainable. What is clear is that further employer and employee tax, income tax surcharges and cancellation of medical scheme tax credits are envisaged. The overall costs for the taxpayer could be as much as three times what is paid currently. It is predicted that medical professionals will not be satisfied with the new system and there may be a knowledge and skill drain in the medical system. The bill further excludes the application of the Consumer Protection Act and the Medical Schemes Act. It is likely that there will be constitutional challenges to this bill.

The bill and its intended aims are a prelude to what is referred to as the “Road Accident Benefit Scheme” in which rights and levels of compensation

which innocent victims of motor vehicle accidents currently enjoy would be removed in favour of a more administrative scheme, in which lawyers are excluded.

Although this may still take a good number of years to be fully implemented, or may never happen, it is the intention of the state to move towards such a system.

In litigation against the state mostly involving CP cases, the Western Cape State Attorney has pioneered a method of protection of the funds in a trust in which there is a top up and reversion clause. In other words, if the future medical expenses which were initially settled on are exhausted legitimately then the trustees may approach the state for a top up.

However, if the patient passes away and any funds remain in the future medical expense pool of funds, and also equipment which may have been purchased with the proceeds of the litigation out of the trust, then those are to be returned to the state.

Finally, I have previously reported on the Contingency Fee Act. There have been a number of cases in which the terms of the legislation have been interpreted. The cases confirm that the fee that may be charged by the attorney is up to 25% (inclusive of vat if applicable – this would not be applicable to non-residents) or double the hourly rate whichever is the lesser. If any other legal professional is involved such, as for instance counsel (a barrister), those are disbursements to the client and charged

separately. Any other questions or queries relating to our jurisdiction may be referred to the writer.

Relevant links: 1. Rules of court July 2019:

[https://www.judiciary.org.za/.../2019/AMENDMENT\\_OF\\_UNIFORM\\_RU...](https://www.judiciary.org.za/.../2019/AMENDMENT_OF_UNIFORM_RU...)

2. Witwatersrand Trial Roll:

<https://johannesburgbar.co.za/court-rolls>

3. National Health Insurance Bill:

<https://www.gov.za/.../national-health-insurance-bill-b-11-2019-6-aug-201>

4. Contingency Fee Act:

[www.raf.co.za/Legislation/Pages/Contingency-Fees-Act.aspx](http://www.raf.co.za/Legislation/Pages/Contingency-Fees-Act.aspx)

**TZVI BRIVIK, DIRECTOR MALCOLM LYONS & BRIVIK INC.**  
**Specialist attorneys in Personal Injury**