CRISIS AT THE ROAD ACCIDENT FUND

JOINT MEMORANDUM BY THE LEGAL PROFESSION

20/07/2023

LAW SOCIETY OF SOUTH AFRICA

L.E.A.D

PROFESSIONAL AFFAIRS

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PERSONAL INJURY PLAINTIFF LAWYERS ASSOCIATION

WESTRAND LEGAL PRACTITIONERS ASSOCIATION

The South African Medico-Legal Association

TO: **THE MINISTER OF TRANSPORT**
VIA EMAIL

AND TO: **THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**
VIA EMAIL

AND TO: **THE DEPUTY MINISTER OF TRANSPORT**
VIA EMAIL

AND TO: **THE BOARD OF THE ROAD ACCIDENT FUND**
VIA EMAIL

AND TO: **THE CHIEF EXECUTIVE OFFICER OF THE ROAD ACCIDENT FUND**
VIA EMAIL

AND TO: **THE PARLIMENTIARY PORTFOLIO COMMITTEE ON TRANSPORT**
VIA EMAIL

AND TO: **THE CHAIRPERSON: STANDING COMMITTEE OF PUBLIC ACCOUNTS ("SCOPA")**
VIA EMAIL

AND TO: **THE AUDITOR GENERAL**
VIA EMAIL

AND TO: **THE LEGAL PRACTICE COUNCIL**
VIA EMAIL

Honorable Ministers, Sirs and Madams,

RE: CRISIS AT THE ROAD ACCIDENT FUND

1. INTRODUCTION

1.1 The organized legal profession of South Africa hereby presents this urgent memorandum to the CEO of the Road Accident Fund ("RAF"), the Minister

of Transport, the Minister of Justice and Correctional Services and other decision makers responsible for the execution of the statutory mandate given to the Road Accident Fund in terms of the Road Accident Fund Act.

1.2 We do so as an outcry not only on behalf the victims of road accidents in South Africa, those vulnerable individuals whose lives have been irrevocably affected by catastrophic events, but also as officers of the court and custodians of the Constitution of South Africa, which provides[1] that everyone has inherent dignity and the right to have their dignity respected and protected. Also, the Constitution provides[2] that everyone has the right to administrative action that is lawful, reasonable, and procedurally fair.

1.3 The following professional bodies have collaborated to prepare this memorandum: The Black Lawyers' Association ("BLA"), The Gauteng Attorneys' Association ("GAA") [incorporating the Pretoria Attorneys' Association ("PAA") and Johannesburg Attorneys' Association ("JAA")], The Law Society of South Arica ("LSSA") [with constituent members being the BLA, NADEL and the Independent attorneys], The National Democratic Lawyers' Association ("NADEL"), The Personal Injury Plaintiff Lawyers' Association ("PIPLA"), The South African Woman Lawyers' Association ("SAWLA"), The West Rand Legal Practitioners' Association ("WRLPA"). Also participating in this collaboration is the South African Medico-legal Association ("SAMLA").

1.4 The aforesaid collaboration was necessitated by-

1.4.1 Firstly, the state of crisis in which the RAF currently finds itself, as articulated by our courts and members of parliament:

The chairperson of parliament's SCOPA recently and publicly indicated that the RAF is a national disaster.

1.4.2 Secondly, by the public narrative of the management of the RAF, and sadly of late also by the Deputy Minister of Transport[3] that aims to

[1] Section 10
[2] Section 33
[3] Interview with ENCA (South Africa Tonight) Wednesday 5 July 2023

shift the blame for the RAF's continued woes to members of the legal profession.

1.5 This memorandum succinctly sets out a chronological delineation of decisions and actions taken by the current Board of the RAF which have resulted in the state of crisis the RAF finds itself in, as well their detrimental outcomes. A number of basic operational issues and how they add to the dysfunctionality of the RAF are then set out. Lastly, we deal with the unfortunate and untrue narrative that legal professionals are to blame for the RAF's state of emergency. In closure, we list what we, as legal professionals that have been interacting with the RAF since its inception, believe will go a long way toward paving the road to recovery from the dysfunctional state in which the RAF finds itself.

2. CONSTITUTIONAL OBLIGATIONS OF THE STATE- AND STATE-OWNED ENTITIES

2.1 The Bill of Rights binds the executive, judiciary, legislature and all organs of state. General duties are further imposed by the Constitution on those bound by it to respect, protect, fulfil and promote the rights in the Bill of Rights. Any organ of state, therefore, has a positive obligation to comply with these constitutional duties.

2.2 Section 33 of the Constitution guarantees the right to just administrative action, which requires that all administrative action must be lawful, reasonable and procedurally fair.

2.3 Section 195 read with s 7(2) of the Constitution places further obligations on organs of state. In terms of s 195(1) of the Constitution it is required that Public Administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

2.3.1 A high standard of professional ethics must be promoted and maintained.

2.3.2 Efficient, economic and effective use of resources must be promoted.

2.3.3 Public administration must be development-oriented.

2.3.4 Services must be provided impartially, fairly, equitably and without bias.

2.3.5 People's needs must be responded to, and the public must be encouraged to participate in policy-making.

2.3.6 Public administration must be accountable.

2.3.7 Transparency must be fostered by providing the public with timely, accessible and accurate information.

2.3.8 Good human-resource management and career development practices, to maximise human potential, must be cultivated.

2.4 The Constitution provides for responsibilities bestowed on the administrator who performs an administrative action. The section requires public administration to be governed by the democratic values and principles enshrined in the Constitution. It requires the public administration to be fair, impartial, equitable, without bias, accountable, transparent and have a high standard of professional ethics. Plainly stated, the section requires the decision-maker to adhere to these principles when performing an administrative action.

2.5 The principles outlined in s 195(1) apply to the 'administration in every sphere of government, organs of state and public enterprises'.

2.6 Organs of state, including state owned entities, are entrusted with powers in terms of the Constitution, statute and regulations. These powers have to be exercised in accordance with their Constitutional obligations.

2.7 Section 7(2) of the Constitution requires the state to respect, protect, promote and fulfil the rights enshrined in the Bill of Rights.

3. MANAGEMENT DECISIONS LEADING TO THE CURRENT STATE OF DYSFUNCTIONALITY AND THEIR CATASTROPHIC OUTCOMES

3.1 Appointment of Mr. Collins Letsoalo as CEO of the Road Accident Fund

3.1.1 The Road Accident Fund, an organ of state and the largest litigator in the Republic of South Africa is managed by a person with no legal background whatsoever, and by his own admission (under oath) only a basic

understanding of litigation processes and the South African legal framework.

3.1.2 It is apposite to, in this regard, make reference to the entire judgment handed down on 24 January 2023 by the full bench of the Mpumalanga Division of the High Court of South Africa, in the matter of Hlatshwayo and Masilela vs the Road Accident Fund[4]. We proceed to quote selected sections form the judgment:

"[114] The next question is who is to be blamed for this system in dealing with trial matters? The Fund represented by the Chief Executive Officer and the Board are to be blamed...

Ordering the claim-handlers to refer every matter pending in court to the State Attorney's Office for pre-trial and judicial case management conferences whilst knowing that a system has not been put in place in the State Attorney Office for such matters to be efficiently and effectively dealt with, is not acting in good faith.

... the conduct of the Fund, CEO and the Board is inexcusable"

"[120] ... there was everything wrong in proceeding and demanding for the immediate return of all the files without a plan in place to absorb the files and deal with them effectively and efficiently"

"[130] The claim officers who had deposed to the affidavits in these matters all pointed to a bus that had no direction. But, all overwhelmed by chaotic situation created by the management steered by the CEO and the Fund's Board. "

"[139] ... The core function of the Fund is to investigate the claims lodged with it and settle unless the claim is a hopeless one. This requires competent and motivated claim-handlers to comply fully with the provisions of the Act. Any failure to heed to this, will amount to acting contrary to the imperative of the Act.

... All is mainly blamed on the new operational model introduced and implemented by the Fund almost like in vacuum"

[144] In paragraph 13 of his affidavit deposed to on 18 April 2022, Mr Letsoalo seeks to blame the claimants or their attorneys as posing the biggest problems for the Fund ...

[4] Hlatshwayo and Another v Road Accident Fund (3242/2019) [2023] ZAMPMBHC 2 (24 January 2023)

[145] The Fund, CEO and the Board cannot now raise this as the reason for the late settlements that occurred in these two cases and in many matters that are finalised nation-wide in the absence of the Fund. As indicated previously and repeatedly in this judgment, demands for the return of the files from the panel attorneys without concrete plan in place devils the submission which is now made by the CEO.

"... It suffices to mention that failure to utilise the procedural safety valve upon lodgement in case or failure to complete the prescribed form properly, failure to meet the threshold for substantial compliance and failure to furnish information or documentation upon request before the expiry of 120 days, is all due to the inability of the Fund through the Board and its CEO to deal efficiently and effectively through claim-handlers or whoever is seized with RAF matters pending in our courts."

"[150] Furthermore, to agree and endorse the impression that 'some attorneys enrol the matters for default judgment, not informing the court that the defendant had requested further information or documentation', is also misguided, uninformed and raises the question whether the CEO, management and the Board had an appreciation of the provisions of the Act ..."

"[151] One is deeply worried whether Mr Letsoalo as the CEO of the Fund has taken an opportunity to acquaint himself with the rules of court or to be educated thereon. .."

"[167] ... What Mr Letsoalo is asking the Judge President to do is effectively to ignore the rules of court and the Divisions' Practice Directive issued on 9 January 2020 with all its amendments and or additions since 9 January 2020. The proposal by Mr Letsoalo on behalf of the Fund as I see it, is extremely inappropriate. The court is being asked to be a gate-keeper for the Fund in its absence."

"[183] The next question is who caused the Fund to be 'under extreme pressure'. Put differently, who was managing the Fund at that stage? Or who in terms of the legislative frame-work was in charge and control of the Fund? What conduct by those in charge of the Fund contributed to the extreme pressure of the Fund and on the employees? All these questions point at the CEO and the Board as they were and are still in charge of the Fund in terms of section 11(1) ... As indicated earlier in this judgment, in terms of section 12(1)(b)(i), the CEO of the Fund shall be the person who is suitably qualified and experienced to manage the day to day affairs of the Fund. He is therefore expected to know better on the implementation of the provisions of the Act."

3.2 **June 2020: Termination of RAF's panel of attorneys and calling for the immediate return of files**

3.2.1 According to information at our disposal each RAF panel attorney (of which there were in excess of 100 at the time when the panel of attorneys were disbanded) had at least 8 to 10 attorneys in their employ. These attorneys would not only attend to the litigation process, but they would also investigate matters and provide claims handlers with motivations on experts to be appointed, settlement offers to be made, attend to settlement negotiations (where instructions were timeously provided) and thereafter assist the RAF with collection of due diligence information required to make timeous payment. Where claims were found to have no merits or where the amount claimed was overstated, panel attorneys would ensure that a proper case was made out before a judge on trial by ensuring that proper preparation for trial was attended to by appointing counsel and ensuring the presence of witnesses to testify on behalf of the RAF at court. Upon finalization of a matter, these attorneys would also instruct cost consultants to similarly settle party and party bills of cost or attend the taxation thereof thereby representing the interests of the RAF.

3.2.2 With the termination of its panel of attorneys and the demand for files on litigated matters to be immediately returned, the benefit of inputs by counsel, and presentation of proper evidence in court, to the benefit of the RAF was abandoned.

3.2.3 The RAF was left entirely unrepresented for approximately a year. The vast majority of trial matters enrolled for trial from June 2020 to June / July 2021 (when the State Attorney was appointed to act on behalf of the RAF) were finalised in court <u>without any legal representation</u> on behalf of the RAF.

3.2.4 The number of state attorneys presently employed together with the number of claims handlers tasked with litigated matters are simply not sufficient to replace the capacity lost when the panel of attorneys (a minimum of 1000 legal professionals plus their secretarial and other support staff and candidate attorneys) were terminated.

3.2.5 Outcomes-

- The termination of the panel attorneys seriously undermined the efficiency of the court system and materially impacted on the administration of justice. It inevitably caused further significant delays in the finalization of claims for those claimants who have already waited years for resolution.
- Thousands of judgements are taken in the absence of any case being made out before the court on behalf of the RAF.
- A capacity void was created at the RAF to deal with and timeously settle claims.
- More matters are proceeding to trial in turn impacting on the proper functioning of courts.
- In effect, the core function of the RAF has been outsourced to the judiciary (Department of Justice) which is left to adjudicate matters that should and could have been settled without the need to apply for a trial date.
- Judges have been tasked to act as custodians of public funds.
- Overburdened court rolls where the volumes are such that trial dates are currently being allocated for November 2025 in effect suspending access to justice for the most vulnerable members of the public.
- More unnecessary delays in finalizing matters. The RAF waiting until the date on which the default judgement is heard (having had in excess of 6 months' notice of this date) to file an appearance to defend matters, pursuant to which the litigation process starts afresh.
- The RAF raising special pleas of prescription where claims prescribed in their hands. This frustrates the litigation process and amounts to defeating the ends of justice.
- An exponential increase in legal costs due to trials interlocutory and trial preparation costs having to be incurred on behalf of Plaintiffs in the form of the appointment of counsel and experts and also obtaining

follow up expert reports when reports become outdated after a period of 2 years.

- Plaintiff attorneys left to do post-trial feedback (previously done by panel attorneys) to the RAF by providing them with copies of court orders and documents required to effect payment of amounts due.
- The RAF accuses Plaintiff attorneys of "holding on to documents" which documents were previously provided to the RAF by their panel attorneys.
- Matters are investigated by the RAF only after the handing down of judgements as part of the payment due diligence process. Where possible irregularities are found, applications for rescission of judgement are brought.
- Wasteful expenditure: Party-and-party or attorney and client costs orders on rescission applications against the RAF and costs to be paid to the RAF's commercial panel attorney.
- Great fiscal risk to the state which has the potential of making the wasted expenditure incurred at Eskom pale in comparison.
- Most importantly, the significant impact on the finalisation of trials, pre-trial proceedings, settlement negotiations and processing of claims are to the detriment of victims of motor vehicle accident.

3.3 **August 2022: Directive on past hospital and medical expenses**

3.3.1 This directive by the RAF instructed its claims handlers to repudiate all claims incurred by road accident victims for past hospital and medical expenses when such expenses have been paid for by the victim's medical aid, on the basis that the road accident victims have not suffered a loss where the medical scheme has paid such expenses on their behalf.

- Discovery Health succeeds with urgent High Court review of the unlawful directive in October 2022 setting aside the unlawful directive, with costs.

- RAF's application for leave to appeal dismissed in High Court in December 2022, with costs.

- RAF's application for leave to appeal to the Supreme Court of Appeal ('SCA") dismissed in April 2023, also with costs.

3.3.2 The RAF's unlawful directive is contrary to more than 100 years of established law relating to so-called collateral benefits which enables the recovery from the RAF of the hospital and medical expenses on behalf of the members of the medical schemes.

3.3.3 Despite this well-established legal position, the RAF refused to accept the High Court and SCA's decisions rejecting the RAF's assertions to the contrary, and instead the RAF elected to apply to the Constitutional Court for leave to appeal in late April 2023. The outcome of said application is pending.

3.3.4 The RAF continues to implement the unlawful directive by rejecting all claims for past hospital and medical expenses on the basis that the judgment is subject to a pending application for leave to appeal in the Constitutional Court.

3.3.5 Separate from the Discovery Health judgment, on 28 November 2022, Vorster AJ handed down an order in the Pretoria High Court in the matter of *Phineas Deck Mawila v The Road Accident Fund* (case number: 15105/2022). The Mawila order also reviewed and set aside the Directive.

3.3.6 While the RAF has sought leave to appeal the Discovery Health judgment, the Mawila order was never appealed and hence is binding on the RAF.

3.3.7 The RAF's continued implementation of the unlawful directive is not only in breach of the Mawila order but also another court order granted on 30 March 2023 in the High Court, Mpumalanga Division in the matter of *Themba v The Road Accident Fund* (case number 106/2018), in which the

RAF undertook that it will cease to implement the directive unless and until the Mawila order is set aside.

3.3.8 Outcomes-

- No claims for past medical expenses paid to members of medical schemes since July 2021.

- Court orders for such claims to be paid ignored (breach of Mawila and Themba court orders): Amounts deducted from capital payments where so ordered.

- Knock on effect on medical scheme industry:

  - Many road accident victims will not be in a financial position to wait for claims to be settled only after the prosecution of the appeal of the Discovery Heath judgment is finalised. These claimants are placed in an invidious position of accepting settlement offers which exclude medical expenses, despite their right to payment of these claims. The settlement of these claims excluding past medical expenses deprive medical schemes of the right to claim from their members the reimbursement of the past medical expenses that they have already disbursed. The medical schemes will not be able to recover these amounts.

- Knock on effect to members of medical schemes/road accident victims:

  - Because the RAF unlawfully refuses to repay these amounts there are now members of medical schemes who have exceeded the limits in respect of certain capped benefits and who have exhausted their medical savings. These members are permanently deprived of the benefits that would otherwise result from their account being credited as a result of the repayment by the RAF of the expenses incurred by

the medical schemes for the treatment of injuries they sustained in road accidents. This means that they are unable to obtain medical treatment funded by their medical schemes which they would otherwise be able to obtain.

- Question: Extent to which these unpaid and pending claims are recorded and provision is made in the RAF's financial statements?

- Wasteful expenditure: Party and party costs orders granted against RAF (including the costs of senior and junior counsel) on all applications heard in court thus far, plus the costs of RAF's own attorneys as well as the costs of their senior and junior counsel. Costs of writs being issued to enforce payment of past medical expenses in terms of orders of court (and in the Themba matter the CEO retained

3.4 **May 2022: Amended requirements for lodging of new claims and refusal to accept new claims that are not fully compliant with new requirements and denial of compensation to certain foreign nationals**

3.4.1 The amended requirements[5] for submission of new claims includes that medico-legal reports and actuarial calculation must be submitted with claims. Letters from SASSA and UIF confirming that claimant has not claimed from them are also required. These government institutions have no administrative resources in place to prepare and issue such letters. Also, no claims are accepted without a salary slip, even for employees who work as street hawkers or are remunerated in cash.

3.4.2 The well-established principle of substantial compliance is no longer applied: No claims that do not fully comply are accepted.

3.4.3 For more than a year thousands of claims that were previously accepted and registered are nowhere to be found on the RAF's premises, or on their claims system.

[5] Board notice 271 of 2022, Government Gazette no 46322

3.4.4 On 23 May 2023 a judgement was handed down in the Eastern Cape Division of the High Court[6] ordering the RAF to suspend the enforcement of the new claims submission requirements and to accept, administer and register new claims lodged.

3.4.5 Despite the above Court Order, the RAF in contempt of court continues to date reject the lodgment of claims, both in person and by registered post to date.

3.4.6 Further to the above the directive indicated that a claim by a foreigner would be rejected if the claimant could not prove by way of documentary evidence that they are in South Africa legally. This directive unilaterally took away the applied principle that held the RAF liable for compensation of all users of South African roads, citizen and foreigners, against injuries sustained or death arising from accident involving motor vehicles within the borders of South Africa. This has recently been challenged in which it is alleged that the new directive is unconstitutional and not in line with the Promotion of Equality and Prevention of Unfair Discrimination Act.

3.4.7 Even where foreign nationals, holding valid passports, have court orders confirming settlements entered into with the Road Accident Fund or judgements obtained there appears to be an embargo on payment of those claims. In order to enforce a valid judgement or court order, writs have to be issued resulting in yet more fruitless and wasteful expenditure.

3.4.8 The Road Accident Fund still pursues an aggressive program to encourage third parties to claim direct. Many of the documents now required for a "valid" claim are often difficult and/or expensive to obtain. This will no doubt result in many direct claims prescribing or being abandoned to the obvious detriment of the very people the RAF Act serves to protect and compensate.

[6] Matter of Sandiswe Sogoni vs The Road Accident Fund Case nr EL 660/23

3.4.9 Outcomes-

- Possible non-reporting of valid substantially compliant claims (for the last 13 months) in the RAF's financial statements.
- Victims of road accidents are literally prevented from lodging claims against the RAF.
- Pending the review application to set aside not only the regulation with draconian new claims submission requirements, but also the abolishment of the substantial compliance principle.
- Wasteful expenditure: Applications are brought on matters where prescription is looming on a matter-by-matter basis. Party-and-party costs are against RAF (including the costs counsel).
- Matters are being finalised on trial or default without claim numbers or link numbers – There are possible administrative and reporting inaccuracies.

3.5 **2023: New contractual undertaking**

3.5.1 Undertakings in terms of the RAF Act are no longer being issued. Instead a document titled "contractual undertaking" is being offered to Plaintiffs.

3.5.2 The document seeks to introduce contractual limitations (akin to medical scheme rules) to the treatment to be paid for by the RAF. It also limits the number of treatments / repeat prescriptions to be covered.

3.5.3 Applications to compel the issuing of undertakings that are compliant with the Act are being brought on a daily basis. (Wasted expenditure – costs orders against the RAF).

3.5.4 Outcomes-

- Non – compliance with the RAF act. Injured victims not receiving treatment they have been provided since the inception of the RAF Act in terms of the statutory undertaking.

- Wasteful expenditure: Applications brought on per matter basis for proper undertakings to be provided. Party and party or attorney and client costs granted against RAF (including the costs counsel).
- Pending review application to set aside the decision that led to the implementation of the new contractual undertaking.

3.6 **Non-payment after 180 days and illegal refusal to make certain payments – enter the Sheriff**

3.6.1 Despite having implemented a dedicated email address for court orders and payment requests for capital, costs and interest to be sent to, the RAF is habitually failing to timeously make payment.

3.6.2 In addition, the RAF is refusing to make certain payments in terms of their internal policies / directives. These payments include past medical expenses (referred to above) and interest on claims where such interest is not specifically provided for in orders of court. Such interest provisions are in many instances removed from draft court orders by presiding judges for reason that it is due "ex lege" and explicitly providing for same in an order of court is regarded as superfluous.

3.6.3 Given that emails and letters sent to the RAF to follow up on payment are mostly ignored, attorney firms are left with no other alternative but to, on instructions from their clients, proceed with writs of execution against the RAF.

3.6.4 In many instances such writs are met with applications to have the writ set aside. This under circumstances where a competent court made an order for compensation to be paid, and the RAF not being represented due to its decision not to have legal representation present.

3.6.5 <u>Outcomes-</u>

- Interruption of RAF's business due to working tools (computers, furniture etc.) being attached for sale in execution.
- Wasteful expenditure: Costs of issuing writs, the Sheriff's costs special costs orders against the RAF, RAF's own legal costs in

instructing its commercial panel of attorneys and counsel to bring applications for setting side of writs and rescissions of judgements.

3.7 **Suspended employees**

3.7.1 Various experienced claims handlers have been suspended. These suspensions were overturned by the CCMA, or the labour court.

3.7.2 A decision has been taken that the RAF's management prefer not to have these employees at the RAF and as such there are many employees that are on paid suspension, not rendering services to the RAF, but being paid.

3.7.3 Outcomes-

- Contempt of court orders to re-instate employees.
- Wasteful expenditure: Employees being paid not to work.
- Under-staffing at RAF perpetuating its inability to process, investigate and make offers on claims.

3.8 **Block settlements**

3.8.1 Instead of having competent claims handers that assess, investigate and prepare daily offers on matters, the RAF applauds itself in the media for having introduced the concept of block settlements.

3.8.2 The manner in which these block settlements are presently set up is ineffective in the extreme and amounts to an insult to legal professionals who are required to stand in queues for hours in order to be added to a list on a 'first come first served" basis.[7]

3.8.3 Also, at a rate of quarterly block settlements per firm allowing only 6 matters per law firm to be presented for consideration this initiative fails dismally in addressing the current back-log of dealing with valid claims that are ready for settlement.

Outcomes-

[7] Refer letter written by the LSSA to the RAF on [insert date].

- Perpetuation of valid claims not being attended to within a reasonable time.
- "First come first serve" queuing system inefficient and inhumane.
- Escalation of legal costs on matters that can and should be settled, that have to be advanced to trial in order to be finalised.
- Burdening of the judicial system with matters that should be resolved by RAF claims handlers.

4. DAY TO DAY MANAGEMENT OF CORE BUSINESS NOT IN PLACE

4.1 Claims management procedure not conducive to assessment and resolution of claims

4.1.1 Once a claim is submitted (if possible at all), the 120 day period mostly lapses post submission without any correspondence being received from the RAF's offices whatsoever.

4.1.2 Summons is then issued by the plaintiff attorney.

4.1.3 Our collective experience is that it takes numerous follow up emails and letters to the RAF and if one is lucky the RAF will allocate a State Attorney to defend the summons. This does not happen in many instances where plaintiff attorneys are left with no alternative but to apply for judgment by default.

4.1.4 As things presently stand an attorney of record is literally unable to determine who the allocated claims handler is (refer discussion under correspondence and call center below). It seems that in instances where emails are responded to, the automated email copied below has been set up:

From: Customer Services <Customerservices@raf.co.za>
Sent: Tuesday, April 11, 2023 11:18 AM
To: [redacted]
Subject: RE: PSE LET US HAVE CLAIMS HANDLER AND STATE ATTORNEY DETAILS [redacted]

Good day

Thank you for your query.

We can confirm that we do have a claim on our side but for security reasons we cannot divulge any further details on email.

Please make contact with us on 0860 23 55 23 and our consultants will help you, alternatively you can visit your nearest Road Accident Fund Office.

Kind regards,

4.1.5 It is our considered view that matters are no longer being allocated to responsible claims handlers upon submission and registration.

4.1.6 In the event that matters are allocated to a claims handler, our experience is that the enormous file counts (more than 1000 matters per handler) are paralyzing to the extent that handlers are only able to work on matters that are on trial the next day.

4.1.7 The 90 page judgment handed down 24 January 2023 by the full bench of the Mpumalanga Division of the High Court of South Africa, in the matter of Hlatshwayo and Masilela vs the Road Accident Fund deals more fully with this topic.

4.2 **Correspondence not being attended to**

4.2.1 Mostly, day to day correspondence addressed to the RAF is simply not attended to, even when sent to designated email addresses as published by RAF themselves.

4.2.2 The RAF Pretoria reception has in fact been instructed not to accept any documents. All documents must either be emailed to the RAF or scanned and emailed to designated email addresses at the RAF's reception itself.

4.2.3 Notwithstanding these measures, correspondence is simply not attended to.

4.2.4 Attorneys are then requested, at the last minute and when a crisis is on hand, to again provide information previously provided to the RAF via email.

4.3 **Document management / information management system**

4.3.1 Previous systems that were in place are no longer functional and there presently seems to be no document management system whatsoever in place at the RAF.

4.4 **Help line**

4.4.1 The RAF help line is non – functional or not properly staffed.

4.4.2 The number is picked up by an auto – response system, and the caller is cut off after holding for assistance for 5 minutes.

4.4.3 This makes it impossible as Plaintiff attorney to determine who deals with a matter in order to facilitate any communication on submitted claims, as well as on matters where summons has been served but not yet defended.

4.5 Outcomes (Par 4)

4.5.1 An organ of state that is unable to deal with the most basic of office administration functions – dealing with written correspondence and taking and attending to telephone calls is an organ of state in crisis.

4.5.2 Wasteful expenditure: New claims management / administration system that simply does not work.

4.5.3 Allegations by the RAF that legal professionals are "holding back documents" or that they have not received documentation that has in fact been provided to them, but which simply did not come to the attention of the person tasked with dealing with the correspondence.

5. NARRATIVE OF BLAMING LEGAL PROFESSIONALS FOR THE RAF'S WOES

5.1 When members of the legal profession engage with the RAF, they do so as officers of the court and representatives of vulnerable victims of road accidents.

5.2 Legal professionals are further subject to a strict code of conduct which is strictly enforced by the LPC.

5.3 The legal profession takes umbrage at the RAF's reprehensible public narrative aimed at blaming legal professionals for the RAF's woes and in general discrediting legal professionals.

5.4 This narrative is often repeated in the media and has recently spilled over to the deputy minister of Transport in an interview conducted with him on the ENCA channel on Wednesday 5 July 2023. We proceed to quote a few of these allegations made by the Deputy Minister of Transport below:

"the reason that the furniture or assets are attached is that lawyers will hold on to those legal documents that authorize them to attach so that they can pounce at the same time without giving the Road Accident Fund enough of time to respond."

"the reason we are seeing some of the things we are seeing it's because screws are being tightened. The tap is being closed. The things that have been happening within the Road Accident fund for instance the money that the Road Accident Fund would be paying for intermediaries in other instances are lawyers unnecessarily an admin cost have been dropped dramatically and those are the monies that should be going to the victims who arguably are the ones who the road accident fund is seeking to compensate"

Now what people some lawyers would do they would wait and hold on to these claims and submit them on the eve of the 60 days obligating the Road Accident Fund to accept them as legitimate claims. So that tells us that there is a flaw in the legislation that should allow the Road Accident Fund or the submission of forms to allow for checks and balances before that 60 days expires."

5.5 These and other general allegations made pertaining to the conduct of members of the legal profession being the reason for the RAF's state of crisis are not only unsubstantiated, but blatantly untrue.

5.6 This therefore serves as a request to the RAF, its management, and representatives from the department of transport to desist this. It is proposed that the time and money spent on perpetuating this narrative might be more productively applied coming to an understanding of the true provisions of the legislation and resolving the many challenges, as outlined above, and which our courts have found[8] were caused by poor management of the RAF as an institution by its Board and CEO.

6. SOLUTIONS

6.1 It is our considered view, as professionals that have been acting on behalf of both the RAF and claimants since the inception of the RAF as statutory institution that the solutions for the state of emergency this institution finds itself in are relatively simple.

[8] Refer Hlatshwayo and Masilela vs the Road Accident Fund referred to above.

6.1.1 Appoint and constitute a new RAF Board, containing individuals who are willing to actively serve the South African public in giving effect to the RAF Act as opposed to devoting their time, energy and resources to changing the long standing legislative and legal framework.

6.1.2 Appoint a legally qualified CEO with a suitable management qualification and appropriate experience in dealing with RAF matters at grass roots level, and also as manager.

6.1.3 Appoint sufficient appropriately qualified and experienced claims handlers with administrative assistants, and allocate to them manageable file counts to deal with as set out above.

6.1.4 Ensure that business basics are put in place: Receive correspondence, allocate same to the appropriate resource, acknowledge receipt and respond to correspondence. Answer telephones and return calls.

6.1.5 Implement an appropriate performance management system for management and employees alike that is based not only on savings brought about, but also on the number of matters settled firstly on merits and secondly fully settled on quantum, thereby giving effect to the RAF's statutory mandate.

6.1.6 Ensure that newly submitted claims that substantially comply with the requirements of the RAF act are received, registered, duly considered and processed, offers made where possible, and matters settled, but also appropriately defended in court where necessary.

6.1.7 Reconstitute the panel of attorneys, alternatively appoint a sufficient number of State Attorneys to appropriately and effectively represent the RAF in court where required.

6.1.8 Until such time as the RAF clears the backlog in settling claims and reducing the number of matters ending up on trial, Treasury to allocate funds from the budget of department of Transport to the department of Justice for the creation of a specialist RAF court in Pretoria (where most summonses are issued due to the RAF's head office being in Pretoria) to appropriately deal with litigated RAF matters.

6.1.9 Respect and abide by orders of court and tried and tried and tested legal principles instead of spending the funds meant to compensate injured road accident victims on personal legal crusades thereby enriching the very legal professionals the RAF has been accusing of "fleecing the system".

6.1.10 Ensure that payments of capital and costs are appropriately captured for payment and actually paid thereby doing away with the issuing of writs and attachments of goods.

6.1.11 Continue with block settlements but do so on a "first come first served" system with reference not to warm bodies standing in a queue on short notice, but rather to written settlement submissions with supporting documentation sent to a designated email address which can be set up for a sensible, professional and efficient system that would reflect settlement ready matters on a "first come" first served basis.

7. CONCLUSION

7.1 It is our sincere hope that these submissions will be taken to heart and implemented by the Minister of Transport, Treasury and the Minister of Justice with the dire urgency the situation calls for.

7.2 We hereby urgently request the opportunity to meet with relevant decision makers to discuss the content of this memorandum and come to an agreement regarding urgent steps to the taken to achieve a turnaround of the crisis the RAF finds itself in.

7.3 We, as the collective representation practising in the field of personal injury law hereby pledge our willingness to be of assistance if so, required in any way in regard to the above.

Yours truly

Mr N Matlala
Chairperson
Transformation
Committee
BLA

Mr T Joubert
Chairperson GAA

Mr W Bloem
Chairperson JAA

Ms E Masipa
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Prof EL Stellenberg
National Chairperson
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