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THE JOHANNESBURG
ATTORNEYS ASSOCIATION

18 JULY 2019

PERSONAL INJURY COMMITTEE REPORT

1. BACKGROUND:-

The personal injury committee had an active year with many changes in the courts approach to personal injury matters, lack of instructions from the various state owned entities, delays in payments of capital despite court orders attracting interest, parents who argue against the formation of trusts on behalf of their minor children, and proceeding with trials as a formality regardless of the costs implications.

2. LIASONS:-

We engaged with the RAF committee of the Law Society of South Africa (Ms Jaqui Sohn), Gauteng Attorneys Association, Pretoria Attorneys Association, APRAV, Gregory Whittaker-Actuary, SAMLA, the Judiciary, GLDEEC Meeting, and PEEC Meetings.

The PAA together with the JAA have co-sponsored a workshop on RABS which aim was to highlight the provisions of the draft bill to all, including the governing party.

We have considered various other systems, as an academic exercise to find a possible solution/ alternative(s) to the current approach which will make it easier for victims to claim with a view of saving costs.

3. WORKSHOP:-

The sub-committee with Mr Tarica, and the Executive Committee convened two workshops on the new practice directive introduced by the judiciary, which was extremely well attended.

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We also note that backlogs have been reported in Gauteng Division-Pretoria, on the application for Judicial Case Management. This is a grave concern to most practitioners and we shall be working with the Pretoria Attorneys Association to consider solutions.

The workshop was hosted by the Honourable Judge Sutherland. There has been an overwhelming response, necessitating a second workshop on the new directive. We thank the Honourable Judge Sutherland for his time taken to present his views which assisted practitioners with an understanding of this process.

4. ROAD ACCIDENT FUND:-

Practitioners have raised the following aspects:-

- **UNDERTAKINGS DEPARTMENT:-**

  Clients are having difficulties with the Undertakings department and are being informed, that the RAF undertaking department will only deal with claimants and not their legal representatives.

  Claimants are being informed that the RAF has the final determination to approve treatment, irrespective of what is contained in the Medico Legal reports.

- **MONITORING OF THE HPCSA DECISIONS:-**

  Practitioners are raising objections to the composition of the experts who are selected to adjudicate on matters pertaining to head injuries, and inconsistent decisions by these panels.

  A few practitioners have suggested the need for legal representation at the HPCSA hearings, in order that client's cases are fully articulated at these tribunals.

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Accordingly, all practitioners should monitor the impartiality of these tribunals as well as the effectiveness of how these matters have been concluded. It may be a good idea to consider whether legal practitioners should be entitled to be present to observe the proceedings, alternatively whether legal representation should be allowed to forward argument.

- **FEEDBACK FROM COUNSEL IN RESPECT OF RABS:-**

We have briefed Advocate Garth Hulley SC together with Advocate Mark Oppenheimer. We have also consulted with Gregory Whittaker –Actuary. We had scheduled a consultation with SAMLA and our Counsels, but due to scheduling conflict the consultation has been rescheduled. Our counsels have nevertheless been furnished with their detailed views.

The Legal team led by Schindlers Attorneys, and our Counsel are prepared to challenge RABS (with various experts, and organisations assistance) at the appropriate stage.

In addition, our chairperson is dealing with APRAV directly, and the JAA has volunteered to assist with the payment of legal fees (on presentation of invoices).

We continue to support APRAV, and urge members to contribute financially to APRAV to assist them with opposition to the RABS.

- **DELAYED PAYMENT FROM THE ROAD ACCIDENT FUND**

Our practitioners note with concern that payments are being delayed by the Road Accident Fund, and rumours of certain firms obtaining preference in the payment queue. The JAA is concerned about the wastage of taxpayers' money, as the delay in payment attracts interest, Sheriffs costs and further legal fees.

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5. We have also considered the current approach by the Minister of Police, Minister of Safety and Security and the Minister of Health cases, and the impact on practitioners. It was noted that they may be difficulty in the State Attorneys Office, insufficient time to deal effectively with medical negligence claims, and this may be a budget and staffing issue.

6. <u>FUTURE MEETINGS FOR THE YEAR:-</u>

The committee will be convening meetings at Schindler Attorneys, and we call upon our members to contact the secretary should you have any challenges and/or input.

ITEM	DATE
1.	19 September 2019
2.	6 December 2019
3.	17th January 2020