**National Assembly**

**Question No: 2307**

**2307. Mr C H HHunsinger (DA) to ask the Minister of Transport:**

(1) What (a) was the reason that the Road Accident Fund (RAF) decided to disband their panel of 103 attorneys that was set up in 2014 and (b) is the new litigious model that the RAF will be following;

(2) what total number of (a) in-house lawyers does the RAF currently have, (b) vacancies exist and (c) lawyers does the RAF intend to hire in the 2020-21 financial year? NW2880E

**REPLY**

1. (a) The reason the Road Accident Fund (RAF) decided to disband its panel of attorneys is because the Road Accident Fund Act, 1996 (the Act) provides that the RAF must pay compensation to road accident victims in accordance with the Act, which allows the RAF a period of 120 days from the date on which the claim is lodged to investigate its liability and to settle the claim. It is only in exceptional cases that litigation is contemplated, and it is not anticipated that the RAF would outsource its investigation of claims to an external panel of attorneys, as has been done. It is important to mention that a study conducted by Professor Hennie Klopper on the RAF matters set down on the court roll in the Gauteng Division of the High Court, Pretoria revealed that 99.56 % of the matters are settled at the doorstep of court and less than 1% (0.45%) proceed to trial. This study was done in the Pretoria High Court which has the highest number of litigated matters countrywide. Although the research focused on Pretoria, the RAFs observation is that this is reflective of the general trend in all the courts in South Africa. RAF matters get settled by both parties and the settlement agreements are then made orders of court. Moreover, the panel of attorneys and the RAF are regularly criticized for the manner in which they manage these outsourced claims. In a recent Judgment in Mpumalanga High Court in the matter of Mncube v RAF, Legodi JP said the following

*“More than 90% of matters on our trial roll are the Road Accident Fund which is funded through public purse. One would have thought the parties and or legal practitioners in dealing with these matters, will be more expedient and professional. However, the contrary appears to be the case. This is despite continuous financial woes the Fund finds itself in.”*

In the unreported judgment of Daniels and Others v Road Accident Fund and Others, Binns-Ward J, after reviewing 17 cases where the RAF was rebuked by various judges for their handling of claims and litigation, said the following:

“*A depressing feature of all of the aforementioned judgments is that they instance examples of cases in which the Fund must have incurred substantial legal expenses in taking to trial, or on appeal, claims which it had no basis to responsibly contest. In the context of the evidence before us that legal expenses constitute a very significant component of the Fund's overall expenditure, this is an aspect of the Fund's conduct which is demanding of conscientious attention by the responsible authorities…”.*

Currently, the RAF owes claimants many billions of Rand in settled claims. It is however unable to pay these claimants and yet spends R10.6 billion on legal costs annually. By getting rid of the current operating model, with unaffordable panel of attorneys, and by adopting the new operating model the RAF could save substantial amounts in legal fees.

The RAF 2020-2025 Strategic Plan targets a 75% saving on legal costs over the five-year period, which will assist the RAF to pay claimants promptly from the anticipated saving. In addition, this new operating model will lead to very few RAF matters coming before courts, which will lessen the workload of the overworked judgesand (b) the new litigious model that the RAF is following seeks to capacitate its operations for Claim Handlers to investigate and settle claims, as opposed to outsourcing claims to a costly panel of attorneys, and by pursuing voluntary mediation, as opposed to expensive and protracted litigation, and where litigation cannot be avoided, referral of the matter to a salaried state attorney, as opposed to a private attorney;

(2) (a) the RAF currently has a total number of 62 attorneys to be seconded to the Office of the State Attorney to deal exclusively with RAF matters, (b) the further recruitment of additional attorneys will be informed by an analysis still be done on the ability of the current attorneys to deal efficiently with the current number of litigated matters, where triable disputes exists, and (c) the RAF aims to further recruit on an ongoing basis such additional attorneys informed by the number of litigated matters which requires representation in Court. The number of attorneys to be recruited in the 2020 – 21 financial year is unknown at this stage.