



**THE ASSOCIATION FOR THE PROTECTION OF ROAD ACCIDENT VICTIMS**

A VOLUNTARY ASSOCIATION NOT FOR GAIN INCORPORATED IN TERMS OF THE COMMON LAW

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**The Melvin M. Belli Society  
Care of Mr. Henry Shields**

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**15 October 2018**

**PROTECTING THE RULE OF LAW IN SOUTH AFRICA: ROAD ACCIDENT FUND vs 'RABS'**

1. The recent Belli Society Seminar & dinner, held in Cape Town on 03 October 2018, refers.
2. Thank you for including APRAV in this important event and affording our organisation the opportunity to brief the Belli Society on this unfolding issue on the legal landscape in South Africa.
3. The Association for the Protection of Road Accident Victims ("APRAV") was established in June 2014 by concerned industry parties, responding to our national Governments' intention to replace the existing Road Accident Fund Act with the Road Accident Benefit Scheme (RABS) Bill.
4. The current system providing for compensation of road accident victims is regulated by statute, which substituted the right to sue the wrongdoer at common law. Despite its inherent restrictions (i.e the threshold test to qualify for an award of general damages for pain and suffering, the cap on lost earnings and only being able to recover ongoing treatment expenses as and when they occur), It has admirably served road crash victims for 76 years and is populated with equitable and well-established principles. To ensure that victims are protected against the possibility that they will be unable to recover the common law damages that they are able to prove, the RAF Act displaces the liability of the negligent driver to the Road Accident Fund. The RAF is funded by a dedicated fuel levy in the form of 1,93 ZAR cents per litre. This levy currently equates to annual funding of approximately R40 billion for this purpose.

5. The essence of the intended legislative reform is to abolish the common law right to sue the wrongdoer and introduce a no-fault based social security system of benefits, the ostensible motivation being that it is equitable and reasonable to give everyone a little bit as opposed to making the victim “whole” again insofar as a monetary award of compensation can do so
6. APRAV’S key organisational objectives are to:
  - a) Inform the public (road users & road accident victims) in respect of the full impact of the RABS Bill on.
  - b) Protect the rights of road accident victims to be properly compensated for and assisted to claim all damages suffered due to or as a result of road accidents, including monetary, emotional, physical and/or other related damages;
  - c) Address the issues pertaining to the RABS Bill, especially unreasonable omissions, limitations, exclusions and prohibitions and to prevent same from being adopted;
  - d) Assist to develop and establish a truly equitable and reasonable sustainable system of compensation, to the benefit of the public; and to
  - e) Establish a platform for industry involvement in the legislative process.
7. The current system needs review, since it was designed with 500 000 cars on the roads of South Africa and there are now more than 11 million vehicles on the roads. There are sensible and well-defined solutions to ensure a review of the current system that would result in significant government savings whilst protecting the rule of law, access to the courts and the rights of road users and the public at large. Unfortunately the lawmakers are not interested in solutions.
8. Even worse, the Department of Transport, who is promoting this Bill, did not undertake proper or adequate research, seems not to care to contravene the South African Constitution, disadvantage the poor and those in most need of support and protection, is lying to parliament and the people of SA, is driving the narrative that attorneys are bad and stealing the poor claimants’ money, exhibits a blind, illogical political tenacity to implement this Bill at all cost and seemingly supports the breakdown of the rule of law and limiting access to the courts.
9. Should the Society be interested or require it, we can provide concrete examples of the successful role which APRAV has played since its’ inception, in terms of resisting the implementation of the RABS Bill by adopting a multi-tiered strategy.
10. We are a voluntary and non-profit organisation and our only income is derived from donations. We currently manage the following projects: Below a short summary of key projects.

11.

**PROJECT 1: ANTI-CORRUPTION INVESTIGATION**

- National investigation directed at the gathering of evidence of misconduct to institute prosecution against RAF top and senior management breaking the law.
- Envisaged outcome of investigation: Saturation prosecution of offenders.
- APRAV involvement in investigation: Watching brief, professional and technical assistance as needed by all Provincial investigating teams.
- Annual funding requirement: Time of National Project Coordinator, traveling expenses and accommodation R650 000.00 (about 45 000\$)

## **PROJECT 2: LEGAL ACTION**

- Constitutional challenge of RABS Bill and key exclusions in the RABS Act and challenge of the flawed parliamentary **procedures**:
- Envisaged outcome of investigation: Prevention of the abolishment of common law and the change to a no-fault system.
- APRAV involvement in investigation: Facilitating and coordinating the process nationally in multiple courts.
- Envisaged funding requirement to pay legal fees: R1m (about 70 000\$)

## **PROJECT 3: PUBLIC AWARENESS AND PARTICIPATION**

- Media coverage (press releases, social media), Radio programs (talk shows), presence at road shows & preparation of Case studies to be presented at road shows
- Industry workshop(s) i.e. health facilities, local government structures, human rights bodies, etc.
- Project funding requirements: Time of APRAV Management and Attorneys, fees of a public relations company, traveling expenses and accommodation: R500 000.00 (about 35 000\$).

## **PROJECT 4: INDUSTRY BRIEFING & DISCUSSION TO DEFINE DETAILED SOLUTIONS**

- Introduction of the APRAV strategy to Industry stakeholders (including a communication plan).
- Newly created solution work teams to focus on specific outcomes (agreement to be reached on the purpose and functions of work teams). Included are Provincial seminars across RSA.
- Project funding requirements: Time of APRAV staff, Attorneys and Advocates, traveling expenses and accommodation: R250 000.00 (about 17 000\$)

## **PROJECT 5: PARLIAMENTARY GATEKEEPER**

- Attending all relevant Portfolio Committee meetings in Cape Town: Transport, Finance, Health and Trade & Industry
- Provide input & briefings to all Committee Members
- Ensure the Industry's views are also part of debate (& not just the state's one-sided view)
- Annual funding requirements: 2 x p/month ORT-CT flights for 3 persons & 2 x p/month 1-night CT accommodation for 3 persons R325 000.00 (about 24 000\$)

12. The need for the current RAF system and a system of the future, to be 'pro-poor' is fully supported. However, this fundamental need cannot only be in words but should be supported by –
  - adhering to all constitutional rights;
  - protecting (and not diluting) road user rights;
  - optimum efficiency and effectiveness of the 'system' and especially those 'managing' its operations;
  - properly completing the research recommended by the RAFCOM (2002) to ensure that the South African realities, in 2017/2018, are fully considered;
  - being 'pro-poor' in its practical application and not just as a tag line;
  - drawing from an industry's 07-decade long experience;
  - properly consulting the public of South Africa, in an open and transparent manner; and
  - accepting that all stakeholders need to be involved to ensure buy-in into the future.
13. Given the socio-economic realities in South Africa as well as the financial pressures that the government has enforced on the medico-legal industry, human rights organisations such as APRAV, barely survive. We request that you consider supporting our cause in any of the following ways:

- a. Assist us with research information on failures of no-fault systems in the USA and internationally.
  - b. Assist us with international case law on the abolition of the common law and specifically how this impacts on the human rights of victims of wrongdoing.
  - c. Consider assisting funding some of our projects.
  - d. Use your influence to put pressure on our government to reconsider this human rights abuse.
14. We are more than willing to provide any detail you may require assisting you in considering supporting our cause to ensure that the rule of law is protected in South Africa.

Yours sincerely

Pieter de Bruyn  
Chairperson

