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1 June 2023

REPORT FOR THE 7TH GAUTENG EFFICIENCY ENHANCEMENT COMMITTEE MEETING (PRETORIA HIGH COURT)

TO BE HELD ON 7 JUNE 2023

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1. MATTERS ARISING FROM PREVIOUS MINUTE

1.1. COURT ONLINE *Previous meeting's minute Par 6(i)*

1.1.1. The system is still extremely troublesome with many glitches, and a lot of down time which makes it user unfriendly.

1.1.2. Members are continuously complaining of help desk click through from the Court Online website not working and the Helpdesk telephone number also just ringing and then cutting users off when all operators are busy (no queuing system).

1.2. HIGH COURT PRECINCT *Previous meeting's minute Par 6(iv)(a)*

The PAA is glad to report that members of its High Court committee have established a communication channel with the City of Tshwane councillor for the High Court precinct. As a result the area was cleaned, and the situation has somewhat improved. A Metro police presence is also visible around the court precinct.

The PAA ensures that the area is inspected at least once a week and pictures taken of the state of the Court precinct.

The issue of homeless people who live on the streets next to the Palace of Justice remains the main challenge. The corners of the court building are being used as toilets, especially at night. This is not cleaned each and every day and therefore remains a health and safety hazard for court employees at the palace of justice (who cannot open their windows due to the stench), practitioners and members of the public who have to frequent the pavement between the Palace of Justice and the Court Building.

The PAA shall continue to liaise with the City of Tshwane in order to arrive at a permanent solution for this problem.

1.3. <u>INFRASTRUCTURE</u> *Previous meeting's minute Par iv(b)*

Extract from minute:

> **b. <u>Infrastructure</u>**
> - Court Manager is absent and cannot report on this.
> - No report was circulated by the Court Manager either.
> - Her report was sent and discussed at the Judges' Meeting two days prior.
>   i. Some of the air-cons are still not operational.
>   ii. Courts on the 2nd Floor – the recording machines

1.3.1. The issue of the recording machines on the 2nd floor have still not been resolved. In fact, there are presently 8 court rooms on the 2nd floor that are not being utilised for this reason.

1.3.2. Judges are having to share court rooms. This means that there are instances where one judge has to wait for another to finish before an allocated trial matter can be heard (with attorneys, counsel, client and experts waiting in the corridors).

1.3.3. Under the circumstances the PAA enquires whether the settlement roll, unopposed motions and the SIC court cannot perhaps be attended to by

Judges from their chambers online as a work – around until the issue with recording machines has been resolved in order to open up more court rooms for trial matters.

1.3.4. Also, given the excessive period for which the absence of the these recording devices have been hampering the efficient functioning of various court rooms, the PAA would appreciate an indication of what actions has been taken by the Court Manager to resolve same, and whether the PAA can provide any assistance in this regard.

1.4. APPOINTMENT OF PRO-BONO ACTING JUDGES

Extract from minute:

Is there a need for names to be submitted? The PAA indicated its willingness to recruit suitable members / people.		CvV
There is a need and require a CV of some sort that will have to meet the criteria that will be discussed with the Judge President.		DJP
Will send the applications that meet the criteria to assist the office in the administrative side of it.		CvV
Also require a certificate of good standing from the LPC to confirm that they are indeed in good standing with the LPC.		DJP

1.4.1. Note has been taken with great appreciation of a number of acting judges already appointed in 2023, and the great efficiency with which many trial, default, settlement and SIC motions were finalised in the 1st term as a result.

1.4.2. It was indicated at the previous meeting that feedback would be given to indicate how many *pro bono* acting judges will be assisting in 2023.

1.4.3. Also, feedback is awaited regarding the criteria to be met and addressed in CVs to be submitted to the AJP's office by Attorneys meeting such criteria and in good standing with the LPC, who are willing to assist.

1.4.4. The PAA looks forward to the above feedback in order that assistance from the attorneys' fraternity in the form of Acting Pro Bono Judges can be unlocked as a matter of urgency.

1.5. ALLOCATION OF TRIAL DATES AND RAF DEFAULT HEARING DATES

Previous meeting's minute Par 7.1.1

1.5.1. Our members are thankful for the moving forward of various trial and default dates from 2024 and 2025 to dates in 2023 during the 1st and 2nd term of the year.

1.5.2. However, it seems that both trials- and default dates are now being allocated for dates in June / July 2025. This entails a lead time of two years from date of allocation to date of trial, which is unconscionable. This again begs the question of measures that can be implemented to bring these dates forward.

1.5.3. Our members have in this regard requested that we address a kind request to the Registrar to, when bringing dates forward, do so with dates that have been allocated 6 months and more in the future. This is so because-

1.5.3.1. When trial dates less than 6 months in the future are brought forward, counsel have already been briefed on such matters and preparation for trial has already been done with the particular counsel on brief. That counsel is then more often than not no longer available for the amended hearing date, with results in wasted costs;

1.5.3.2. Special interlocutory dates are so far in the future (Currently September 2023) that when a matter is brough forward to a date before the 1st available date on the SIC roll, trial matters are then removed from the trial roll due to Defendant's failure to for example file a discovery affidavit under circumstances where Plaintiff is no longer in a position to bring an SIC application. This then results in the date being brought forward being forfeited, which renders all the work done to facilitate an earlier trial date fruitless.

1.6. <u>TAXATIONS</u>

Previous meeting's minute Par 7.1.1

1.6.1. Taxation dates that are almost a year in the future remains a serious challenge.

1.6.2. We have been requested by our members to again raise the following issues arising from the taxation office, some of which were also raised at the previous meeting.

1.6.3. <u>The taxation roll</u>

1.6.3.1. Since this week, the taxation roll is being published with the remainder of the day roll. Our members have asked us to extend their deepest thanks to the Chief Registrar and Chief Taxing Master for facilitating this.

1.6.4. <u>Administrative office</u>

1.6.4.1. The administrative office tasked with the compilation of the taxation roll seems to be experiencing challenges.

1.6.4.2. Regular complaints are received that notwithstanding practitioners confirming in writing two days before the preliminary taxation date, matters so confirmed are not finding their way to the final roll.

1.6.4.3. Also, the taxation roll often contains various errors such as the incorrect case numbers.

1.6.4.4. The administrative office for taxations is unresponsive when dealing with queries, the impression has been created that it is unmanned for large portions of the day.

1.6.4.5. Complaints about the administrative office regarding the rolls and tardiness do not appear the have been escalated as the problems persists.

1.6.4.6. The aforesaid was brought to the attention of the Chief Registrar during a weekly court liaison meeting held with her and the Chief Taxing Master on Thursday 25 May 2023. They undertook to keep a close eye on the situation.

1.6.5. <u>Utilisation of Caselines and MS teams for taxations</u>

1.6.5.1. Whereas the Johannesburg taxing office is very efficiently finalizing matters online making use of MS teams and Caselines, the Pretoria office still insists that taxations be done in person and that the entire file be brought to the taxation by the Attorney presenting the bill. This under circumstances where all relevant documentation including the bill of costs with annexures (proof of disbursements) are uploaded to caselines.

1.6.5.2. The PAA proposes that all taxations be attended to Online, unless there are exceptional circumstances requiring in person taxations. This would very much improve the efficiency of the taxing office allowing more matters to be placed on the roll per day, which would in turn result in a shorter lead time between date of allocation to date of taxation of a matter.

1.6.5.3. Also, Caselines should be noted as the preferred method of providing documentation at taxation as all parties, including the taxing master, have access to the entire court file.

1.6.5.4. The need to bring a hard copy of court documentation to the taxation should fall away. The exception to this being a hard copy of the bill of costs so that the taxing master has a copy on which to make handwritten notes.

1.6.6. <u>RAF taxations</u>

1.6.6.1. The RAF continues to ignore the rules of court with regard to taxations by never filing notices of objections, timeously or otherwise.

1.6.6.2. The RAF does not settle bills of costs with the all the Plaintiffs in any organized or reasonable fashion.

1.6.6.3. It was confirmed on 26 May 2023 and pursuant to the directive issued by the Judge President on 22 May 2023 In re: Revisions to the several directives dealing with settlement agreements that taxations may proceed in the Pretoria taxation office without an order of court.

1.6.7. <u>Complaints procedure</u>

1.6.7.1. We have been receiving complaints about taxing masters starting late for taxations (especially those commencing at 09:00), and eating / preparing food whilst taxations are ongoing, which is not conducive to a productive, professional, hygienic work environment or efficient attendance to taxations.

1.6.7.2. Also, there have been numerous reports of some taxing masters making rulings on issues such as time allowed for a pre-trial meeting (Only 15 minutes allowed, even for a pretrial on a complicated matter) in <u>unopposed</u> taxations notwithstanding a file note being produced as proof of actual time spent and such time being in line with what is allowed in the rules of court. When asked for reasons, and referrals to the rules of court based on which the time spent is disallowed, members report having been advised that "the RAF does not allow it".

1.6.7.3. Also, rulings are in many instances being made that are not in line with taxation principles that are well established, and supported by relevant case law.

1.6.7.4. Taking such rulings on review is in many instances not an option in circumstances where the Plaintiff would already have been waiting for a year after the trial was finalised for his / her party and party costs to be taxed, in order that final accounting to the Plaintiff can be done.

1.6.7.5. As such, the PAA is requesting that the complaints and escalation procedure in the event of the conduct complained of as noted above be clarified that we may inform our members to follow that process accordingly.

1.6.8. <u>Proposals to resolve current backlog and increase number of taxations dealt with per day</u>

1.6.8.1. It was indicated in the minute of the previous meeting held that:

-	Report to be complied on the different options / solutions and a suggestion on the way forward will be decided on before the end of January.	|	DJP

1.6.8.2. Our members have put forward the following solutions to increase the number of taxations that can be attended to per day, and in doing so reduce the waiting period for a taxation date to a more reasonable period of 3 months:

- Taxations to start strictly at 09:00 in the mornings.
- Sufficient matters to be enrolled per day per taxing master to ensure that taxing masters continue to tax matters until 16:00.

- Documentation for taxation purposes to be uploaded and viewed on Caselines, in order that the bringing to court of huge files is no longer necessary.

- Taxing masters to prepare for- and ask for proof of items they wish to query at <u>unopposed taxations</u> before the day of taxation making use of the widely shared note function on caselines, thereby enabling attorneys to come prepared (preferably to upload the proof required on caselines) instead of having to source documentary proof where required (such as file notes for time spent) during taxation time.

- Enroll unopposed RAF taxations 15 minutes apart, which would (if appropriate time management practices are followed) and given that these are <u>unopposed</u> matters, allow for a taxing master to finalise at least 15 unopposed taxations from 09:00 to 13:00 (4hrs x 4 matters per hour less 15 mins tea break).

- The non-RAF roll should have a dedicated taxing master daily in order to expedite those taxations and shorten the waiting period of 10 months.

- Matters which have become settled should be removed from the roll (both RAF and non-RAF) and those opposed taxation spots should then be allocated first to the new applications for taxation dates before continuing to allocate dates 10 months ahead. This will ensure that the taxation rolls remain full and productive.

1.6.8.3. That having been noted, there remains an urgent need for more Taxing Masters to be appointed as the Taxing Masters' office remains understaffed. The PAA has previously indicated that there are many seasoned costs practitioners who would be willing to sit as assistant Taxing Masters. This solution was also discussed with the Chief

Registrar and Chief taxing master at the last PAA High Court liaison meeting held on 26 May 2023. The Chief Registrar proposed that we prepare a proposal to the Deputy Judge President's office in this regard. The document is in the process of being compiled.

2. <u>NEW AGENDA ITEMS</u>

2.1. <u>CLARIFICATION SOUGHT: IN RE REVISIONS TO THE SEVERAL DIRECTIVES DEALING WITH SETTLEMENT AGREEMENTS PUBLISHED BY THE JUDGE PRESIDENT'S OFFICE ON 22/05/2023</u>

2.1.1. Reference is made to our letter addressed to the DJP's office in the above regard on 26 May 2023, of which a copy is annexed to this report as **Annexure PAA1**.

2.2. <u>CLARIFICATION SOUGHT: IN RE CLARIFICATION NOTE - OPERATIONS OF THE SPECIAL INTERLOCUTORY COURT ISSUED BY DJP SUTHERLAND ON 12 MAY 2023</u>

2.2.1. A Copy of the above directive is annexed as **Annexure PAA2**.

2.2.2. We have received many enquiries from the Pretoria legal fraternity wanting to know whether the above directive will also be applied in the Pretoria High court.

2.2.3. It would be of great assistance to Pretoria litigants if the DJP of this division could endorse the above directive, and confirm that it will also be implemented in our division.

2.3. <u>THE OFFICE OF THE SPECIAL INTERLOCUTORY MOTION REGISTRAR</u>

2.3.1. Challenges with the above office were previously raised at the Stakeholder engagement facilitated by NADEL in September 2023. A public undertaking was given by the Chief Registrar that the challenges complained of would be addressed.

2.3.2. Nine months after said engagement, the following still prevails:

2.3.2.1. The Registrar only accepts date follow ups, 14 clear court days after application as made for a date on Caselines, on Mondays and Tuesdays between 09:30 and 12:00.

2.3.2.2. The practical effect of this rule is that a firm that is entitled to five motion dates per day (25 days per week), would only be able to be allocated ten dates per week, given that the follow ups accepted on Mondays and Tuesdays are also limited to five per firm per day.

2.3.2.3. Also, on trial matters the Registrar does not accept follow ups at all (i.e refuses to allocate dates) unless a period of 180 court days (approximately 6 to 7 months) remain between the date follow up is made with his office, and the trial date.

2.3.2.4. The above rules do not emanate from the Practice Directives and in application unlawfully restrict the advancement of matters to trial.

2.3.2.5. Over and above the bitter complaints raised regarding the conduct of the Registrar of the Special Interlocutory section at the NADEL event in September 2022, written complaints in this regard have been addressed to the Chief Registrar's office to no avail.

2.4. <u>THE SPECIAL INTERLOCUTORY MOTION ROLL</u>

2.4.1. New dates on the Special interlocutory roll are currently being allocated for <u>September / October 2023</u>.

2.4.2. Bearing in mind that application cannot be made for a trial date before a recalcitrant Defendant has been compelled to comply with the requirements of Practice Directive 1 of 2021, a waiting time of approximately four months to obtain a date in the SIC court is simply not tenable.

2.4.3. This is even more so because, as things presently stand, the very same Plaintiff will receive a trial date in excess of two years in the future.

2.4.4. From reports received from our members and also from advocates appearing in this court, the SIC roll is on more days than not, finalised by 12:00.

2.4.5. That means that only 2.5 hours of court time is taken per day to finalise the matters currently allocated for this roll.

2.4.6. It is proposed, that the number of matters currently allocated to the SIC roll should be increased in order that the lead time from date of allocation to date of hearing can be significantly reduced.

2.4.7. Whereas it is fully appreciated that Judges require time to prepare for matters, it is submitted that most, if not all of these SIC applications are simple in nature and not voluminous, and therefore this roll could and should carry more matters than is presently the case.

2.4.8. Members have requested us to obtain clarity from the Registrar's office regarding –

- The number of SIC applications provisionally enrolled per day;
- For when are dates currently allocated (1st open day on SIC rolls).

2.5. <u>AMENDMENTS TO THE CONSOLIDATED PRACTICE DIRECTIVE PREVIOUSLY DISCUSSED, NOT INCORPORATED IN 1 DECEMBER 2022 AMENDMENT OF PD 1 OF 2021 (Par 7.1.12 of Draft minute)</u>

You can apply for a trial date within thirty (30) days after the per-trial between parties. Number 3.1.6. in the GAA Report – directive must be issued in this regard.		MP
Will amend provision in the Directive. Will have serious training with the Registrar. Pre-Trial Minutes MUST Be proper and will be scrutinised by the Registrars before a date is allocated. It is the responsibility of practitioner to have a proper pre-trial.		DJP

2.5.1. The requirement that the signed pre-trial minute must be less than 30 days old when applying for a trial date is stil to be addressed in a follow – up amendment to PD1 of 2021 as it presently reads.

2.5.2. Our members are also reporting extreme difficulties experienced as a result of the requirement that before a date for an unopposed motion can be allocated both parties must submit their heads of argument. We are informed by our members that Respondents utilize this requirement to delay matters by simply not filing heads of argument, and then when application is made in the SIC court to compel the filing of the heads, that application is also opposed thereby blocking the further advancement of the matter.

2.5.3. The DJP's kind consideration and direction on this challenge will be very much appreciated.

2.6. <u>COURT FORMS NOT ALIGNED WITH PROVISIONS OF 1 DECEMBER 2022 AMENDMENTS TO PD1 OF 2023</u>

2.6.1. Members have pointed out that confusion is caused by the fact taht the court forms annexed to PD1 of 2021 (Such as form 4 and form 7) have not been amended to bring the forms in line with the amendments to the practice directive. These forms served as a "checklist" which was previously utilized by Attorneys and Registrars alike to ensure that the requirements for the allocation of a trial date were met before submitting their application for a trial date.

2.7. <u>AMENDED PD1 OF 2023: NOTICES OF APPEARANCE FILED ON DAY OF HEARING OF DEFAULT JUDGMENT</u>

2.7.1. Reports have been received from our members that a new trend has arisen, and that their position to deal with same has been weakened in the absence of a Special Interlocutory Court order referring such matters for judgment by default.

2.7.2. The trend entails that after waiting in excess of a year for a date for default judgment to arrive (Dates are currently received for October 2024), the RAF files its notice of intention to defend and plea the day on or before the trial by default is enrolled. The matter having been defended, most judges in such instances remove the matter from the default roll, and then the litigation on the matter has to start afresh with the exchange of pleadings, closure of pleadings, discovery, pre-trial and then application can be made for a trial date, which will (on the current system) be allocated for a further at least 18 months in the future.

2.8. <u>CALL FOR ONE CONSOLIDATED PRACTICE DIRECTIVE THAT MERGES PD1 OF 2021 AND PD 2 OF 2022</u>

2.8.1. Confusion still persists amongst members due to overlapping and conflicting provisions in the above two directives.

2.8.2. Members are calling for one consolidated practice directive.

2.9. <u>COMPLIANCE WITH PRACTICE DIRECTIVES: SIC APPLICATIONS TO COMPEL DISCOVERY & SIC APPLICATIONS TO STRIKE DEFENCE</u>

2.9.1. Members have experienced instances where they wait for months for a Special Interlocutory hearing in order to compel their opponent to discover. There are however Judges who refuse to grant orders to compel discovery, given that discovery is not a requirement purely on the rules of court. However, the Practice Directives require that <u>both parties</u> must discover before a trial date will be allocated. This leaves a Plaintiff who has himself fully complied with the rules of court in a position that they are not able to obtain the required order to compel Defendant to discover, and they cannot apply for a trial date in the absence of same.

2.9.2. We have also been informed that there are Judges who are of the view that striking a defendant's defence for failure to comply with an order compelling defendant to reply to a request for further particulars, is too harsh a remedy, and who refuse to grant such orders.

2.9.3. Members have expressed immense frustration at being required by the Practice Directives incur further costs and time delays to approach the Special Interlocutory Roll in instances where their opponent to not actively participate in litigation, and in fact not being able to apply for a trial date before having done so, only to find themselves not being able to obtain the compelling / striking court orders provided for in Practice Directive 1 of 2022, and the rules of court.

2.9.4. This issue was also touched on at the NADEL member engagement held on Saturday 5 Novembers 2022 where it was indicated that a memorandum would be circulated in order to achieve uniformity in judgments handed down in SIC applications.

2.10. <u>SPECIFIC COSTS PROVISIONS IN COURT ORDERS</u>

2.10.1. Members have reported that many Judges require simple and short court orders without provisions regarding expert costs, travel costs, and other specified items, in order that the Taxing Master may exercise their discretion on these issues.

2.10.2. However, we are informed by costs practitioners appearing before the Taxing Masters on a daily basis that the Taxing Masters in Pretoria refuse to exercise any discretion on expense items such as expert costs, reservation fees, travel costs, and other specified items as well as the issue of counsel's fees. The rule applied by the Taxing Masters, we are informed, is simply that if an item is not in the court order, it is disallowed for only that reason.

2.10.3. There seems to, with the utmost respect, be a disjoint between the Judiciary's desire not to make rulings on costs related items and the Taxing Masters' willingness to allow any items not specifically noted in court orders.

2.10.4. The PAA proposes that the issue be resolved by way of a Circular form the DJP's office clarifying the position and appropriate training to be provided to taxing masters and practitioners who appear before them regarding the provisions required in order of court, and the case law pertaining to the taxing Masters' discression when it comes to costs items not specifically provided for in the court order.

2.11. <u>WIFI AT COURT</u>

2.11.1. The absence of working 3G, and Wifi at court remains a headache for all role players at court, especially where matters have to be conducted with reference to bundles on caselines.

2.11.2. The PAA is in the process of investigating the possibility of installing Wifi at court. We understand that a similar solution was implemented in Johannesburg by the Johannesburg Bar Association.

2.12. <u>COURT LIAISON: ASSISTANCE TO OFFICE OF THE TRIALS REGISTRAR</u>

2.12.1. <u>PAA litigation info group on Whatsapp</u>

2.12.1.1. In March 2023 the PAA created a whatsapp group for all members of the legal fraternity, the purpose of which was initially to distribute the rolls and hearing directives to our colleagues in real time, as and when they are received from court.

2.12.1.2. The group, which has grown to in excess of 850 members in a very short space of time has also proven to be very useful when communicating requirements from the Court to members of the legal fraternity.

2.12.1.3. In this vein, we recently assisted the Trials Registrar with a communication to the group in which practitioners were requested to correctly complete the date follow up books at court:

> Dear all,
> The trials office on the 4th floor is experiencing staffing challenges (One of the assistant registrars is currently on leave and Baldwin was relocated to the appeals department with Friday having been his last day in the trials office).
> We have been requested by the Trials Registrar to share this notice, which has been placed on the 4th floor where the follow up books are placed.
> Law firms are kindly requested to adhere to this notice in order to assist the Assistant Registrars to attend to trial- and default date follow ups in a focussed and productive manner.
> Kind regards
> Nicolette de Witt
> Convenor PAA High Court Committee
> 13:15

2.12.2. The PAA has successfully partnered with the office of the trials Registrar to more effectively deal with the allocation of trial- and default hearing dates as follows:

2.12.2.1. Capturing of the data handwritten in the follow up books for trial and default dates in Excel format;

2.12.2.2. Creating an excel spreadsheet containing matters followed up on sorted from oldest “date applied for date” and with duplicated matters highlighted;

2.12.2.3. This avoided wasted time spent by assistant registrars on duplications, enabled prioritization of manners in a fair and transparent manner, and provides a traceable reference of how many matters were followed up on, how many of these have been attended to and how many are left to be attended to by the Registrars.

2.12.3. Feedback from the Trial Registrar’s office is that the Excel system is proving very helpful.

2.12.4. The PAA believes that we can further extend this assistance to the trials registrar’s office by implementing a very simple web based form system that would allow practitioners to fill in a follow up form on the internet making use of a computer or mobile phone. The system will then provide the trials registrar’s office with all follow ups in excel format, from where she and her team of assistants can allocate dates as per usual. The system lastly provides for an automated feedback email going to the person who submitted the electronic follow up form, informing them for when a date was allocated and if not that they must check Caselines for the assistant registrar’s case note.

2.12.5. We have done preliminary tests on the functioning of the proposed system, which does not interfere with or change the current processes on Caselines at all.

2.12.6. It is the PAA's belief that this system would greatly assist the Trial Registrar and the profession alike and would very much appreciate an opportunity to present same to the DJP his consideration.

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Dawie Bekker Deputy Chair PAA	Nicolette de Witt Convenor: High Court Committee	Conrad van der Vyver Convenor: RAF Committee