e-MANTSHI

A KZNJETCOM Newsletter

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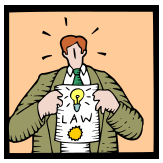
Welcome to the hundredth and seventeenth issue of our KwaZulu-Natal Magistrates' newsletter. It is intended to provide Magistrates with regular updates around new legislation, recent court cases and interesting and relevant articles. Back copies of e-Mantshi are available on http://www.justiceforum.co.za/JET-LTN.ASP. There is now a search facility available on the Justice Forum website which can be used to search back issues of the newsletter. At the top right hand of the webpage any word or phrase can be typed in to search all issues.
Your feedback and input is important to making this newsletter a valuable resource and we hope to receive a variety of comments, contributions and suggestions – these can be sent to Gerhard van Rooyen at gvanrooyen@justice.gov.za.



New Legislation

1. The Rules Board for Courts of Law has, under section 6 of the *Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985),* with the approval of the Minister of Justice and Correctional Services amended the rules of the magistrates court. The notice to this effect was published in Government Gazette no 39715 dated 19 February 2016. The amended rules will come into operation on the 22nd of March 2016. The most important amendment is a substitution of rule 21B of the rules which reads as follows:
"Failure to deliver pleadings - barring

21B.(1) Any party who fails to deliver a replication or subsequent pleading within the time stated in rule 21 shall be automatically barred.

(2) If any party fails to deliver any other pleading within the time laid down in these rules or within any extended time allowed in terms thereof, any other party may in writing calling upon that party to deliver such pleading within five days of receipt of such notice.

(3) Any party failing to deliver the pleading referred to in the notice mentioned in sub-rule (2) within the time therein required or within such further period as may be agreed between the parties, shall be in default of filing such pleading and automatically barred: Provided that for the purposes of this rule the days from 16 December to 15 January, both inclusive, shall not be counted in the time allowed for the delivery of any pleading.".

2. The Rules for the Attorneys' Profession which is published in accordance with section 74(4) of the *Attorneys Act 53 of 1979* will come into operation on the 1st of March 2016. These rules were published in Government Gazette no 39740 dated 26 February 2016.

3. The Department of Justice and Constitutional Development invites interested parties to submit written comments on the draft amendments to the Regulations relating to Child Justice. The draft amendments were published in Government Gazette no 39751 dated 26 February 2016. Any comments on the draft amendments to the Regulations must be submitted not later than 31 March 2016. The Regulations which are being amended is regulation 13 (Form 2), 21, 31 and 50(1).

4. The Office of the Chief Justice has published a policy on the use of official languages in terms of the *Use of Official Languages Act, 2012 (Act No 12 of 2012).* This policy has been published in Government Gazette no 39749 dated 26 February 2016. The policy indicates that the uses of official languages in court are as follows:

"9.1. The use of official languages in court including court interpretation services, court processes, documents and recording of court proceedings shall be regulated by the rules of court or any other applicable legislation."

Recent Court Cases

1. S v EKE 2016 (1) SACR 135 (ECG)

A Certificate in terms of s 212(4)(a) of the Criminal Procedure Act 51 of 1977 will be sufficient if the certificate sets out the qualifications of the person who made it, described the process involved and explained why it was reliable.

At the accused's trial in a magistrates' court on a charge of having contravened s 65(2)*(a)* of the National Road Traffic Act 93 of 1996, in that she had driven a motor vehicle whilst the concentration of alcohol in her blood exceeded the permissible limit of 0,05 grammes per 100 millilitres, the appellant pleaded not guilty but made a number of admissions in terms of s 220 of the Criminal Procedure Act 51 of 1977. She admitted that: (1) she had driven the motor vehicle on a public road; (2) that a sample of her blood was drawn within the prescribed period and that the result of the analysis of the blood sample was 0,15 grammes per 100 millilitres. In her plea explanation her attorney expressly placed in issue the accuracy and reliability of the blood specimen measurement process, namely whether the instruments used to analyse the blood sample — gas chromatographs — had been properly calibrated before the sample was analysed. The prosecutor handed in a certificate in terms of s 212(4) and (8) of the CPA in which the deponent stated that she had a diploma in analytical chemistry, and described herself as an assistant forensic analyst employed by the state at the Forensic Chemistry Laboratory of the Department of Health in Cape Town. She stated that she had analysed the blood sample by means of a method described in paras 5 – 6 of the certificate and that she had obtained the result of the concentration of alcohol in the blood sample. She stated that the result was established by gas chromatography and the blood specimen was analysed in duplicate. The two gas chromatographs used were calibrated before the specimens were analysed and the calibration was done by using certified alcohol standards of different concentrations to obtain a calibration curve. The certified standards were supplied by the National Metrology Institute of South Africa which was the custodian of the national measuring standards in the country. She explained in detail the process and that the reliability of the gas chromatographs was constantly checked by having recourse to the reproducibility of the retention times of the compounds on the column, baseline appearance and resolution between alcohol and internal standard peaks. In addition a quality-control specimen was chromatographed regularly to verify instrument performance. This proved that the gas chromatograph was set up and operating properly. After the certificate was handed in the prosecutor closed the

state's case and the appellant also closed her case without tendering any evidence. She was convicted of the offence and sentenced to a fine of R4000 or eight months' imprisonment, part of which was suspended. In an appeal against the conviction the appellant contended that the proper calibration of the gas chromatograph could not be proved by way of a certificate in terms of s 212(4) but only by way of an affidavit in terms of s 212(10). The court noted that two issues arose on appeal: *(a)* whether the s 212(4) certificate could be used to prove the proper calibration of the gas chromatographs; and *(b)* if so, whether the mere placing in issue of the accuracy of the result obtained from the gas chromatographs was sufficient to disturb the state's prima facie case.

Held, that a certificate, in the circumstances permitted by s 212(4), took the place of oral evidence, and a mere recording of a result would not suffice if an expert witness gave oral evidence, and it did not suffice for purposes of a certificate, and, that being so, the certificate of necessity had to contain more than merely the result. In order to be of any use as evidence it also had to set out the qualifications of the person who made it, describe the process involved and explain why it was reliable. The certificate procedure, while not intended to reduce the burden of proof that rested on the state, was intended to facilitate the procurement of certain evidence of an expert nature, and the purpose of s 212 was simply to avoid undue wastage of official manpower in court attendances for the purpose of frequently undisputed evidence on matters nearly always incontrovertible. (Paragraphs [19] and [21] at 143*f*–*g* and 143*i*–144*b*.)

Held, further, that the first leg of the appeal, namely that the accuracy of the results produced by gas chromatographs could only be proved by an affidavit in terms of s 212(10) and not by a certificate in terms of s 212(4), had to fail. (Paragraph [27] at 145*e*–*f*.)

Held, further, that a plea explanation was evidentiary material because it was the unsworn statement made by an accused in which he or she disclosed what was in issue between him/her and the state. In cases in which an accused did not testify, while a plea explanation was not on the same footing as evidence having been given under oath, nevertheless it had to be considered in finally deciding whether the state had proved its case beyond a reasonable doubt. This did not mean that the plea explanation on its own could displace the state's prima facie evidence. Instead, by identifying the issues in dispute between the parties, it identified what the state was required to prove in order to secure a conviction. (Paragraphs [31]–[32] at 146*b*–*e*.)

Held, further, that there were three possible courses open to the appellant to rebut the correctness of the result recorded in the certificate. She could have applied to the court below to exercise its discretion in terms of s 212(12) to have the analyst subpoenaed to give oral evidence or she herself could have subpoenaed the analyst to testify. If she had a factual basis to cast doubt on the accuracy of the result (such as that it could not be accurate as she consumed no alcohol at the time concerned),

she herself could have testified or called witnesses. In the circumstances, there being no evidence to rebut or challenge the certificate, its contents, having been prima facie proof, became conclusive proof. (Paragraphs [34]–[36] at 146*g/h*–147*e*.) The appeal was accordingly dismissed.

2. S v BROWN 2016 (1) SACR 206 (WCC)

The provisions of section 15 of the Electronic Communications and Transactions Act 25 of 2002 did not exclude the common law of evidence.

The court was required in a trial-within-a-trial to rule whether images found on a cell phone were admissible as evidence. The accused stood trial on two counts of attempted murder and one count of murder. The state's principal witness testified that she had seen something fall from the accused's pocket during the shooting, and after he left the scene she returned and retrieved the object and discovered that it was a cell phone. She then gave the phone to a member of the gang to which her partner belonged. A police witness testified that the phone had been handed to him later that same night by a member of the local neighbourhood watch who said that it had come from a member of the gang that was the target of the attempted assassination. The policeman booked the phone in as an exhibit. The phone was then sent to a specialised police unit which retrieved the data on the phone, including five images which the investigating officer wished to use in the criminal proceedings against the accused. These images were traced back to another phone which could be identified. The images were apparently of the accused. The defence objected to the evidence on a number of grounds inter alia that the integrity of the chain of safekeeping of the phone, from the time that it was allegedly picked up to the time that material was downloaded from it, had not been proved; that the evidence sought to be admitted was both hearsay and irrelevant; that such evidence was not covered by the terms of a subpoena issued by a magistrate in relation to the phone in terms of s 205 of the Criminal Procedure Act 51 of 1977; and that, in any event, any material downloaded from the phone without the authorisation of a magistrate was unlawful and an invasion of privacy.

Held, that the Electronic Communications and Transactions Act 25 of 2002 (ECTA) was introduced to provide inter alia for the admissibility of evidence generated by computers since its predecessor, the Computer Evidence Act 57 of 1983, was generally considered to have failed to achieve its purpose in this regard and, in any event, had not regulated criminal proceedings. ECTA followed an inclusionary rather than an exclusionary approach to the admission of electronic communications as evidentiary material, and the overall scheme of the Act was to facilitate the admissibility of data messaging as electronic evidence. (Paragraphs [16]–[17] at 213*d*–214*b*.)

Held, further, that s 15 of ECTA, which dealt with the admissibility and evidential weight of data messages, did not render a data message admissible without further ado. The section did not exclude our common law of evidence and, this being so; the admissibility of an electronic communication would depend, to no small extent, on whether it was treated as an object (real evidence) or as a document. (Paragraph [18] at 214*c*.)

Held, further, that, given the potential mutability and transient nature of images which were generated, stored and transmitted by an electronic device, they were more appropriately dealt with as documentary evidence rather than as real evidence and, adopting this approach, the ordinary requirement of our law for the admissibility of such evidence was that the document itself had to be produced, which meant that it had to be the original and the authenticity of the document had to be proved. (Paragraph [20] at 214*h* – 215*c*.)

Held, further, that there had been no evidence or even a suggestion that any person had tampered with the phone or the images stored on it during the period unaccounted for. Furthermore, what evidence there was indicated that the phone was in the hands of lay persons in that four-hour period and it was thus improbable that any tampering with the images in question had taken place. On a conspectus of the evidence it appeared that the requirements of original form and of s 14 of ECTA were met. In any event, s 15(1)*(b)* of ECTA gave messages a further exemption from the requirement of original form in the event of their being the best evidence that the person could reasonably be expected to obtain. In the light of the lack of any evidence as to who originally transmitted the images to the phone and the limited purposes for which the evidence was tendered, namely to prove that the phone belonged to the accused, the state could not reasonably be expected to have produced better evidence of these images. Their authenticity was in fact not disputed. (Paragraphs [23]–[24] at 215*g*–216d.)

Held, as to the contention that the images constituted hearsay evidence, that the images were more akin to being real evidence, but, however they were classified, they did not constitute hearsay evidence. (Paragraph [25] at 216*e*–*g*.)

Held, as to the contention that the images were unlawfully obtained as they were downloaded without the authority of a magistrate, the provisions of the CPA relating to the obtaining of a search warrant were not applicable in the present case and the police were moreover entitled to seize the phone in terms of s 20 of the CPA when it was presented to them by the member of the neighbourhood watch with the explanation that it had been found at the scene of the crime. Nor was any particular authority necessary from a judicial officer in order to download the material from the phone with a view to identifying its owner or possessor. Clearly that information was reasonably necessary in order to trace a suspect. The accused consistently denied

that the phone was his and in the circumstances it would be untenable for him to deny, on the one hand, ownership or possession of the phone or the disputed images stored on it, and on the other hand to assert a right to privacy over such images. (Paragraphs [27]–[28] at 217*a–e*.) The evidence was ruled admissible.

From The Legal Journals

Wessels, B

"Reconsidering the legal position of victims of violent crime: *DN v MEC for Health* 2014 (3) SA 49 (FB); *MEC for Health v DN* 2015 (1) SA 182 (SCA)

***Obiter* 2015 540**

Okpaluba, C

"Arrest without a warrant: When is an offence committed in the presence of an arresting officer?"

2015 SACJ 257

Walker, S

"Determining the criminal capacity of children aged 10 to 14 years: A comment in light of *S v TS 2015 (1) SACR 489 (WCC)*"

2015 SACJ 337

(Electronic copies of any of the above articles can be requested from gvanrooyen@justice.gov.za)

Contributions from the Law School

SPEAK NOW OR FOREVER HOLD YOUR PEACE MR NDPP[1]

It is now close to a full year since the legal fraternity was greeted with the news of a potential terrorism trial in May 2015. This followed the decision of the prosecution to request authorisation from the National Director of Public Prosecution (NDPP) to pursue terrorism charges against those apprehended for violent acts committed during a march by taxi drivers in the city of Durban. The protesters were demanding the release of their minibus taxis that were impounded by the city's metro police notwithstanding there being ongoing negotiations about the issue of operating permits. The march was characterised by various scenes of violence, including the stoning of vehicles and buildings, the blocking of traffic, assault on members of the public and the setting alight of various municipal vehicles. The accused (fifteen men in total) have since been released on bail.

For many in the legal fraternity, the news not only aroused a feeling of fear about the seeming re-emergence of a strong reliance on serious security crimes to fend off the violence during protests, but also a sense of anxiety over the eagerly anticipated decision of the NDPP. This explains my writing of this contribution, pleading with the NDPP to put us out of our misery. There is no doubt that this case has all the characteristics of a landmark case that will shape South Africa's post-apartheid terrorism jurisprudence, and probably lead to a pronouncement on the constitutional validity of the Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004 (the anti-terrorism Act).

Although it remains uncertain whether the pending terrorism charges will culminate in a court trial, it is worthwhile to pass a comment on the developments that are likely to unfold in this matter. The first noteworthy development emanates from s 16(1) of the anti-terrorism Act which requires that before an offender is prosecuted for the offence of terrorism, the prosecutor must have received written authorisation from the NDPP to proceed with the prosecution. The indirect, and perhaps unintended, implication of the decision of the NDPP in this matter is that it would serve as an indication of the prevailing political and societal attitude towards violent protests. If the NDPP refuses

[1] This contribution states the legal position and the prevailing state of affairs as at 12 February 2016. The contribution is also drawn from the ideas for law reform submitted by the author to the South African Law Reform Commission: Ismail Mahomed Essay Writing Competition.

the authorisation sought, that will, to a large extent, indicate a continued will to uphold the right to freedom of assembly. If the authorisation is granted, that will indicate a change in the political or societal attitude towards the right to protest. The change in the political attitude becomes a real possibility given the increasing number of violent protests and the nuisance they are to those in power.

The second development would follow in the event that the NDPP grants the authorisation sought and the matter proceeds to trial. Both the merits of the matter (the identification of the accused and their participation in the alleged violent activities, and whether their conduct satisfies the elements of the offence of terrorism) and the constitutionality of the anti-terrorism Act will most likely be challenged. Raising the constitutionality issue in particular would be advantageous as it would pave the way for obtaining a pronouncement by the Constitutional Court on the constitutional validity of the anti-terrorism Act. Such a pronouncement the would come at the most opportune time given the prevailing scourge of violent protests and the recent academic views to the effect that there is some doubt as to whether the anti-terrorism Act, in its present form, will pass the constitutional muster (see K Roach 'A comparison of South African and Canadian anti-terrorism legislation' (2005) 19(2) *South African Journal of Criminal Justice* 127-150 and A Cachalia 'Counter-terrorism and international cooperation against terrorism – an elusive goal: a South African perspective' (2010) 26(3) *South African Journal on Human Rights* 510-535).

Turning to the merits of this case, it suffices to mention that, as is the case in every criminal trial, the prosecution would bear the onus to prove beyond a reasonable doubt that the accused committed the alleged terrorist acts and are therefore guilty of terrorism. The offence of terrorism is provided for in s 2 of the anti-terrorism Act and it provides that "any person who engages in a terrorist activity is guilty of terrorism". The definition of the phrase "terrorist activity" in section 1 (1)(xxv) of the Act is couched in very broad terms, which can be broken down into three main elements; namely (1) acts constituting terrorism; (2) intention; and (3) the motive of the perpetrator (J Dugard *International law: a South African perspective* 4ed (2011) 166).

Regarding the first element (acts constituting terrorism), it suffices to state that, in accordance with s 1(1)(xxv)(a)(i); (iii); (iv); and (v) of the anti-terrorism Act, the violence committed by the accused during the march can be said to have threatened human life, physical integrity and general public safety, and substantial damage to property was committed. As a result, it seems that the first element should not be too difficult to establish.

Regarding the second element (intention), proving this element should also not be difficult because, as per s 1(1)(xxv(b)(iii) of the anti-terrorism Act, the violence can be said to have been "intended, or by its nature and context, can reasonably be regarded as being intended" to unduly compel the eThekwini Municipal Council (which is part of government structures) into action and release the impounded

minibus taxis. After all, the general understanding of what constitutes an act of terrorism is that the act in question must be intended to intimidate the civilian population or to compel a government or any organisation to act or not to act (Roach op cit 138). Furthermore, it is noteworthy that the inclusion of the phrase "reasonably be regarded as being intended…" significantly reduces the standard of fault required for purposes of the offence of terrorism. Therefore, the conduct of the protesters in the present case would most likely satisfy the intention element.

The last element (the motive of the perpetrator) is provided for in s 1(1)(xxv)(c) of the anti-terrorism Act and it requires proof of the perpetrators' political, ideological, philosophical or religious motive. This is undoubtedly the most problematic element as it entails a highly subjective inquiry which, realistically, can only be established satisfactorily if the perpetrators admit their motives (Roach op cit 138-139 & Cachalia op cit 519). Although the Act does not define what a political motive is, the motive of the perpetrators in the present case (i.e. to compel the Council to release of impounded minibus taxis) would most likely qualify as a political motive in the ordinary sense of the word. However, given the seriousness of the offence of terrorism, surely the determination of what constitutes a political motive must follow a strict interpretation of the word. Thus, on a strict interpretation, what would qualify as a sufficient political motive for purposes of the offence of terrorism are those conventional political ideologies (for example, the advancement of a communist or capitalist agenda, or the creation of an independent state for a particular race or religious group etc) which are pursued through conducting an armed struggle or inciting widespread violence and uprisings within the country. Therefore, political ideologies held by groups such as Boko Haram, Al-Qaeda, the Boeremag and others would fall squarely within the ambit of a political motive described above. This is certainly one other aspect of the case (in addition to the issue of the constitutionality of the anti-terrorism Act) that the courts would need to provide clarity on. As things stand, logic dictates that the interpretation of a political motive is dependent upon the attitude of the presiding officer. On the one hand, a presiding officer who is sensitive to the protection of the right to freedom of assembly would not hold the motive of the protesting taxi drivers to be sufficient for the offence of terrorism. On the other hand, a presiding officer who is frustrated by the prevalence of violence during protests and the accompanying destruction of property and violation of the rights of non-protesters would find this motive to be sufficient.

A further interesting dimension would be added to this case should it be found that all the elements of the offence are satisfied, and the accused are guilty of terrorism. Such a finding would mean that the language employed in the anti-terrorism Act to define what constitutes a "terrorist activity" is in conflict with the intention of the law-maker. The policy considerations underlying the enactment of the present anti-terrorism Act indicate that notwithstanding the broad definition of "terrorist activity", it was not the intention of the law-maker to include within the ambit of the definition those protests which, although violent, do not pose a significant threat to the security

of the state (see South African Law Commission (project 105) *Review of Security Legislation* (*terrorism: section 54 of the Internal Security Act 1982 (Act No. 74 of 1982*)) (2002). See also South African Law Commission Discussion Paper 92 (project 105) *Review of Security Legislation* (*terrorism: section 54 of the Internal Security Act 1982 (Act No. 74 of 1982*)) (2000)). This will require the court to make a finding as to whether the underlying intention of the law-maker supersedes the cardinal rule of construction that where the language of the enactment is clear and unambiguous, then effect must be given to it.

In conclusion, making a decision required of the NDPP in this case is undoubtedly a difficult task. However, silence is not a proper response either. Perhaps the sitting NDPP should draw courage from the fact that society at large would support the view that a noble decision in the circumstances would be to refuse to grant the authorisation sought. After all, despite the scourge of violent protests being a major concern, invoking the charge of terrorism would not be an apt response because it is excessively harsh and would lead to disproportionate penalties being imposed. Furthermore, the invocation of serious security crimes against protesters is even more undesirable in South Africa given its history of apartheid and the undue suppression of fundamental rights of individuals, particularly the right to freedom of assembly. However, the proposed discontinuance of the terrorism charges in the present case does not mean that parliament cannot be proactive and effect the necessary amendments to address the issues that this case would have raised.

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Matters of Interest to Magistrates

Media Statement by the South African Law Reform Commission concerning its Release of Issue Paper 31 on Family Dispute Resolution: Care of and Contact with Children

The South African Reform Commission (SALRC) hereby releases Issue Paper 31 on Project 100D, for the general information and comment. The project involves the development of an integrated approach to resolving family law disputes. The specific focus is on disputes relating to the care of the contact with children after the relationship breakdown of the parents. The chairperson of the investigation is Judge Deon Van Zyl and the project leader is Advocate Mahlape Sello, a SALRC Commissioner.

Although South Africa has a no-fault divorce law, divorce proceedings still occur – in increasing numbers – in the various courts. Such proceedings follow the mostly adversarial court procedures.

Until recently, there was widespread acceptance that the courts were best suited to decide questions of custodial rights and access to children, and to decide family disputes in general. In recent years this assumption has been questioned.

Long court battles often cause harm to children and their relationships with their parents. Cases that are especially problematic are those where there are claims of violence or abuse, cases that have care and contact or care and protection issues, and cases that involve voluminous files of recurring litigation. The position of children living in rural areas also needs to be considered.

South Africa's unstructured, dual and fragmented family court system can be confusing and burdensome to users. It is also expensive to run, and fails to satisfy many people. The limitations associated with adversarial litigation are thus firmly acknowledged. The need has been identified to assist families with procedural issues arising out of separation, divorce, and child welfare. Mediation seems to have become a preferred procedure as an effective dispute resolution mechanism Issue Paper 31 examines cost-effective, accessible, efficient and integrated processes that would help to address family law disputes, both in and outside the court system, and from both a private and public family law perspective. Attention is drawn in this regard to case flow management, the optimal use of various dispute resolution processes (mediation, arbitration, facilitation), and the importance of parenting

information and education. In addition, appropriate structures to accommodate the above processes are discussed. The issue paper refers in this regard to the courts, their jurisdiction and capacity to deal with civil disputes, the problems encountered by the Office of the Family Advocate, and the position of traditional courts and informal community involvement. Finally, policy issues that have been raised since the implementation of the Children's Act are also discussed in the issue paper. They are as follows:

- The importance of hearing the child's voice when resolving both private and public family law disputes;

- The development of a fair system for relocation of families, and the impact of such a system on cases that involve the abduction of children;

- Ideas on how adult dependent children should be dealt with;

- The position of unmarried fathers now that the Natural Fathers of Children Born Out of Wedlock Act has been replaced by sections in the Children's Act;

- The impact of domestic violence or sexual abuse on the resolution of family law disputes;

- Professional (expert) reports; and

- Child-headed households.

The ultimate object of this investigation is to ensure access to justice for the most vulnerable people in our society, namely children. A unified family judicial system is needed, one that is both more efficient at resolving family disputes and more likely to serve therapeutic justice. The three therapeutic justice processes should empower families through skills development, and should assist families to resolve their own disputes. It should also provide access to appropriate services, and offer a variety of dispute resolution forums within a unified system, so that the family can resolve its problems without additional emotional trauma. The challenge for the future does not seem to require a choice between alternative dispute resolution and litigation, but a plan to integrate these two approaches. Parties should have the freedom to tailor the procedure they follow to meet the needs of their particular dispute. The purpose of Issue Paper 31 is to stimulate debate, seek proposals for reform, and serve as a basis for further deliberation. Respondents are requested to submit their written comments, representations, or requests to the Commission by 30 June 2016 at the following address:

The Secretary South African Law Reform Commission

Private Bag X668

Pretoria 0001 Tel (012) 622 6348 (Ananda Louw) Email: analouw@justice.gov.za

Issue paper 31 is available on the internet at the following site: http://www.justice.gov.za/salrc/.

A Last Thought

"[38] In the context of s 165 of the Constitution of South Africa, the Constitutional Court has also confirmed that principles of the rule of law are indispensable cornerstones of our constitutional democracy. See *Justice Alliance of South Africa v President of the Republic of South Africa and Others* 2011 (5) SA 388 (CC) (2011 (10) BCLR 1017; [2011] ZACC 23) Para 40. The emphasis must be on 'indispensable'. Where the rule of law is undermined by government it is often done gradually and surreptitiously. Where this occurs in court proceedings, the court must fearlessly address this through its judgments, and not hesitate to keep the executive within the law, failing which it would not have complied with its constitutional obligations to administer justice to all persons alike without fear, favour or prejudice."

As per the full court in ***Southern Africa Litigation Centre v Minister of Justice and Constitutional Development and others 2016 (1) SACR 161 (GP)***