CASE MANAGEMENT
IN THE CONTEXT OF IDENTIFYING AND REFORMING
UNDUE DELAY IN
SOUTH AFRICAN CIVIL PROCEDURAL LAW

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by

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SUMMARY

A reform viability test of Van Heerden is utilised to assess the viability of implementing case management to address perceived delay experienced in the South African civil procedural regime. The reform viability test holds that in order for any attempt at reform to be successful, a reform-ethos, being the ideal to which reforms strives, must be identified and said identified reform-ethos must be in line with the reform-need experience by a civil procedural regime. The three elements of the reform viability test of: (i) the reform-need (demarcated in this study to the need to address delay); (ii) the reform-ethos (identified herein as the implicit constitutional right to access to justice) and (iii) the reform options to address delay (the options explored herein being judicial resource approach, delay reductive innovations and case management) are evaluated. The last-mentioned option is investigated with reference to examples of both comprehensive case management regimes (as are evident in English civil procedure and the Federal Court of Australia) and selective case management regimes (as are evident in certain Australian states and territories). The conclusion is reached that, in the correct application of the reform viability test, without a properly identified reform-need it is impossible to postulate either a specified reform-ethos or sensibly assess the viability of any reform option.

OPSOMMING

Die hervormingstoets van Van Heerden word toegepas om die lewensvatbaarheid van die implementering van saakbestuur ten einde vertraging in die Suid-Afrikaanse Siviele Prosesregstelsel aan te spreek te evalueer. Die hervormingstoets hou in dat ten einde enige sinvolle regshervorming te laat geskied die hervormingsetos, synde die ideale wat nagestreef word met die hervormingspoging, geïdentifiseer moet word en dat die geïdentifiseerde hervormingsetos die hervormingsbehoeftes van ’n spesifieke regstelsel akkuraat moet weerspieël en aanspreek. Die drie elemente van hierdie toets word in hierdie studie ondersoek, synde: (i) die hervormingsbehoefte (beperk vir doeleindes van hierdie studie tot slegs die aanspreek van vertraging); (ii) die hervormingsetos (geïdentifiseer hierin as die geïmpliseerde Grondwetlike reg van toegang tot geregtigheid); en (iii) die hervormingsopsies om vertraging aan te spreek (die opsies hierin ondersoek is die regterlike hulpbron benadering, vertragingbeperkende innovasies en saakbestuur). Laasgenoemde word bespreek met verwysing na beide omvattende saakbestuursmodelle (soos teenwoordig in die Engelse siviele prosesregstelsel en die Federale Hof van Australië) sowel as selektiewe saakbestuursmodelle (soos teenwoordig in verskeie Australiese gebiede en state). Die gevolgtrekking word bereik dat, in die korrekte toepassing van die hervormingstoets, sonder ’n korrek geïdentifiseerde hervormingsbehoefte is dit onmoontlik om óf ’n hervormingsetos daar te stel óf die lewensvatbaarheid van enige hervormingsopsie sinvol te oorweeg.

TABLE OF CONTENTS

CHAPTER 1

INTRODUCTION

Hurter states that "the primary by-product of the vast changes that modern societies face is an increase in litigation".[1] This is possibly the main cause of problems experienced in South African civil litigation,[2] cited by the South African Law Commission to be excessive delay, high costs, and procedural complexity.[3] Adversarial civil procedural regimes world-wide are continually reforming as a result of increasing demands for litigation,[4] with most attempts at reform in adversarial systems aiming to achieve the greater goal of access to justice.[5]

South African civil procedure should likewise consider reform. Van Heerden, however, aptly states that reform for the sake of reform will not satisfy.[6] Van Heerden goes further to state that in order for any attempt at reform to be successful, a reform-ethos,[7] being the ideal towards which reform strives, must be identified, and same must further be in line with the reform-need,[8] or the aspect sought to be addressed with reform, of a specific civil procedural system.[9]

The concept of case management is internationally implemented to address the problems modern civil procedural regimes face. Although there is not presently a uniform case management model in place in South African civil procedure, South African jurisprudence is amenable to the concept.[10]

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1 Hurter "*Seeking Truth or Seeking Justice"* TSAR 2007(2):242–43.
2 *Ibid.*
3 South African Law Commission Report "*Project 94; Issue Paper 8*" 15 at par 2.9.
4 Van Heerden "*Voorbereiding vir Verhoor ter Verwesentliking van die Waarborg van 'n Billike Siviele Verhoor"* 4.
5 Van Heerden *supra* 11.
6 Van Heerden *supra* 24.
7 "Regshervormingsetos".
8 "Regshoervormingbehoeftes".
9 "Die etos verteenwoordig die ideale wat nagestreef word met die hervormingspoging en behoort dus die sentrale oorwegings, soos hierbo uiteengesit en aangepas by die behoeftes van die betrokke regstelsel, te omvat." Van Heerden *supra* 23.
10 Van Heerden *supra* 319.

In line herewith, and in considering the threefold problems which are said to face South African civil procedure, this study is aimed at and demarcated to assess only the manner in which reform to adopt case management could address delay.

In considering the viability of the proposed reform of case management, same would therefore imply that an assessment be conducted in terms of which: (i) the reform-need sought to be addressed must be evaluated; (ii) the reform-ethos must be identified and evaluated; and only thereafter (iii) the viability of the reform option, in light of the above, can be considered.

In relation to the first step in assessment, Chapter 2 of this study will discuss the reform-need to be addressed, being addressing delay. The concept of delay with reference to undue delay or excessive delay will be defined and causes of delay explored. Further, delay specifically in South African civil procedure will be assessed with the assistance of results of a micro-study of the Gauteng Division of the High Court of South Africa (Pretoria),[11] as an illustration as to the manner in which statistical analyses can identify the nature and causes of delay.

In the second step of the analysis, Chapter 3 of this study is aimed at the identification and evaluation of a reform-ethos in the context of a reform-need of delay. The impact of delay on litigants and the possibilities to address delay will be discussed, in concluding that the reform-ethos of access to justice must be established.[12]

In the last chapters of this study, the reform options to address delay will be investigated. In Chapter 4 two options, those of judicial resource approach and delay reductive measures, as alternatives to case management to address delay, will be discussed. In Chapter 5 the reform option of case management will be investigated

11 Hereinafter referred to as “the Gauteng Division, Pretoria”.
12 Section 34 Constitution of the Republic of South Africa, 1996.

with reference to examples of both comprehensive case management regimes (as are evident in the English civil procedure and the Federal Court of Australia) and selective case management regimes (as is evident in certain Australian states and territories).[13]

In Chapter 6, the reform viability test is applied to the three abovementioned reform options and recommendation are made, regarding the necessity and manner in which reform in South African civil procedure should be approached.

13 The commonwealth jurisdictions focused on within the demarcation of this study are the English civil procedure and Australian civil procedure. The choice of jurisdictions was mainly governed by, first, the fact that South African civil procedure has its historical roots in English civil procedure. Secondly, jurisdictions with a similar character (an adversarial system) were studied in order to investigate applicability thereof in South African civil procedure. Case management has, however, already taken root in various other civil jurisdictions not discussed herein.

CHAPTER 2

REFORM-NEED: DELAY IN SOUTH AFRICAN CIVIL PROCEDURE

2.1 Introduction

As set out in Chapter 1 above, the first step in the assessment of the viability of adopting case management is the evaluation of the reform-need. In line with the demarcation of this study, the necessity to address perceived delay in South African civil procedure is identified as the reform-need sought to be addressed by any reform option implemented. In order to evaluate addressing delay as the identified reform-need, the nature and causes of delay will be discussed and thereafter specifically the delay in South African civil procedure will be analysed and contextualised.

2.2 The Concept of Delay

Van Rhee views there to be an everlasting presence of delay in civil procedure.[14] This, he rationalises, is due to the fact that there will always be a period of time which lapse between the initial institution of the case and obtaining final judgment therein.[15] Delay becomes problematic once it manifests as "undue delay", and what is viewed to be undue delay will differ from the one jurisdiction to the next and from one period to the next.[16] 'Undue delay' is defined to be brought about:[17]

> "…when it is felt that too much time has elapsed between the filing of the action and its ultimate decision by the court. Although it is difficult to establish which amount of time can be classified as 'too much time'…"

The definition is phrased in a subjective manner, as almost to allow any civil jurisdiction to decide for itself whether the delay present is in fact undue delay. Erasmus states that the measurement of delay should take place "from the time of

14 Van Rhee "*The Law's delay: Introduction"* (Van Rhee ed 1).
15 *Ibid.*
16 *Ibid.*
17 *Ibid.*

filing to the time of disposition", whether disposition takes place by way of trial or settlement.[18]

2.3 Causes of Delay

Van Rhee states that delay is caused by, *inter alia*, (i) the "actors involved in civil litigation" and (ii) "procedural causes".[19]

The actors are identified to be the lawyers and judges involved in the litigation process. Erasmus, in this regard, refers to a "local legal culture" to explain that the inclination, expectation, informal practices and general attitudes of both practitioners and judges in their approach towards laxity of process contribute greatly towards either addressing or exacerbating the problem of delay.[20] A third actor which can be identified, which contributes to delay in some instances, is the litigant itself. In this regard, the Road Accident Fund's laxity in properly attending to claims which are lodged is a prevalent factor which contributes to delay. This problem is succinctly addressed by Bertelsmann J as follows:

> "The court system is overcrowded, not least because hundreds of matters that should never have been allowed by the Fund to proceed to litigation are placed on the court roll, only to be settled…."[21]

> "The full extent of this rather desperate state of affairs is best illustrated by some figures. During the first term of 2015, 5 895 (five thousand eight hundred and ninety five) civil matters were enrolled on this Court's civil trial roll. The vast majority of these cases, more than 90%, were RAF matters. In 3 032 (three thousand and thirty-two) matters the parties arrived at the call of the roll with draft settlement agreements, or entered into settlements on that

18 Erasmus "*Civil Procedural Reform – Modern Trends"* STELL LR 1999(1):9.
19 The other category of delay causing factors are identified to be external factors (such as changes in political and economic systems). Van Rhee *supra* 6–9.
20 Erasmus "*Civil Procedural Reform" supra* 10 with reference to the research conducted by Church on delay in civil litigation in the United States of America.
21 *Ketsekele v Road Accident Fund* [2015] JOL 31927 (GP) at par 38. Bertelsmann J further sets out an exposition of the estimated costs of Road Accident Fund litigation in the Gauteng Division of the High Court (Pretoria), being between R110 million and R150 million in one court term of the Gauteng Division of the High Court (Pretoria), at par 40.

> morning that were duly made orders of court. Many settlements, probably the majority, would relate to the merits only, which would mean that these matters would reappear on the roll in future, to be dealt with in similar fashion. There is only one reason that the roll is swamped in this fashion: The failure of the Fund to investigate claims, timeously or at all."[22]

According to Van Rhee, the quality of the judicial infrastructure and consequently the efficiency whereby cases can be finalised, is largely dependent upon governmental resources spent upon the judiciary.[23] Furthermore, and probably consequential hereto, the quality of court staff and the possibility of outsourcing tasks from judges to court officials also play an important role in the curbing of delay.[24]

Regarding procedural causes, there is a great cry of complaint against procedural aspects which centres around the nature of the adversarial system. The characteristics of the adversarial system of party control, party prosecution and party autonomy,[25] are deemed to cause long delay with "depressing consistency".[26] Hurter states that "it is simplistic to place the blame … solely at the door of the adversarial system".[27] The approach of De Vos is more correct when he states that the operational method of the legal representatives within an adversarial system and their abuse of the procedural rules are the cause of the problems,[28] not the adversarial system itself. Ipp refers to an "alarming culture" prevalent in litigants in an adversarial system which "dictates that those afflicted by it" prolongs every aspect of

22 *Ketsekele v Road Accident Fund* [2015] JOL 31927 (GP) at par 40. See also further statistical analysis of trial roll pertaining to delay in 2.4 below.
23 Van Rhee *supra* 8.
24 Van Rhee *supra* 8-9.
25 Hurter *supra* 242-243.
26 Erasmus "*Civil Procedural Reform" supra* 13. Hurter states that the adversarial system is accused of being not only the cause of delay but also the cause of the complexity of the system; the high cost of litigation and that the system do not afford proper access to justice. Hurter *supra* 248.
27 Hurter *supra* 249.
28 De Vos states that "They [legal representatives] can decide amongst themselves to extend the time limits to suit their own needs and not necessarily those of their client." and "[legal representatives are so] overzealous in their endeavour to win there is little to restrain them." De Vos "*The Law's delay: Delay in South African civil procedure"* (Van Rhee ed) 337.

litigation to the minutest detail.[29] De Vos further states that "the conduct of this nature does occur frequently enough to warrant our concern".[30]

It can therefore be stated that the procedural factors of delay which are thought to be caused by the adversarial system are rather an exhibition of delay caused by an alarming legal culture.

2.4 An Illustration of Delay in South African Civil Procedure: Micro-study on the Gauteng Division of the High Court (Pretoria)[31]

Pertaining specifically to South African civil litigation, it seems to be accepted that delay is present in civil proceedings.[32] Little concern is given to whether same is or should be classified as undue delay; consequently, whether same is problematic and what the cause thereof is, seems to be irrelevant. This can be due to the fact that little to no empirical data exists from which to extrapolate principles or draw conclusions regarding time spent from filing of an action to finalisation thereof. The lack of empirical data in this regard not only hampers any possible identification of problem areas to be addressed; it also diminishes the prospective success of any possible reform which is envisioned to address delay, as any attempt to address the issue of delay will be based merely on "impressions and anecdotes".[33] The only manner in which this problem can be addressed is to obtain current and in-depth

29 Ipp explains that this "alarming culture" entail that: "…there is no such thing as a case which is too costly, that no issue is too small to be explored at excruciating length, that no number of questions too many, that no speech is too long and that concessions or admissions must practically never be made…" Erasmus "*Civil Procedural Reform" supra* 14. Price stated that: "The tedious, cumbersome process that the present court rules require provides ample room for evasiveness and scope for relying on technicalities, and the party whose case is doubtful can, and does use them if he or she has the financial means." Price "*Civil Court Rules – Open to Abuse?"* http://www.saflii.org/za/journals/DEREBUS/2013/148.

30 De Vos *supra* (Van Rhee ed) 338.

31 Hereinafter referred to as the Gauteng Division (Pretoria).

32 De Vos *supra* (Van Rhee ed) 337 and SALC Report *supra* 15 at par 2.9.

33 This approach is warned against by Erasmus: "Perhaps the principal characteristic of the twentieth century movement for procedural reform is the realisation that improving civil justice systems requires wide-ranging and penetrating research on every aspect of the civil process…*while there is much debate in the civil justice area, this debate is not based on factual information but rather on impressions and anecdotes.'*…". Erasmus "*Civil Procedural Reform" supra* 6–7.

statistical analysis of the manner in which cases are dealt with and finalised in South African courts.

To illustrate the manner in which statistical analysis would assist in answering both the question as to whether South African civil procedural delay is undue and what the cause thereof is, an empirical study was conducted. This entailed a three-tiered analysis of specifically matters appearing on the trial roll on the Gauteng Division (Pretoria).[34] It is suggested that the data can serve as an illustrative starting point for further discussion.

2.4.1 Year Analysis

The initial analysis reflects data in relation to trial matters of three terms of the 2014 year. The data obtained chiefly focuses on the various manners in which the actions were disposed of or dealt with on the particular day the actions were enrolled for trial, as follows:

34 Same in all probability does not equate to all courts in South Africa, especially Magistrate's Courts, nor perhaps to other divisions of the High Court.

TABLE 1: Year analysis[35]

	No. of cases[36]	Total no. of drafts	Allocations	Removals	Postponements	Struck off	Stand down to next day	Removals for settlement
TERM 1[37]	3900	2065	222	1005	140	258	58	152
TERM 2[38]	3704	2122	201	844	91	120	100	226
TERM 3[39]	3867	2210	223	853	73	175	87	246
TOTAL	**11 471**	**6397**	**646**	**2702**	**304**	**553**	**245**	**624**
% OF TOTAL	**-**	**55,77%**	**5,63%**	**23,56%**	**2,65%**	**4,82%**	**2,14%**	**5,44%**

From the above, it is evident that 61,4%[40] of matters which appeared on the trial roll were finally disposed of on the trial date, whereas 38,6%[41] thereof could not be disposed of on the trial date and had to be re-enrolled at a later stage. 90,82% of these matters were disposed of without court intervention, while a mere 9,18% of matters required court adjudication.

The year analysis, as an illustrative exercise, does not answer two vital questions: (i) what is the time period spent awaiting a trial date and can same be said to be equivalent to undue delay; and (ii) can a party to proceedings (either a type or category of litigant or the court) be blamed for undue delay, if any? The latter question is especially important, as delay cannot be sufficiently addressed if the cause thereof is uncertain. Further analysis was therefore required.

35 Empirical data obtained and table compiled by staff of the Deputy Judge President (hereinafter "the DJP") of the Gauteng Division (Pretoria). Statistics are compiled on instruction from the Department of Justice and Constitutional Development. Data analysed by writer.
36 Amount reflects the total of the categorised amounts indicated in the remainder of the table. The amount indicated in this column in provided data does not concur with these amounts. Provided data indicates these amounts as follows: for Term 1: 4265; Term 2: 4066 and Term 3: 4112. Due to uncertainty as to the manner wherein these totals are categorised, same cannot be utilised for statistical purposes.
37 The analysed data provided here, source data for Table 1: Term 1 at Annexure A.
38 The analysed data provided here, source data for Table 1: Term 2 at Annexure B.
39 The analysed data provided here, source data for Table 1: Term 3 at Annexure C.
40 Amount calculated by adding "Total no. of Drafts" and "Allocations" from Table 1. This statement is, however, made on the assumption that the "Total no. of Drafts" column correctly relates to Draft orders in term whereof matters are settled.
41 Amount calculated by adding total of the remainder of the categories in Table 1.

2.4.2 Term Analysis

The second level of empirical research entailed a further in-depth analysis of specifically the second term of the Gauteng Division (Pretoria). This was done by conducting an analysis of the bench-annotated roll, reflecting how each matter which appeared on the trial roll for a specific date was disposed of.

This analysis was conducted with the object of obtaining data which indicate the following: (i) the categorical type of cases which appear on the trial roll (matters were categorised according to the parties to the litigation)[42] in order to ascertain whether there is a trend in litigation style and adherence to procedural rules which can be identified in any of the categories; thereafter, (ii) the manner in which an action was disposed of (categorised in accordance with whether a matter was disposed of with or without court intervention and matters not yet disposed of); and (iii) the maturity of the case at the time same appeared on the trial roll (annotated according to the case number of the specific actions, which reflects the year of the institution of the action). The data obtained is reflected as follows:

42 The categories being: (i) actions instituted against the Road Accident Fund; (ii) actions instituted by or against Institutions in the Financial Sector (such as Banks); (iii) actions instituted against the Minister of Safety and Security (chiefly same would entail actions based on unlawful arrest) and (iv) other actions, to which the remainder of actions were allocated.

TABLE 2: Term analysis [43]

TOTAL TERM 2	ON ROLL	RESULT			TIME				
		A	B	C	2013	2012	2011	2010	2009+
ROAD ACCIDENT FUND	3 044	145	1 964	935	432	1 420	665	313	214
FINANCIAL SECTOR	48	11	20	17	0	17	17	9	5
MINISTER OF S & S	105	29	26	50	10	61	15	6	13
OTHER	608	67	132	409	29	253	164	83	79
TOTAL:	**3 805**	**252**	**2 142**	**1 411**	**471**	**1 751**	**861**	**411**	**311**
% OF TOTAL:	**-**	**6,62%**	**56,29%**	**37,08%**	**12,38%**	**46,02%**	**22,63%**	**10,80%**	**8,17%**

KEY: A = ALLOCATED FOR HEARING (MATTERS DISPOSED OF WITH COURT INTERVENTION)
B = SETTLED WITHOUT ALLOCATION / WITHDRAWN (MATTERS DISPOSED OF WITHOUT COURT INTERVENTION)
C = POSTPONED FOR TRIAL / REMOVED (MATTERS NOT YET DISPOSED OF)

From the term analysis set out in Table 2, the category-specific analysis of the matters which appeared on the trial roll is set out as follows:

Table 3: Term analysis – category-specific percentages[44]

	% OF CASES ON TERM ROLL	RESULT			TIME				
		A	B	C	2013	2012	2011	2010	2009+
ROAD ACCIDENT FUND	**80,00%**	4,76%	64,52%	30,72%	14,19%	46,65%	21,85%	10,28%	7,03%
FINANCIAL SECTOR	**1,26%**	22,92%	43,75%	35,42%	0%	35,42%	35,42%	18,75%	10,42%
MINISTER OF S & S	**2,76%**	27,62%	26,67%	47,62%	9,52%	58,10%	14,29%	5,71%	12,38%
OTHER	**15,98%**	11,36%	27,63%	69,32%	4,75%	41,61%	26,97%	13,68%	12,99%

KEY: A = ALLOCATED FOR HEARING (MATTERS DISPOSED OF WITH COURT INTERVENTION)
B = SETTLED WITHOUT ALLOCATION / WITHDRAWN (MATTERS DISPOSED OF WITHOUT COURT INTERVENTION)
C = POSTPONED / REMOVED / STOOD DOWN (MATTERS NOT YET DISPOSED OF)

43 Empirical data obtained; table compiled and data analysed by writer. Analysed data provided here, source data for Table 2 at Annexure D.
44 Source data contained in Table 2.

The most prevalent conclusions which can be drawn from this analysis are that matters instituted against the Road Accident Fund dominate the trial roll of the Gauteng Division (Pretoria) and constitute 80% of matters which appeared on the trial roll. Of those matters, 64,52% were disposed of without court intervention, with a mere 4,76% requiring adjudication on the date allocated for trial.

In the other categories, Financial Sector matters are mainly disposed of without court intervention (43,75%), and the bulk of matters instituted against the Minister of Safety and Security are not disposed of on the trial date (47,62%). Interestingly, in the category "other actions", in which everyday litigants are involved, one would have expected a sense of urgency to finalise the process on both sides. However, a stellar 69,32% of these cases were not disposed of on the date allocated for trial.

Finally, 46,65%, which appeared on the 2014 term 2 trial roll comprised of actions already instituted in 2012, which indicates an average two-year period from institution of the action to disposal thereof. It should be noted that 41.6%[45] of cases indicate a time lapse of between 3 and 5 years from institution of the action to possible finalisation thereof.

2.4.3 Case Analysis

In order to attempt to illustrate the manner in which specifically the cause of delay can be identified, a case-specific analysis of cases which were disposed of with court intervention (cases which were allocated for adjudication) on the trial roll of the second term of the Gauteng Division (Pretoria) was undertaken.

To this effect, data was gathered from case files with the specific object of identifying possible delay in either the time lapse between: on the one hand, the institution of the action and close of pleadings and on the other hand, a time lapse between the

45 Amount calculated by adding the 2011; 2010 and 2009 case number totals.

application for a trial date and the date allocated. Should the lapse of time be more prevalent in the former, it would be indicative thereof that the parties themselves or their legal representatives are the cause of delay. Should the time lapse occur during the latter time portion, it could be indicative of court-based delay.

A total of 21 cases were analysed,[46] which represents 10% of allocated cases in each category as set out above. First, data was gathered as to dates which upon which specific procedural steps were taken,[47] same was processed into a month analysis of time lapse and from the data so gather the following percentage analysis was made: [48]

TABLE 4: Case analysis

	TIME PERIOD A	TIME PERIOD B	TIME PERIOD C	TIME PERIOD D
1–3 MONTHS	11 = **55%**	4 = **33.3%**	1 = 7.6%	–
3–6 MONTHS	6 = 30%	2 = 16.6%	1 = 7.6%	–
6–9 MONTHS	2 = 10 %	4 = **33.3%**	5 = **38.4%**	1 = 7.6%
9–12 MONTHS	–	1 = 8.3%	3 = 23%	3 = 23%
12+ MONTHS	1 = 5%	1 = 8.3%	3 = 23%	9 = **69.2%**
TOTALS:	**20**	**12**	**13**	**13**

KEY: TIME PERIOD A= TIME LAPSE SUMMONS TO CLOSE OF PLEADINGS (MONTHS)
TIME PERIOD B= TIME LAPSE CLOSE OF PLEADINGS TO ENROLMENT (MONTHS)
TIME PERIOD C= TIME PERIOD "A" AND "B" COMBINED (MONTHS)
TIME PERIOD D= TIME LAPSE ENROLMENT TO TRIAL DATE (MONTHS)

From the data analysis, it is clear that the portion of the proceedings prior to the application for a trial date takes on average at least six months. Thereafter, 69% of cases are allocated for hearing dates more than 12 months after enrolment has been applied for. This is evident of court-based delay.

46 Approximately twice this number of court files were drawn. However, the information from all the files could not be utilised owing to various reasons such as files which were missing; and files containing incorrect documentation, incomplete documentation, or no documentation.
47 The procedural steps referred to are: the issue of the summons; the service of the summons; date upon which an intention to defend is entered; close of pleadings; enrolment for trial; and the trial date allocated. The data gathered in this format set out at Annexure E, Date analysis table.
48 Source data for Table 4 set out at Annexure E.

2.5 Conclusion

There will always be a presence of delay in civil litigation and what should be defined as undue delay is subjective to each separate civil procedural regime. Primarily, two forms of delay-inducing factors can be identified, which can be categorised as either "party-induced delay" or "court-induced" delay. Complaints of delay aimed at procedural causes are rather another illustration of delay caused by the actors in the litigation process.

By way of illustration as to the manner in which a statistical analysis of cases can assist in the identification of both undue delay and the cause of said delay, if any, a micro-study was conducted. The following is evident from the analysis of the data obtained in the micro-study: (i) the bulk of matters are disposed of on the date allocated for trial, without court intervention; (ii) litigation trends can be identified in the categorisation of litigants; (iii) there is an average waiting period of two years, from institution of action, to an allocated date of trial; and (iv) more than 12 months expire between an application for trial date and the date allocated in contradiction to the period of only six months between the issuing of summons and the application for a trial date. [49]

Prior to implementing reform of any nature, the reform-need must be properly identified. In relation to specifically the reform-need of delay, it must not merely be assumed to be present but assessed on both a theoretical and practical level in order to ensure the viability of any reform instituted to address same. The only certain conclusion which can be drawn is that South African civil procedure is in great need of comprehensive current and in-depth statistical analysis, in order for reform to be effectively implemented.[50]

49 It is conceded that the lack of empirical data and the fact that the information obtained in the micro-study does not assist in understanding the nuances of each specific case may provide a contorted view of the presence of delay in South African civil procedure.

50 Erasmus states that: "We have no figures which would enable us to draw the distinction between so-called 'lawyer induced delay' and 'court induced delay'. We do not even know what the real cost of litigation is in this country." Erasmus "*Civil Procedural Reform" supra* 18.

CHAPTER 3

REFORM-ETHOS: ACCESS TO JUSTICE

3.1 Introduction

The second step in the analysis of assessing the viability of case management as a reform option will be to assess what the ideals are which is sought to be achieved by the implementation thereof. Within the demarcation of this study, same will imply the reduction of undue delay. Scott warns that it should be borne in mind that "the link between disputes and the process of resolving them is not mechanical; [i]t is dynamic."[51] By these words Scott implies that any alteration to the process of litigation will effect litigation itself. Prior to accepting that a reform-need has been identified and therefore reform must automatically follow it is important to assess not only the necessity of the implementation of reform but also the ideals sought to be achieved by same. In relation to the reform-need of addressing delay, the impact of delay and the reform-ethos to be implemented will be discussed.

3.2 Why Should Delay be Addressed?

Andrews, referring to Damaska, states that at the heart of the adversarial system lies a liberal political theory which implies that "it is not for the state to engage in coercive paternalism but instead to facilitate private endeavour…".[52] In the realm of litigation, in the classic adversarial structure, courts must therefore facilitate the litigious desires of its citizens, irrespective of how long the process may take and cannot control the amount of cases received or the speed with which cases are finalised.

In juxtaposition hereto, according to the South African Law Commission, "[a] congested court which cannot decide matters expeditiously is an inaccessible

51 Scott "*Reform in Civil Procedure –Essays on 'Access to Justice': Case Flow Management in the Trial Court"* (Zuckermann et al eds) 29.
52 Andrews "*Reform in Civil Procedure*: *The Adversarial Principle - Fairness and Efficiency"* (Zuckermann et al eds) 178.

court".[53] This is of specific importance as South Africa has a Constitutional dispensation where "[e]veryone has the [constitutionally entrenched] right to have any dispute…decided in a fair public hearing before a court…".[54]

Undue delay in litigation is said to infringe on a proposed litigant's access to justice entitlement on a two-fold basis: (i) delay implicitly prolong the granting of any relief; and (ii) delay cause the costs of litigation to increase.[55]

Pertaining to the former, Andrews states that there are harmful consequences of undue delay for the litigants.[56] Claimants "are kept out of their money or their rights are left to fester unvindicated". On the other hand, the case hangs over the head of the defendant like a sword.[57] Andrews further states that delay often causes weaker litigants to accept unfair settlements, it therefore serves as a disincentive to litigate.[58] According to Van Heerden, the time component of any litigation is of great importance as undue delay will impact on a litigant's access to justice in line with the "justice delayed is justice denied principle".[59]

The time component of litigation is, according to Van Heerden, intertwined with the costs of litigation as, where undue delay is freely practised, same will per implication cause the cost of litigation to increase.[60] This cost escalation, it is reasoned,

53 De Vos *supra* (Van Rhee ed) 338 with reference to the *Fifth and Final Report* of the Commission of Inquiry into the Structure and Functioning of Courts under chairmanship of Mr Justice Hoexter, 1983 Part A 165.
54 Constitution of the Republic of South Africa, Section 34.
55 Van Heerden *supra* 16. This principle was accepted in *Bellocchio Trust Trustees v Engelbrecht NO and Another* 2002 (3) SA 519 (C) at 523G-H where, with reference to review proceedings it was stated that: "The Constitution envisages that litigation should be finalised speedily and without undue delay. This, after all, is in the interests of justice, which the Constitution itself seeks to promote.
56 Andrews "*English Civil Procedure"* 378 at par 15.09-15.10.
57 *Ibid.*
58 Andrews "*English Civil Procedure"* 379 at par 15.12-15.14.
59 Van Heerden *supra* 17. Ipp states that: "A crowded judicial system and overly lengthy litigation can effectively deny citizens their right to access to courts". Ipp "*Case Management"* Consultus 1997 (May) 38.
60 Van Heerden *supra* 17.

consequentially places litigation beyond the reach of the ordinary citizen,[61] and will also infringe on a proposed litigant's access to justice entitlement.

3.3 The Reform-Ethos

The broad reform-ethos for purposes hereof would be the delay-reduction in order to ensure the promotion of access to justice. Although South African civil procedure is already alive to this reform-ethos,[62] Van Heerden states that there is no declared general reform-ethos in South African civil procedure. As in the instance of assessing the nature of reform, no concern is given to the formulation of a reform-ethos in terms of which present and future reform endeavours can be undertaken[63] resulting *inter alia* therein that reform in South African civil procedure is approached on a piecemeal basis.[64] In formulation of the reform-ethos it must further be considered to which extent the classic adversarial nature of South African civil procedure should be altered, if at all, to attain these goals. It is further warned, in line with Scott's view that the process and substance is intricately linked,[65] that in the formulation of such a general reform-ethos regards must be had to not only the aim to attain procedural justice but also substantive justice.[66]

3.4 Conclusion

Undue delay impacts on the constitutionally-entrenched right to access courts, as same will imply that the granting of relief is prolonged and costs of litigation increased which makes courts inaccessible. Same would negate the apathetic approach that everyone will be helped eventually and reform options to address the problem must be assessed. In assessing same, the broad reform-ethos would imply a holistic goal of promoting access to justice. In specific formulation of such a reform-ethos, sight must not be lost of that substantive justice and reform to reduce delay should not detrimentally affect substantive justice.

61 SALC Report *supra* 15 at par 2.9. Van Heerden *supra* 26.
62 *Ibid.*
63 Van Heerden *supra* 26.
64 Van Heerden *supra* 7.
65 Scott *supra* 29.
66 Van Heerden *supra* 26.

CHAPTER 4

REFORM OPTIONS

4.1 Introduction

The third step in the process of assessing the viability of case management as a reform option is not only to explore the concept of case management, as will be done in the chapter to follow, but also to consider which alternatives there are to the implementation of case management, in order to consequentially consider the eventual viability of the implementation of reform to address delay.

4.2 Methods by means of which to Address Delay

4.2.1 Judicial Resource Approach

Andrews, with reference to Hazard, suggests that there are two methods in which to address delay: (i) to increase the availability of judicial resources; and/or (ii) to decrease the demand for litigation, by reducing either the number of cases received or the amount of adjudicative time spent on each case.[67]

Regarding the former, Erasmus states that the efficiency with which a court finalises matters cannot always be equated to the workload of that court, and he therefore views the appointment of additional court staff and presiding officers as not necessarily being a sufficient manner to address the issue of delay.[68] Erasmus further states that, if there is an unhealthy legal culture, the problem would not necessarily be solved by the appointment of additional Judges or by re-writing the

67 Andrews "*English Civil Procedure" supra* 378 at par 15.09-15.10. Andrews further suggest the following methods in which to reduce delay: (i) stronger administrative control (this only relates to which cases are allocated to which judges); (ii) better office management procedures; (iii) procedural streamlining; and (iv) substantive legal change. Andrews "*English Civil Procedure"* 387 at par 15.47. Save for the last-mentioned aspect which does not seem to be procedural in nature, it is assumed that the remainder of these suggestions is or should at least be in place in most South African civil courts.

68 Erasmus "*Civil Procedural Reform" supra* 10.

civil procedure rulebook.[69] The counter-argument to be borne in mind is that in the event where there are not enough judges to cope with the litigation workload and insufficient governmental resources to appoint more judges, this option will also not be viable.[70]

Regarding the latter, especially in relation to the reduction of cases received, any court in an adversarial system is a "passive court", which implies that the court has no control over "input demand".[71] A decrease in litigation demand can therefore only be achieved by statutorily requiring certain types of cases to be dealt with either by way of mediation, arbitration or another tribunal. The problem that arises, again leads back to the constitutionally entrenched right to a "fair public hearing",[72] which would implicate adjudication in open court.[73] Lord Woolf was faced with a similar problem when he suggested that some cases had to dealt with by way of arbitration and cannot be adjudicated upon. This suggestion was rejected, as it was seen to infringe on the Article 6(1) European Convention on Human Rights right to a "trial".[74]

For the purposes of this study it is therefore assumed that parties should still litigate (as is conventionally implied in an adversarial civil procedure regime), and delay reduction in relation thereto should be explored.

69 *Ibid.*
70 An in depth discussion of this aspect is not within the demarcation of this study.
71 Scott states that this implies: "If a party wishes to commence a case the court cannot prevent him from doing so. If a case 'epidemic' develops the court has to grin and bear it." Scott *supra* (Zuckermann et al eds) 7.
72 Constitution of the Republic of South Africa, Act 108 of 1996, Section 34.
73 Erasmus "*'n Billike Siviele Verhoor"* OBITER 1996 292.
74 Article 6(1) of the European Convention of Human Rights was incorporated into English law by the Human Rights Act,1998. Bailey et al "*Smith; Bailey and Gunn on the Modern English Legal System"* 736 at par 12-022. Section 34 of the South African Constitution was partially inspired by Article 6(1) of the European Convention of Human Rights which reads: "In the determination of civil rights and obligations…everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." Erasmus "*'n Billike Siviele Verhoor" supra* 291.

4.2.2 Delay-Reductive Innovations

The classic manner wherein delay is dealt with in an adversarial system is mulcting cost orders against the non-complying party. This system is, however, viable only in instances where the parties themselves (or their legal representatives) are not lenient towards each other. In light of the concerns regarding a prevalent legal culture, this measure does not provide a sufficient manner in which delay is addressed.

Reform in the manner of implementation of further rules and/or practice directives has therefore recently seen the light. Same require the parties to take certain further steps prior to being allowed to continue the litigation process (aimed at delay reduction),[75] referred to herein as delay-reductive innovations. This should be differentiated from case management which, as discussed *infra*, implies that the control of the process is removed, at least partially, from the hands of the litigants.

An example hereof in South African civil procedure is the manner in which the pre-trial minute compiled in terms of Rule 37 of the Uniform Rules of the Superior Court is utilised in ensuring delay reduction.

The Practice Manual of the Western Cape High Court requires the parties to "genuinely endeavour to achieve the objects of Rule 37 (by defining triable issues and curtailing proceedings)"[76] and a pre-trial minute which only complies formalistically will not be accepted as compliance with Rule 37.[77] The Practice Notes further require the legal representatives to complete a "questionnaire" before a trial date will be allocated to any matter.[78] Although unclear as to the sanctions of non-

75 Although in a strictly theoretical sense most civil procedural rules are delay reductive in nature, most procedural rules are also and primarily aimed at the organisation of the process rather than addressing delay or time consumption.
76 Consolidated Practice Notes, Western Cape High Court, Practice Note 41(2).
77 Consolidated Practice Notes, Western Cape High Court, Practice Note 41(3).
78 Consolidated Practice Notes, Western Cape High Court, Practice Note 39 and 40.

compliance, the signature of the legal representative completing the questionnaire is required.

Another example of delay reductive innovations is found in the Practice Manual of the Gauteng Division (Pretoria),[79] which states that in matters where damages are claimed, the merits and quantum of the claim are automatically separated, and two pre-trial conferences must be held,[80] unless otherwise agreed to between the parties.[81]

The main point of criticism which can be levied against delay-reductive innovations is, especially with regard to the examples thereof present in South African civil litigation, that they remain rules at the mercy of the prevalent legal culture. According to Van Rhee "good rules lose their meaning if they are not applied" and "rules become powerless not only if they are ignored but also if effective sanctions are lacking or sanctions are not imposed".[82]

4.3 Conclusion

There are evidently various manners in which to address delay. This can entail: (i) decreasing litigation demand; (ii) increasing judicial resources (iii) the implementation of reform to introduce further delay reductive innovations either as incentives for litigants or as limitations of court time spent on a case; and (iv) the implementation of reform in the form of case management, as discussed in the chapter to follow.

79 The Practice Manual of the North Gauteng High Court.
80 Practice Note 6.13.
81 As contemplated in terms of Rule 33(4) of the South African Uniform Rules of the Supreme Court. Practice Manual North Gauteng High Court, Practice Note 6.13(3.5.3).
82 Van Rhee *supra* 15.

CHAPTER 5

CASE MANAGEMENT

5.1 Definition of Case Management

The essential objective of case management[83] is to take the determination of the pace of litigation out of the parties' control.[84] This involves a departure from the adversarial model of the judge as merely an umpire.[85] Case management is therefore defined to entail that:[86]

> "[j]udges are responsible for controlling litigation at all stages, so that the parties cannot indulge in their 'worst cases' ."

Lord Woolf defines this concept as follows:[87]

> "Case management … involves the court taking ultimate responsibility for progressing litigation…"

Doyle states the effect thereof to be that:[88]

> "[c]ase management enables the judge to identify the real issues in dispute and fashion an effective, efficient procedure to enable those issues to be resolved as quickly as possible."

Case management can take various forms. It does not denote a singular method,[89] rather various principles to attain control over the pace of litigation and ensure finalisation thereof.

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83 Also referred to as "managerial judging" Hurter *supra* 253 or "case flow management" Erasmus "*Civil Procedural Reform" supra* 11, in this study referred to as "case management".
84 Erasmus "*Civil Procedural Reform" supra* 11 quoting the American Bar Association's Standards Relating to Trial Courts which state that: "The court should supervise and control the movement of all cases on its docket from time of filing though [to] final dispensation".
85 Sheahan "*Case Management Handbook: Some General Considerations"* (Anon ed) 16 at par 3.6.
86 De Vos "*English and French Civil Procedure Revisited"* STELL LR 2002 (3) 437 quoting Michalik.
87 Interim Woolf Report page 29.
88 Doyle "*Imagining the Past, Remembering the Future: The Demise of Civil Litigation"* AJL 2012 (86) 245 quoting Justice Rares of the Australian Federal Court.

It is evident from the above-quoted definitions that the defining characteristic of any form of case management would be that the procedure no longer involves party control but judicial control, albeit that judicial control does not necessarily have to present itself at every stage of the litigation. Case management should therefore be distinguished from other procedural innovations such as rules or practice directives which are focused on delay reduction or procedural streamlining without judicial intervention.[90]

According to Scott, the application of case management can be introduced into a legal system either by way of a comprehensive approach, such as the one implemented by Lord Woolf in England, or by a selective approach, examples of which are applied in Australia.[91] These two approaches will be discussed below in order to consider the elements of a case management regime and the viability of the implementation, if any, thereof in South African civil procedure.

5.2 Comprehensive Case Management

The comprehensive approach entails that judicial control of the case is taken at the earliest possible stage and, on the English model, allows wide-ranging powers to judicially hurtle the case towards conclusion. The case management regimes present in both the English civil procedure and the Federal Court of Australia are model examples of comprehensive case management.

89 Erasmus "*Civil Procedural Reform" supra* 12.

90 One should, on a theoretical basis, be careful to fall into the trap of hailing any innovation which seeks to reduce delay as "case management" often happens on civil procedure reform fronts. As will also be evident from the discussions below, however, delay reductive innovations and case management mechanisms are in some instances so interwoven that it is theoretically difficult to separate them.

91 Scott *supra* (Van Rhee ed) 17. Ipp refers to "continuous control by a judge" and "ad hoc …control…requiring the parties to report to the court", Ipp *supra* 36.

5.2.1 Comprehensive Case Management in English Civil Procedure

5.2.1.1 Development of Case Management in English Civil Procedure

English civil procedure has undergone major reform, prior to which the system was classically adversarial in nature resting on the main pillars of party control, party autonomy, and passive presiding officers.[92] The system received various criticisms, contained in both the Civil Justice Review of 1998 and the Heilbron/Hodge report of 1993.[93] According to Andrews, it was perhaps based on the latter that the then Lord Chancellor, Lord Mckay, appointed Lord Woolf in 1994 to investigate possible reform of the civil procedural regime.[94]

Lord Woolf compiled two reports, an interim report by the name of "Access to Justice: Interim Report (1995)" and a final report entitled "Access to Justice: Final Report (1996)".[95] Both these reports evoked "a great deal of thought and a greater amount of ink"[96] to be spilt and constituted the "greatest shake up of civil procedure since the 1870s".[97] The "crown jewel" of these reports was the introduction of case management principles into English civil procedure.[98]

The final report was accompanied by draft civil procedure rules called the "brown books" after the colour of their binding.[99] These draft rules were the starting point for the redrafting and testing of what would ultimately become the English Civil Procedure Rules,[100] which were implemented on 26 April 1999 and are currently still constantly being updated.[101]

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92 According to Andrews this entails that parties controlled the commencement and constitution of the action; the pre-trial progress of the action; settlement and withdrawal of the action and the production and reception of evidence at the trial. Andrews "*English Civil Procedure"* 33 par 2.14.
93 Andrews "*English Civil Procedure"* 30 par 2.03.
94 *Ibid.*
95 Andrews "*English Civil Procedure"* 30 par 2.04. Bailey et al *supra* 693 at par 12-001.
96 Bailey et al *supra* 751 at par 12-034.
97 Andrews "*English Civil Procedure"* 30 par 2.04.
98 *Ibid*
99 Bailey et al *supra* 693 at par 12-001.
100 Hereinafter referred to as "the English CPR".
101 Andrews "*English Civil Procedure" supra* 29 par 2.01.

5.2.1.2 The Overriding Objective

Part I of the English CPR contains the "overriding objective", which is viewed to be the cornerstone of the English CPR and similar to a preamble to the procedural code to follow.[102] The overriding objective of the CPR is to deal with cases "justly",[103] and this objective must be adhered to in the exercising of the court's power and in the interpretation of the English CPR.[104] The concept of "justly" dealing with cases is defined to entail *inter alia* dealing with cases (i) proportionate to the subject matter of the case, both financially and regarding the complexity of the issues; (ii) ensuring that it [the case] is dealt with expeditiously and fairly; and (iii) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases." [105]

The overriding objective requires the assistance of parties in the promotion thereof.[106] Andrews states that the overriding objective is not merely an "empty rhetoric" and can lead to serious consequences for parties who fail to adhere thereto, as, for example, the refusal of a cost order in favour of a party who refused to consider alternative dispute resolution options.[107]

More importantly, the overriding objective should serve as the governing principle when courts exercise their case management duties,[108] as the courts must further the overriding objective by actively managing cases.[109]

102 Andrews "*English Civil Procedure" supra* 38 par 2.28.
103 English CPR 1.1(1).
104 English CPR 1.2.
105 English CPR 1.1(2).
106 English CPR 1.3.
107 Andrews "*English Civil Procedure" supra* 39 par 2.33 with reference to *Dunnett v Railtrack* [2002] 1 WLR 2434.
108 Bailey et al *supra* 695 at par 12-002.
109 English CPR 1.4(1).

5.2.1.3 Active Case Management

According to the English CPR, active case management involves presiding officers to encourage co-operation, settlement, and the utilisation of alternative dispute resolution mechanisms.[110] Furthermore, presiding officers are required to identify the issues at an early stage, decide whether the issues require the full investigation of a trial, and determine the order in which the issues should be resolved.[111]

In the performance of their functions, judges are still entitled to utilise the basic collection of trial procedure mechanisms,[112] in addition hereto, judges are entitled to receive evidence via telephone or another method of oral communication; to exclude certain issues from consideration; and to give judgment on a claim after only preliminary issues have been decided.[113] The high-water mark of judicial involvement provided for by active case management is the ability of the court to strike out *mero motu* a "statement of case"[114] in certain circumstances.[115] The abovementioned powers, conferred in terms of the active case management regime can be exercised on an application of the court's own initiative.[116]

Portions of the adversarial system's party control, however, still remain under the CPR regime, in that the parties are still in control of the decision to institute or defend actions; the remedy upon which actions or defences are based; the unilateral withdrawal of an action or defence; the decision to enforce a judgment or order; and the decision to appeal.[117]

110 English CPR 1.4(2)(a),(e-f).
111 English CPR 1.4(2)(b),(c-d).
112 English CPR 3.1(2)(b) and (e-i).
113 English CPR 3.1(2)(a),(d) and (k-l).
114 Similar to a Particulars of Claim or a Plea.
115 English CPR 3.4(2)(a-c). The court can strike a statement of case if it appears that: (a) the statement of case discloses no reasonable grounds for bringing or defending the claim; (b) that the statement of case is an abuse of the court process or is otherwise likely to obstruct the just disposal of the proceedings; or (c) that there has been a failure to comply with a rule, practice direction or court order…"
116 English CPR 3.3(1).
117 Andrews "*English Civil Procedure" supra* 37 par 2.27.

5.2.1.4 Practical Implementation of Case Management in English Civil Procedure

The manner in which this system has been incorporated in the adversarial litigation structure will be explored with reference to the steps taken prior to institution of an action; steps taken after institution of the action and prior to trial; and the steps taken at trial phase.

5.2.1.4.1 Pre-action Protocols[118]

The English CPR requires steps to be taken to ensure that this overriding objective is promoted even prior to the institution of an action, contained in draft protocols tailored for specific types of claims. Same in essence sets out a timetable for the exchange of letters wherein the claimant's case and details of the claim are specified, and in response thereto a letter setting out the extent wherein and on what basis the claim is opposed.[119] Parties are required "to act reasonably in exchanging information and documents relevant to the claim and generally avoid the necessity to start the proceedings".[120]

The extent to which the pre-action protocols have been complied with is disclosed at allocation stage and can influence the court in its decision regarding costs to be awarded.[121]

5.2.1.4.2 Institution of Action and Allocation

Once a claim has been instituted and defended, the "court begins the process that will lead it to manage the case".[122] An allocation questionnaire is sent by the court to

118 It should be noted that pre-action protocols do not strictly fall within the ambit of case management, same can, however, be classified as a delay reducing innovation.
119 Bailey at al *supra* 703 at par 12-010.
120 English CPR, Practice Direction, Protocols par 4.
121 English CPR 44.3(5). Examples of costs sanctions which can be imposed are *inter alia* that costs are awarded against the non-complying party; interest can be deprived on a damages claim or interest can be specified to be paid by a Defendant at a higher rate. English CPR, Practice Direction, Protocols par 2.3.
122 Bailey et al *supra* 729 at par 12-021.

both parties, which must be completed and sent back to the court within 14 days.[123] Based on the information provided on the allocation questionnaires, [124] the court will allocate the case to a specific track.

Factors which are taken into consideration in track allocation include: (i) the financial value of the claim; (ii) the nature of the remedy sought; (iii) the likely complexity of the law or facts; (iv) the amount of oral evidence envisioned; and (v) the views and circumstances of the parties.[125] Should it be necessary, an allocation hearing can be convened in order for the parties to make representations as to the appropriate track to which a case should be allocated.[126]

5.2.1.4.3 The Track System

Lord Woolf contended that litigation should be "tailored to the size and nature of the dispute".[127] In order to achieve this proportionality aim, the English CPR instituted the regime of the "track system". The track system provides that there are three tracks upon which any action instituted can run: the Small Claims Track; the Fast Track; or the Multi Track.[128]

The Small Claims Track has jurisdiction over cases of which the claim amount is up to £5 000.00 (personal injury claims) or £1 000.00 (housing disrepair claims).[129] Features of the Small Claims Track include procedurally: (i) expert evidence is generally disallowed; (ii) the hearing is informal in nature (implying that the strict rules of evidence do not apply); and (iii) there are limits to the amount of cross-

123 English CPR 58. The parties cannot agree to extend the time period for the return of these questionnaires and failing to timeously return the questionnaires can result therein that a claim or defence is struck out. English CPR 26.3(6A) and English CPR, Practice Direction 26 par 2.5.
124 Bailey et al *supra* 735 at par 12-021.
125 English CPR 26.8.
126 English CPR 26.5(4).
127 Andrews "*English Civil Procedure"* 39 par 2.34.
128 Bailey et al *supra* 698 at par 12-005.
129 Bailey et al state that this track "occupies the territory formerly occupied by the small claims court in the county court." Bailey et al *supra* 736 at par 12-022.

examination which will be permitted.[130] Economic features entail that it is expected that parties will appear in person (Legal Service Commission funding is usually not available for actions in this track).[131] This is a highly efficient track, according to Bailey et al, the average length of a hearing being a mere 66 minutes.[132]

The Fast Track (often also referred to as the normal track as it applies to the majority of civil cases)[133] applies to cases of which the claim amount ranges between more than £5 000.00 and less than £15 000.00.[134] Characteristics of this track include that the case management directions made by the court should be made without the presence of the parties (without a "case management conference"), although the presiding officer may convene such a meeting should he or she deem it necessary.[135]

The Multi Track applies to all cases which exceed the threshold amount of the Fast Track (all cases of which the claim amount is in excess of £15 000.00).[136] Bailey et al state that the "hallmarks" of this track are: (i) the ability of the court to deal with cases of a wide range of complexity and values; and (ii) the great amount of flexibility with which the court can manage the case progress.[137] Cases within the purview of this track include complex issues of law of evidence, a case management conference is therefore held at which the presence of the parties is required. [138] At such a case management conference, case directions are decided upon.[139]

The quantitative limits of the different tracks are, as is stated above, not the only aspects taken into consideration when cases are allocated. Should a Fast Track

130 Bailey et al *supra* 737 at par 12-022.
131 English CPR 27(3).
132 Based on 55 836 hearings held in 2000. Bailey et al *supra* 736 at par 12-022.
133 Bailey et al *supra* 698 at par 12-005.
134 *Ibid*.
135 Bailey et al *supra* 737 at par 12-023.
136 Bailey et al *supra* 698 at par 12-005.
137 *Ibid*
138 Bailey et al *supra* 738 at par 12-024.
139 *Ibid*.

case entail complex legal or factual issues, it would rather be allocated to the Multi Track, despite the claim amount falling below the £15 000.00 threshold.

5.2.1.4.4 Directions Timetables, Case Management Conferences, and Pre-trial Reviews

The English CPR does not provide basic time periods within which steps in preparation for trial have to be taken. Therefore, after allocation to a specified track, the court will "fix a timetable" for the parties for pre-trial preparation up until the trial date.[140] A standard directions timetable reads as follows:[141]

"Disclosure	within 4 weeks from making of the order
Exchange of statements of witness of fact	within 10 weeks from making of the order
Exchange of Expert reports	within 14 weeks from making of the order
Distribution of listing questionnaires By court	within 20 weeks from making of the order
Return of completed listing questionnaires	within 22 weeks from making of the order
Trial (1 day)	within 30 weeks from making of the order"

The timetable can be fixed in three possible manners: (i) immediately after allocation the court can provide directions as to the steps the parties are required to take within certain time periods, in which instance no case management conference is held (usually applied in Small- and Fast Track cases);[142] (ii) the timetable can be worked out during the case management conference (usually applied in Multi Track cases);[143] and (iii) the parties can agree upon a timetable and propose same to the court. The proposal still has to be ratified by the court in order to have any effect.[144]

Another function of the court under the case management regime is the clarification of issues regarding both factual and legal aspects of the case. In order to achieve

140 Andrews "*English Civil Procedure" supra* 340 par 13.26.
141 English CPR, Practice Direction 28 par 3.12.
142 Andrews "*English Civil Procedure" supra* 341 par 13.30.
143 Andrews "*English Civil Procedure" supra* 341 par 13.31.
144 English CPR 29.4.

this effect, the court can convene case management conferences.[145] To this effect, the court can direct the parties to compile a case summary setting out the issues in dispute and the oral and documentary evidence sought to be presented to clarify the issue in dispute.[146] Questions regarding separation, consolidation, exceptions and the like will also be discussed at the case management conference. Usually in complex Multi-Track cases, the case management conference will be followed by a pre-trial review, which focuses on immediate preparation for trial.[147]

5.2.1.4.5 Case Management during the Hearing

To reiterate a point already made above, the court can intervene in any aspect of the case should it deem that alteration would curb delay, including any aspect presented during the hearing of the case.[148] Inclusive hereof, the court "may exclude admissible and relevant evidence or cross-examination which is disproportionately expensive or time-consuming, provided that to do so accords with the overriding objective".[149]

5.2.2 Comprehensive Case Management in the Federal Court of Australia

Created by the *Federal Court of Australia Act 1976*, the Federal Court of Australia came into operation on 1 February 1997.[150] Sitting in all capital cities in Australia and sometimes elsewhere as a circuit court, it constitutes the superior court of record in Australia and comprises of a diverse and substantial appellate division.[151] The Federal Court's jurisdiction is conferred by more than 150 statutes, which entails that it has jurisdiction to hear and determine, *inter alia*, almost all civil matters; constitutional matters and cases created by federal statute.[152]

145 English CPR 29.2.
146 Bailey et al *supra* 739 at par 12-024.
147 English CPR 29.4 and Bailey et al *supra* 738 at par 12-024.
148 See discussion under paragraph 3.2.3 above.
149 *CKR Karate (UK) Ltd v Yorkshire Post Ltd* [2000] 1 WLR 2571 CA at page 2577.
150 www.fedcourt.gov.au/about/jurisdiction.
151 *Ibid.*
152 *Ibid.* Creation of cases by federal statute regulated by Section 39B(1A)(c) of the Judiciary Act 1903. Examples of cases created by statute includes: cases envisioned in the *Competition and Consumer Act 2010;* maritime claims set out in the *Admiralty Act 1998* (concurrent jurisdiction with Supreme Courts of the States and Territories) and cases arising from the *Native Title Act* 1993.

The two forms of comprehensive case management regimes present in the Federal Court of Australia are the individual docket system, adopted in 1997,[153] which serves as a basis for the listing and case management of cases in the Federal Court;[154] and the "Fast Track List", which came into effect in the Federal Court on 1 May 2007.[155]

5.2.2.1 Overarching Purpose and Active Case Management

The Australian Federal philosophy towards case management entails that cost and delay are most likely to be reduced by an early and continuing process of "narrowing", and the avoidance of adversarial "wiggle-room".[156] The process of narrowing entails that issues are identified; no issue is afforded greater factual investigation than that which justice requires; and the matter is sought to be disposed of with as few interlocutory applications as possible.[157] It is also central to the Australian Federal philosophy towards case management that this process of narrowing would be "unlikely to occur without active judicial engagement".[158]

Similar to the overriding objective of its English compatriot, the Australian Federal civil procedural model has an "overarching purpose" of case management, being: [159]

> "the just resolution of disputes as quickly, inexpensively and efficiently as possible".

Unlike its English compatriot, Australian Federal civil procedure is extremely crisp and does not stipulate and define which powers are imparted on a judicial officer with

153 Sheahan *"Case Management Handbook: A Brief History of the Court"*, (Anon ed) 13 at par 2.4.
154 www.fedcourt.gov.au/case-management-services/case-allocation/induvidual-docket-system.
155 Cases which qualify for Fast track adjudication are the following: commercial transactions (including issues of importance for trade and commerce and issues arising from the construction of commercial documents); issues of importance for personal insolvency; intellectual property rights disputes save for disputes relating to patents and any matter of which the trial is not likely to exceed 5 days. www.fedcourt.gov.au/case-management-services/case-allocation/fast-track-system.
156 Sheahan *"Some General Considerations" supra* (Anon) 17 at par 3.10 and 3.11.
157 *Ibid.*
158 *Ibid*
159 Federal Court of Australia Act Sections 37 M(1), 37 N(1), (2); Sheahan *"Some General Considerations" supra* (Anon) 16 at par 3.8.

the term "active case management". The *Federal Court of Australia Act* stipulates the following:[160]

> "(2) The Court or a Judge may give directions about the practice and procedure to be followed in relation to the proceeding, or any part of the proceeding.
>
> (3) Without limiting the generality of subsection (2), a direction may:
> (a) require things to be done; or
> (b) set time limits for the doing of anything, or the completion of any part of the proceedings ;or
> (c) limit the number of witnesses who may be called to give evidence, or the number of documents that may be tendered in evidence; or
> (d) provide for submissions to be made in writing; or
> (e) limit the length of submissions (whether written or oral); or
> (f) waive or vary any provision of the Rules of Court in their application to the proceeding; or
> (g) revoke or vary an earlier direction."

These powers seem to entail any practical possible solution each specific case may require in order to achieve the overarching purpose of case management.

5.2.2.2 Genuine Steps

Prior to the commencement of proceedings, the *Civil Dispute Resolution Act*[161] requires parties to attempt "genuine steps" at resolving the dispute between them. What amounts to "genuine steps" is up to the parties to determine, so long as it "constitute[s] a sincere and genuine attempt to resolve the dispute".[162] Should these genuine steps fail, however, a party who commences proceeding is required to file a "genuine steps statement", setting out which steps were taken to resolve the dispute, or the reasons why no such steps have been taken.[163]

160 Section 37P (2) and (3) of the *Federal Court of Australia Act* 156 of 1976, as amended.
161 Act 17 of 2011.
162 *Civil Dispute Resolution Act* 17 of 2011, Section 4(1A). These steps can include, but is not limited to: notifying the opposing party timeously of the nature of the dispute; response to this notification; providing the relevant documentation to the opposing party and the consideration of Alternative Dispute Resolution steps, *Civil Dispute Resolution Act* 17 of 2011, Section 4(1) and 4(2).
163 *Civil Dispute Resolution Act* 17 of 2011, Section 6(1).

The Respondent to proceedings must also file a statement (prior to the hearing of the matter) stating whether he is in agreement with the genuine steps statement filed or if not, reasons for dissent.[164] The genuine steps statements can and should be taken into consideration by the court in exercising its discretion in awarding costs.[165]

5.2.2.3 The Individual Docket System

As stated above, the individual docket system provides the backbone for comprehensive case management in the Federal Court of Australia. The system essentially entails that at the time of filing of a case, same is allocated randomly[166] to the so-called docket judge, who will manage the case progress until final disposition thereof.[167] A major attribute of the system is seen to be the fact that it is unnecessary to explain the facts of the case afresh to different judges present at different stages of the proceedings.[168]

The practical implementation of the system entails that the Registrar sets the date for a first directions hearing when the originating process is filed.[169] The aim of the first directions hearing is to narrow the issues in dispute as early as possible and to discuss the manner in which the matter must be dealt with up until the trial.[170] This entails that the parties should, prior to the hearing, file and serve statements of facts and contentions and prepare lists of matters agreed not to be in dispute.[171] The

164 *Civil Dispute Resolution Act* 17 of 2011, Section 7.
165 *Civil Dispute Resolution Act* 17 of 2011, Section 12.
166 In some instances where particular expertise are required the case may be allocated to a specific judge who is a member of a specialist panel. www.fedcourt.gov.au/case-management-services/case-allocation/induvidual-docket-system.
167 This entails that the case will generally stay with the same judge until final disposition thereof. The system varies from most other forms of case management present in Australian Supreme Courts, as the emphasis is on court control of procedure from the inception of the action, in other words it is a comprehensive case management regime rather than a selective one. Sheahan *"Case Management Handbook: Mechanics of Case Management"* (Anon ed) 18 at par 4.4. www.fedcourt.gov.au/case-management-services/case-allocation/induvidual-docket-system.
168 www.fedcourt.gov.au/case-management-services/case-allocation/induvidual-docket-system.
169 Sheahan *"A Brief History of the Court" supra (*Anon ed) 12 at par 2.2.
170 Crutchfield, Lees and Rollnik *"Case Management Handbook: Identifying and Narrowing the Issues"* (Anon ed) 22 at par 5.15.
171 Crutchfield, Lees and Rollnik *supra* (Anon ed) 22 at par 5.16 and 5.17.

aspects upon which no agreement could be reached will then be discussed and addressed by the Court at the first directions hearing.[172]

The first directions hearing can be followed-up by interlocutory applications[173] which are dealt with by the docket judge (as is deemed necessary by the docket judge) [174] and further directions hearings, prior to the hearing of the matter can be scheduled.

To further expedite proceedings, the Federal Court Rules provides for the non-attendance of parties in instances where orders by consent are to be made[175] or where the docket judge decides to deal with a specific matter on the papers.[176] Finally, the Court is also given broad powers to utilise technology via the "eCourt" system, providing for the electronic filing of court documents[177] and allowing the reception of remote testimony via technological access.[178]

5.2.2.4 The "Fast Track List"

This system entails that cases which qualify[179] are entered on the Fast Track List and dealt with in an expedited fashion, as opposed to being processed under the individual docket system.[180] The cases which are envisioned to be dealt with in this

172 *Ibid.*
173 Examples of interlocutory applications: Applications for the amendment of pleadings; applications to strike pleadings; applications for security for costs; applications for subpoenas and applications for joinder. Downes QC and Hutton *"Interlocutory Applications" supra* (Anon ed) 62-63 at par 9.6.
174 Sheahan *"Mechanics of Case Management" supra (*Anon ed) 62 at par 9.4.
175 Federal Court Rules, Rules 1.36; 39.2 and 39.1; Sheahan *"Mechanics of Case Management" supra* (Anon) 20 at par 4.13.
176 *Ibid*
177 Federal Court of Australia Practice Note CM12; Sheahan *"Mechanics of Case Management" supra* (Anon ed) 20 at par 4.19.
178 Sheahan *"Mechanics of Case Management" supra* (Anon ed) 20 at par 4.16.
179 Cases which qualify for Fast track adjudication are the following: commercial transactions (including issues of importance for trade and commerce and issues arising from the construction of commercial documents); issues of importance for personal insolvency; intellectual property rights disputes save for disputes relating to patents and any matter of which the trial is not likely to exceed 5 days. www.fedcourt.gov.au/case-management-services/case-allocation/fast-track-system.
180 www.fedcourt.gov.au/case-management-services/case-allocation/fast-track-system.

manner are principally commercial litigation, which must be disposed of quickly in order to provide economic certainty.[181]

Key elements of the manner in which these case are dealt with entail: (i) the abolition of pleadings which are replaced by case summaries; (ii) the initial directions hearing takes place approximately six weeks after filing of the action;[182] (iii) interlocutory applications are dealt with on the papers save for in urgent applications;[183] the volume of documents which may be discovered are substantially reduced; (iv) a pre-trial conference will be scheduled to iron out final issues prior to trial; (v) the trial is conducted on a "chess-clock"-style; and (vi) judges must endeavour to deliver judgment within six weeks after the conclusion of the hearing.[184]

Cases on the individual docket system can be transferred to the Fast Track List by the docket judge.[185] Likewise, cases on the list can be moved to the individual docket on the judge's own motion or upon the request of the respondent.[186]

5.3 Selective Case Management

Selective case management, as opposed to comprehensive case management, implicates that judicial control of the process is not the default position from the inception of all proceedings. Judicial control of the proceedings will take place only once some hurdle has been crossed, or, as Ipp refers thereto, "at a few fixed strategically determined, intervals or occurrences."[187] For example, cases will be managed only once they fall within a certain category, or an application to this effect is made.

181 *Ibid.*
182 *Ibid.* This entails that the parties or their legal representatives are present, the principal issues in dispute will be defined; the witnesses each party intends to call will be set out and a hearing date for the action will be allocated.
183 *Ibid.* Implying that interlocutory applications need not be set down separately for the hearing thereof. www.fedcourt.gov.au/case-management-services/case-allocation/fast-track-system.
184 *Ibid.*
185 *Ibid.*
186 *Ibid.*
187 Ipp *supra* 36.

5.3.1 Selective Case Management in Australian Civil Jurisdictions

Due to the Australian political compilation as a federal state, in addition to the Civil Procedural regime of the Federal Court of Australia discussed above, each state or territory (there being six mainland states and territories) has its own set of civil procedural rules for Supreme and Magistrate's courts. Although some degree of case management is evident in the civil procedure of all of the Australian States and Territories, the application thereof differs. While some territories or states have comprehensive case management regimes, such as the Northern Territory,[188] Western Australia[189] and New South Wales,[190] the remainder of the mainland territories follow a selective case management regime. The selective case management and elements thereof are discussed below.

5.3.1.1 Queensland

The Uniform Civil Procedure Rules of the Supreme Court of Queensland stipulates the manner in which proceedings should be conducted in general, but provision is also made for the application by any party for directions from the court as to the conduct of proceedings or for the court to make such directions *mero motu*.[191] Such

188 Practice Direction 6 of 2009 of the Northern Territory of Australia contains in Part 2 thereof Pre-action conduct aimed at early and complete disclosure; Part 3: The inclusion of active case management into the civil procedure of the Northern Territory; stipulates the provisions to be applied for case management conferences and provides for encompassing use of technology in the expedition of proceedings.

189 The Consolidated Practice Directions of the Supreme Court of Western Australia categorise cases under two sections cases not entered into the "Commercial and Managed Cases (CMC) List" and those that are entered on the CMC List. The former is managed by a Case Management Registrar (section 4.1.1 (1)) and the latter which needs more intensive case management is referred by the Registrars to a Judge in charge of the CMC List (Section 4.1.2 (1) and (2)). In both instances a "strategic conference" is scheduled by the Registrar where legal representatives are required to present proposals as to the manner in which to best achieve the objects of case management in the particular instance (Section 4.1.2(13)). Similar to the Federal Court of Australia, interlocutory applications are dealt with by the allocated case manager (Section 4.1.2.(21)).

190 Part 6 of the *Civil Procedure Act* 28 of 2005 of New South Wales, deals with detail of the case management regime in New South Wales. The Act contains an "overriding purpose" of case management (Section 56) similar to that of the Federal Court of Australia and lists encompassing directions that can be made: in respect of practice and procedure generally (Section 61); during the hearing (Section 62) and regarding procedural irregularities (Section 63), the encompassing nature therefore is closely linked to the English case management regime. Interestingly, the Court can *mero motu* dismiss proceedings in which no step has been taken by either of the parties for more than 5 months (New South Wales Uniform Civil Procedure Rules 2005, Rule 12.8).

191 Supreme Court of Queensland: Uniform Civil Procedure Rules of 1999, Rule 366(2) and (3). Although this may seem to be merely part of a Supreme Court's inherent power to control its own

a direction order can be made upon application for that purpose or upon application for other relief.[192] The directions which can be made include the limitation of: (i) the time to conduct the hearing; (ii) the time in which a party may present its case; (iii) the number of witnesses that may be called, and (iv) the length of written submissions or affidavits.[193]

5.3.1.2 Southern Australia

In Southern Australia, a three-tiered selective case management regime is present. First, the court may, if satisfied that an action is sufficiently complex, assign a special classification thereto.[194] Upon such assignment, the Chief Justice will assign a specific Judge to supervise the conduct of action up to point of trial and a different judge may be assigned to conduct the trial.[195] Comprehensive case management is applied for cases so assigned.

Secondly, the court may at any time review the progress of any case. Depending upon the outcome of the review, the court may make appropriate directions as to the further conduct of a case. Same may be accompanied by other orders such as penalising cost orders, against the party whom delayed the process.[196]

Finally, similar to the regime present in Queensland, the court can make directions regarding the control of proceedings serving before that specific court, including

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proceedings, if regard is had to the nature of the directions which can be made it clearly falls within the ambit of case management. Furthermore, the case management regime is selective in nature as directions are only made in specified instances and only in respect of certain issues, the remainder of the process, and time periods stipulated for compliance, is regulated by civil procedural rules.

192 Supreme Court of Queensland: Uniform Civil Procedure Rules of 1999, Rule 366(4).

193 Supreme Court of Queensland: Uniform Civil Procedure Rules of 1999, Rule 367(3)(a), (c), (e), (h) and (i).

194 South Australia Supreme Court Civil Rules 2006, Rule 115(1).

195 South Australia Supreme Court Civil Rules 2006, Rule 115(2).

196 South Australia Supreme Court Civil Rules 2006, Rule 116(2)(a-b).

dispensing with the necessity to comply with certain rules, and striking documents deemed to be frivolous.[197]

5.3.1.3 Victoria

The Supreme Court Rules define different categories or lists, these being: the Commercial List;[198] the Technology, Engineering and Construction Cases or TEC List;[199] the Intellectual Property List;[200] and the Corporations List.[201] Cases which appear on the different aforementioned lists shall be under the control of a List Judge, whose powers may be exercised by a Judge other than the List Judge.[202] Comprehensive case management is applied in the instance of cases which fall under the aforementioned lists.

In other instances, similar to the regime followed in Queensland, the Rules of the Supreme Court stipulate the process to be followed. The Rules further provide for a party to apply for directions, or the court may *mero metu* give directions in order to conduct the proceedings in a manner which would be "conducive of its effective, complete, prompt and economical determination".[203]

197 The remainder of the powers are conservative in nature to the point that it is merely part of the Court's inherent ability to conduct its own process such as the extension or determination of a time period for compliance and orders relating to the manner in which evidence are to be presented. South Australia Supreme Court Civil Rules 2006, Rule 117(2)(a-m).
198 Defined and case management regime details set out in Victoria Supreme Court (Miscellaneous Civil Proceedings) Rules 2008: Order 2.
199 Defined and case management regime details set out in Victoria Supreme Court (Miscellaneous Civil Proceedings) Rules 2008: Order 3.
200 Defined and case management regime details set out in Victoria Supreme Court (Intellectual Property) Rules, 2006.
201 Defined and case management regime details set out in Victoria Supreme Court (Corporations) Rules, 2013.
202 Victoria Supreme Court (Miscellaneous Civil Proceedings) Rules 2008: Order 2.02 and 3.02; Victoria Supreme Court (Intellectual Property) Rules 2006: Order 2.02.
203 Victoria Supreme Court (General Civil Procedure) Rules 2005: Order 34.01 and 34.02.

5.3.2 Selective Case Management in South African Civil Procedure

5.3.2.1 Development of Case Management in South African Civil Procedure

According to Van Heerden, the concept of case management is not completely foreign to South African civil procedure.[204] The Hoexter commission has proposed the introduction of the concept with a pilot project,[205] which led to the implementation of the pilot Rule 37A scheme for the Cape Provincial Division in for a two-year period from 1993 to 1995.[206] The basis of the scheme was that Rule 37 pre-trial conferences were to be held under judicial supervision as a first step towards the introduction of case management in South Africa.[207] The pilot scheme was said to have had "moderate success", the "main failing" being that judges did not have adequate powers to enforce the system.[208] This led to a redrafting and a second pilot scheme of a more sophisticated Rule 37A. The introduction of case management was, however, short lived, and the second rule was recalled in April 2001.[209]

Certain divisions of the High Court are introducing elements of case management into the procedure by way of practice directives imparting judicial control.[210]

5.3.2.2 Examples of Case Management in South African Civil Procedure

Both the Practice Manuals of the Gauteng Division (Pretoria) and the Gauteng Local Division (Johannesburg) provide in similar terms for the case management of a case upon application of a party: [211]

> "who is of the opinion that by reason of its complexity, long duration or any other reason, the trial requires case management".

204 Van Heerden *supra* 319.
205 *Ibid.*
206 Friedman *supra* 41.
207 Friedman *supra* 41. Van Heerden states that the scheme differ from the current Rule 37 as the scheme implied not only stocktaking procedures, rather a regulation of the pre-trial procedure after close of pleadings. Van Heerden *supra* 346-347.
208 Hodes *Case Management: Bar Initiatives* Consultus 1997 (May) 34.
209 Van Heerden 319.
210 For a discussion and evaluation of the previous pilot schemes see Van Heerden *supra* Chapter 6 paragraph 7.
211 Practice Manual North Gauteng High Court, Practice Note 6.4(1) and Practice Manual South Gauteng High Court, Practice note 6.3(1).

Such an application is made by directing a letter to the Deputy Judge President, and if successful, the Deputy Judge President will appoint a judge to undertake the case management of the trial.[212]

The judge appointed will conduct all interlocutory applications; any parties may apply to said judge for directions as to the conduct of the trial and the appointed judge may direct one or more pre-trial conferences to be held before him or in his absence.[213]

In addition to the above,[214] in December 2014, the Deputy Judge President of the Gauteng Local Division (Johannesburg) published a directive worded as follows:[215]

> "Henceforth, only trial matters involving expert evidence shall be subject to judicial case-flow management and require certification before being allowed to proceed to trial on the set down date, in accordance with the procedures set out herein."

The directive introduces two new elements. First, a motion court dedicated to interlocutory matters is created, which deals with all applications relating to non-compliance with the rules for trial matters and any failures to comply timeously with undertakings provided in a Rule 37 conference.[216]

Secondly, a judicial pre-trial conference to certify trial readiness is introduced.[217] This conference requires the plaintiff to apply for such a certification process in which a copy of the Rule 37 conference minutes, expert reports and joint minutes of the

212 Practice Manual North Gauteng High Court, Practice Note 6.4(3-4) and Practice Manual South Gauteng High Court, Practice note 6.3(3-4).
213 Practice Manual North Gauteng High Court, Practice Note 6.4(5) and Practice Manual South Gauteng High Court, Practice note 6.3(5).
214 This Directive seemingly does not remove the right of a party to apply for case management in terms of the already existing directive regarding case management. Directive for 2015 First Term, Gauteng Local Division par 15.
215 Directive for 2015 First Term, Gauteng Local Division par 1.
216 Directive for 2015 First Term, Gauteng Local Division par 4.1 and 4.3.
217 Directive for 2015 First Term, Gauteng Local Division par 7.

experts are provided.[218] Furthermore the following is required: (i) a statement from the plaintiff's attorney which sets out that discovery is complete for all parties; (ii) a summary of the common cause facts is provided; (iii) the questions of law to be determined by the trial court; (iv) any agreement regarding a separation of merits and quantum; and (v) a list of witnesses that will be called and the issues those witnesses will address.[219] Thereafter, at the certification conference, the certification judge shall initially explore settlement.[220] If same is not attainable, the certification judge shall deal with: (i) any amendments sought; (ii) identify the issues to go to trial; (iii) order a separation, if appropriate; and (iv) endeavour to promote an agreement on limiting the number of witnesses to be called.[221] The certification judge can thereafter certify the matter as trial ready or refuse certification, in which event the set-down date is forfeited; or he/she may put the parties on such terms as to allow for trial readiness.[222]

Finally, the directive provides for the Deputy Judge President to convene a monitoring committee[223] to receive comments and adapt the system to achieve the objectives of: avoidance of delay, avoidance of postponement; early settlement; efficient and competent trial preparation and reduction of the duration of trials.[224]

5.4 Criticism against Case Management

Prior to the final Woolf Report, Scott freely criticised the English case management civil procedural reform by raising "ten concerns" against case management.[225] The main points thereof, from the perspective of prospective implementers of a system similar to that in England are: first, the complexity of the reform envisioned requires

218 Directive for 2015 First Term, Gauteng Local Division par 8.2 and 8.5.
219 Directive for 2015 First Term, Gauteng Local Division par 8.3.
220 Directive for 2015 First Term, Gauteng Local Division par 11.1.
221 Directive for 2015 First Term, Gauteng Local Division par 11.2 to 11.4.
222 Directive for 2015 First Term, Gauteng Local Division par 11.5 to 11.9.
223 This committee will comprise of the Deputy Judge President, an advocate and an attorney. Directive for 2015 First Term, Gauteng Local Division par 17.
224 *Ibid.* Although this Directive is chiefly aimed at a reduction of delay, the power provided for judges to issue directive should the certification application not be satisfactory does involve judicial control of the process and as such does fall within the ambit of case management.
225 Scott *supra* (Zuckermann et al eds) 17-29.

time effort and expertise for the implementation thereof.[226] The sophisticated system would require legal representatives to do work that was not previously required of them, which in turn could lead to an increase in the cost of litigation.[227] He further stated that the system implies that process collapses into management[228] and that the impartiality of judges as adjudicators is diminished when they are required to act as "managerial judges".[229]

Zander, in vocal opposition to the proposed reforms, raised various reasons why Lord Woolf's proposals should be rejected. He stated *inter alia* that "[m]ost cases do not need any intervention from the courts because they settle" in any event.[230] He believes that the case management by Judges or masters (registrars) will be inefficient,[231] because case management poses the risk that judges with insufficient information are under pressure to "move things along regardless" and therefore make decisions that may be detrimental to the parties.[232] With a similar forewarning in relation to a fast track system, Zuckermann warns that in striving to achieve cheap and quick justice it "may produce [a] low level of accuracy".[233] This can lead thereto that the system lacks the necessary legitimacy in the eyes of the public.

On the Australian front, especially regarding the Federal Court of Australia, in a case management regime where the judge is involved from an early stage and later presides over the trial, there is a "risk of appearance of bias or pre-judgment of the issues".[234]

226 Scott *supra* (Zuckermann et al eds) 19.
227 Scott *supra* (Zuckermann et al eds) 22.
228 Scott *supra* (Zuckermann et al eds) 24.
229 Scott *supra* (Zuckermann et al eds) 26.
230 Zander *"Reform in Civil Procedure: Why Woolf's Reforms Should be Rejected"* (Zuckermann et al eds) 84.
231 Zander *supra* 90.
232 Zander *supra* 94.
233 Zuckermann "*Reform in Civil Procedure: Reform in the Shadow of Lawyers' Interest"* (Zuckermann et al eds) 74.
234 Sheahan *"Some General Considerations" supra* (Anon) 17 at par 3.14.

5.5 Conclusion

From the above, the following are identified as elements forming part of the case management regimes discussed, which can be considered with reference to possible reform: (i) an overarching objective or purpose; (ii) pre-action protocols or genuine steps; (ii) a comprehensive case management regime, implying a track allocation system or individual docket system placing the control of the procedure after the close of pleadings in the hands of the presiding officer; or, alternative hereto, a selective case management regime where only some cases fall within the purview of case management from the inception thereof or at a later stage as a result of insufficient progress being made; and (iv) a certification process prior to allowing a case to proceed to trial.

The attraction of case management remains that the control of the process is not at the behest of the parties. The implication in a South African regime is, however, that the process control has to be entrusted to either judges or registrars who, in the latter instance, may lack the necessary expertise to apply the principles sensibly. This problem diminishes once the required judicial control is only sparsely applied. Therefore it would be safer to opt for selective case management rather than comprehensive case management, if case management is to be implemented in South African civil procedure. The South African jurisprudence is accommodating to this notion, as is evident by Divisions of the High Court already providing for versions of case management to be applied in some select instances.

Attractive possibilities which can be implemented in tandem with a selective case management regime or individually are: (i) the implementation of pre-action protocols as a delay reductive measure; (ii) the possibility provided for in Queensland for courts to *mero motu* give directions to facilitate the conclusion of a case, even upon hearing an application for other relief; (iii) the court's ability to review cases which are not progressing satisfactorily, and issue directions for the conclusion thereof as provided for in South Australia; or (iv) procedural categorisation of cases into

subject-matter specific categories (similar to the list system applied in Victoria); and (v) that tailor-made case management be applied only to certain types of cases.

In these suggestions, Friedman's warnings should be kept in mind, these being that what is suitable for one court (or division) will not necessarily be suitable for another;[235] although overarching and uniform reform is attractive. Furthermore, in the implementation of any reform, the complete civil judicial system should be kept in mind and lower courts should not be overlooked,[236] as lower courts, in theory, carry the brunt of civil litigation. Finally, any reform envisioned should be implemented experimentally and should be properly monitored..[237]

235 Friedman *supra* 40.
236 Friedman *supra* 41.
237 *Ibid.*

CHAPTER 6

CONCLUSION

This work aimed at considering the viability of the implementation of case management as an antidote to perceived delay. In the assessment hereof, the reform viability test of Van Heerden was utilised. This test implies that a reform option can only be sensibly considered once the reform-need has been identified and the reform-ethos established.

Three reform option in addressing delay were discussed. In applying this reform viability test to these options, first, the judicial resource approach (implying that either litigation demand is decreased or judicial resources increased) might have the effect of reducing undue delay should the cause thereof be court induced delay. Said option will, however, not necessarily address the issue of party induced delay. Although a decrease in litigation demand will address both party induced delay and court induced delay, same will not attain the general identified reform-ethos of access to justice.

Secondly, delay-reductive innovations which are already present in the South African civil procedural regime can possibly address party induced delay, should there be stricter sanctions imposed in the event of non-compliance, this option will, however, not address court induced delay.

Finally, in relation to case management, the main aspect of which the viability is to be assessed, said implementation in the form of comprehensive case management could address party induced delay but will only exacerbate, worsen or create court induced delay. The midway approach, should the reform-need require the implementation thereof, would be to only implement case management on a selective basis.

In conclusion, in the application of the reform viability test, the starting point would be the reform-need. In the context of a reform-need of addressing undue delay the cause of the undue delay will have to be identified before a reform-ethos can be established and only once these two aspects have been determined a reform option can be tailored to retrospectively address the reform-need and prospectively attempt to attain the specified reform-ethos without unjustifiably limiting procedural justice or detracting from the substantive justice. It has been illustrated how statistical analysis can assist in the classification of delay as undue delay and the identification of the cause or causes of undue delay.

On this basis, the following proposals are made: (i) comprehensive statistics should be obtained to determine the nature and cause of the delay perceived in the South African civil procedural regime; (ii) once same has been determined, a specified reform-ethos can be established within the general ambit of the implicit constitutional right to access to justice; and (iii) only once the abovementioned two factors have been determined can it be considered whether reform is required at all; whether the procedures already present require some alteration; or whether case management should be implemented. Should the first two steps of the reform viability test indeed indicate a reform option of case management, it would further be suggested that case management be implemented selectively in line with the suggestions set out in Chapter 5 hereof. Finally, whichever reform option is implemented, if any, must be monitored: first, to assess the manner in which it is addressing the identified reform-need; and second, to assess the manner in which it is progressing towards the reform-ethos.

These suggestions and the proper application of the reform viability test negate the necessity of overhauling the whole system merely to adhere to the civil procedure fashion trend that is “comprehensive case management” without understanding the reform-need sought to be addressed thereby or without having a reform-ethos sought to be attained in the reform. Without same, reform implemented for the sake of reform will not satisfy.

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ANNEXURE A

Matters on the civil roll call in the Gauteng High Court

1st term 2014

Date	No. of cases	Total no. of drafts	Allocations	Removals	Postponements	Struck off	Stand down to following day	Removals for settlement
27/1	113	64	9	19	3	6	5	4
28/1	111	57	4	16	5	3	2	4
29/1	116	49	7	37	2	2	2	4
30/1	104	50	5	22	7	4	0	2
31/1	102	40	5	30	2	8	0	5
03/2	120	60	7	28	0	6	1	8
04/2	108	52	6	22	7	3	0	7
05/2	107	61	7	22	1	14	0	0
06/2	108	55	7	24	3	2	0	9
07/2	111	64	5	19	5	11	0	3
10/2	116	52	6	36	3	2	4	8
11/2	116	49	4	42	2	1	1	8
12/2	114	54	8	33	3	3	0	7
13/2	115	59	7	24	2	4	2	8
14/2	114	67	7	28	2	3	1	3
17/2	108	52	7	20	6	11	1	0
18/2	116	49	2	28	5	2	9	6
19/2	129	57	6	31	3	0	11	2
20/2	127	74	10	13	2	13	0	0
21/2	121	68	5	31	4	3	3	6
24/2	115	54	7	21	8	16	2	0
25/2	124	57	3	34	1	19	0	0
26/2	128	53	8	36	3	21	0	0
27/2	126	65	9	20	2	21	0	0
28/2	112	53	3	25	2	23	0	0
03/3	113	44	9	18	2	5	0	13
04/3	117	56	6	25	6	0	1	5
05/3	123	63	4	29	7	4	2	2
06/3	111	51	4	37	5	2	0	3
07/3	109	45	3	37	5	6	1	1
10/3	126	67	11	28	6	1	3	3
11/3	103	48	2	27	5	4	0	9
12/3	119	57	4	37	5	5	0	0
13/3	108	53	1	28	4	5	1	3
14/3	113	56	8	14	4	19	3	3
17/3	116	52	11	28	5	2	1	6
18/3	126	58	5	36	3	4	2	10
19/3								
20/3								
24/3								

ANNEXURE B

Matters on the civil roll call in the Gauteng High Court

2nd term 2014

Date	No. of cases	Total no. of drafts	Allocations	Removals	Postponements	Struck off	Stand down to following day	Removals for settlement
14/4	134	67	9	39	0	6	2	10
15/4	119	60	9	31	3	12	3	1
16/4	102	58	5	19	3	2	1	9
17/4	121	59	7	34	6	2	11	1
22/4	132	55	10	26	5	2	7	18
23/4	126	64	6	28	4	2	8	9
24/4	117	55	5	28	6	3	7	10
25/4	117	70	3	26	4	2	2	7
29/4	123	64	6	26	2	4	0	12
30/4	124	66	3	35	3	1	0	7
02/5	105	55	5	21	2	3	3	8
05/5	124	73	11	21	1	1	2	14
06/5	124	72	7	26	2	5	3	7
08/5	216	117	6	52	2	2	3	25
09/5	124	57	3	22	4	2	1	0
12/5	137	68	5	31	4	4	8	4
13/5	127	62	2	13	7	1	10	10
14/5	133	16	6	3	2	0	4	1
15/5								
16/5								
19/5								
20/5								
21/5	133	69	6	30	1	15	0	0
22/5	132	60	5	34	0	5	0	0
23/5	133	76	10	34	4	1	3	3
26/5	138	75	7	26	2	1	2	13
27/5	125	79	6	20	5	3	1	1
28/5	126	67	9	29	2	5	1	9
29/5	121	78	3	26	0	12	1	0
30/5	117	54	7	11	6	18	1	0
02/6	145	78	12	23	3	2	5	15
03/6	141	83	7	26	1	0	1	11
04/6	136	85	9	24	1	3	6	4
05/6	119	55	7	41	0	0	1	11
06/6	149	85	5	36	4	1	3	6
10/6	46	40	0	3	2	0	0	0

ANNEXURE C

Matters on the civil roll call in the Gauteng High Court

3rd term 2014

Date	No. of cases	Total no. of drafts	Allocations	Removals	Postponements	Struck off	Stand down to following day	Removals for settlement
21/7	145	101	6	27	2	4	1	4
22/7	117	54	3	30	8	4	3	12
23/7	137	80	4	22	1	3	3	14
24/7	130	69	3	27	2	10	6	5
25/7	126	58	5	28	2	7	6	10
28/7	123	60	6	31	2	2	6	11
29/7	127	69	7	29	3	3	3	6
30/7	138	85	7	17	2	6	1	10
31/7	123	55	7	36	2	7	2	7
01/8	117	66	5	27	1	0	1	10
04/8	142	77	7	29	3	4	2	7
05/8	125	63	4	29	1	12	3	5
06/8	116	69	6	22	2	8	2	2
07/8	120	73	5	22	1	5	0	10
08/8	117	67	5	16	3	5	3	3
11/8	127	63	9	23	2	8	3	6
12/8	129	69	9	34	4	3	3	5
13/8	130	74	34	22	3	3	3	9
14/8	125	88	6	10	2	3	0	11
15/8	127	63	6	30	1	2	1	12
18/8	132	70	8	20	2	6	3	10
19/8	134	71	5	39	2	3	3	6
20/8	142	74	7	14	7	21	0	9
21/8	138	75	6	29	3	3	1	6
22/8	136	86	5	23	4	4	2	3
25/8	131	54	11	21	2	18	5	4
26/8	135	67	7	30	1	8	2	13
27/8	130	64	6	38	0	4	2	10
28/8	124	71	3	35	3	1	2	4
29/8	133	63	4	35	0	3	5	9
01/9	111	47	10	25	1	4	4	3
02/9	125	65	7	33	1	1	6	10
03/9								

ANNEXURE D

HIGH COURT: GAUTENG DIVISION PRETORIA TERM 2 WEEK: **1: 14/04-18/04**

14 April 2014	ON ROLL	RESULT			TIME				
		A	B	C	2013	2012	2011	2010	2009+
ROAD ACCIDENT FUND	83	0	56	27	8	31	22	11	11
FINANCIAL SECTOR	5	4	0	1	0	5	0	0	0
MINISTER OF S & S	2	2	0	0	0	2	0	0	0
OTHER	31	1	2	28	1	12	11	6	1
TOTAL:	**121**	**7**	**58**	**56**	**9**	**50**	**33**	**17**	**12**

15 April 2014	ON ROLL	RESULT			TIME				
		A	B	C	2013	2012	2011	2010	2009+
ROAD ACCIDENT FUND	80	4	56	20	8	24	24	19	5
FINANCIAL SECTOR	0	0	0	0	0	0	0	0	0
MINISTER OF S & S	1	0	0	1	0	0	0	0	1
OTHER	31	5	1	25	1	12	12	3	3
TOTAL:	**112**	**9**	**57**	**46**	**9**	**36**	**36**	**22**	**9**

16 April 2014	ON ROLL	RESULT			TIME				
		A	B	C	2013	2012	2011	2010	2009+
ROAD ACCIDENT FUND	73	4	48	21	2	35	20	11	5
FINANCIAL SECTOR	0	0	0	0	0	0	0	0	0
MINISTER OF S & S	1	1	0	0	0	1	0	0	0
OTHER	24	2	9	13	1	8	6	4	5
TOTAL:	**98**	**7**	**57**	**34**	**3**	**44**	**26**	**15**	**10**

17 April 2014	ON ROLL	RESULT			TIME				
		A	B	C	2013	2012	2011	2010	2009+
ROAD ACCIDENT FUND	80	6	44	30	9	51	12	8	0
FINANCIAL SECTOR	0	0	0	0	0	0	0	0	0
MINISTER OF S & S	13	2	1	10	0	10	2	0	1
OTHER	15	3	6	6	1	7	3	3	1
TOTAL:	**108**	**11**	**51**	**46**	**10**	**68**	**17**	**11**	**2**

2014/04/18* (PUBLIC HOLIDAY)	ON ROLL	RESULT			TIME				
		A	B	C	2013	2012	2011	2010	2009+
ROAD ACCIDENT FUND									
FINANCIAL SECTOR									
MINISTER OF S & S									
OTHER									
TOTAL:	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**

TOTAL WEEK 1	ON ROLL	RESULT			TIME				
		A	B	C	2013	2012	2011	2010	2009+
ROAD ACCIDENT FUND	316	14	204	98	27	141	78	49	21
FINANCIAL SECTOR	5	4	0	1	0	5	0	0	0
MINISTER OF S & S	17	5	1	11	0	13	2	0	2
OTHER	101	11	18	72	4	39	32	16	10
TOTAL:	**439**	**34**	**223**	**182**	**31**	**198**	**112**	**65**	**33**

HIGH COURT: GAUTENG DIVISION PRETORIA TERM 2 WEEK: **2: 21/04-25/04**

2014/04/21* (PUBLIC HOLIDAY)	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND									
FINANCIAL SECTOR									
MINISTER OF S & S									
OTHER									
TOTAL:	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**

22 April 2014	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	87	6	43	38	9	42	19	7	10
FINANCIAL SECTOR	0	0	0	0	0	0	0	0	0
MINISTER OF S & S	8	6	0	2	0	4	3	0	1
OTHER	24	1	1	22	3	7	7	4	3
TOTAL:	**119**	**13**	**44**	**62**	**12**	**53**	**29**	**11**	**14**

23 April 2014	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	85	3	51	31	6	50	17	7	5
FINANCIAL SECTOR	3	0	0	3	0	1	2	0	0
MINISTER OF S & S	4	1	1	2	0	4	0	0	0
OTHER	23	5	4	14	1	11	8	2	1
TOTAL:	**115**	**9**	**56**	**50**	**7**	**66**	**27**	**9**	**6**

24 April 2014	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	82	3	57	22	8	38	21	11	4
FINANCIAL SECTOR	3	1	2	0	0	0	1	2	0
MINISTER OF S & S	8	0	2	6	6	1	1	0	0
OTHER	22	1	3	18	1	12	5	0	4
TOTAL:	**115**	**5**	**64**	**46**	**15**	**51**	**28**	**13**	**8**

25 April 2014	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	79	4	56	19	13	44	14	4	4
FINANCIAL SECTOR	2	0	0	2	0	0	1	1	0
MINISTER OF S & S	1	0	0	1	0	1	0	0	0
OTHER	24	2	8	14	0	11	9	4	0
TOTAL:	**106**	**6**	**64**	**36**	**13**	**56**	**24**	**9**	**4**

TOTAL WEEK 2	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	333	16	207	110	36	174	71	29	23
FINANCIAL SECTOR	8	1	2	5	0	1	4	3	0
MINISTER OF S & S	21	7	3	11	6	10	4	0	1
OTHER	93	9	16	68	5	41	29	10	8
TOTAL:	**455**	**33**	**228**	**194**	**47**	**226**	**108**	**42**	**32**

HIGH COURT: GAUTENG DIVISION PRETORIA TERM 2 WEEK: **3: 14/04-18/04**

2014/04/28* (PUBLIC HOLIDAY)	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND									
FINANCIAL SECTOR									
MINISTER OF S & S									
OTHER									
TOTAL:	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**

29 April 2014	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	88	4	59	25	14	41	21	8	4
FINANCIAL SECTOR	1	0	0	1	0	0	0	1	0
MINISTER OF S & S	6	3	1	2	0	6	0	0	0
OTHER	26	2	8	16	2	9	8	6	1
TOTAL:	**121**	**9**	**68**	**44**	**16**	**56**	**29**	**15**	**5**

30 April 2014	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	82	4	55	23	6	49	15	8	4
FINANCIAL SECTOR	1	1	0	0	0	0	1	0	0
MINISTER OF S & S	5	0	1	4	0	1	1	3	0
OTHER	20	0	3	17	1	8	6	2	3
TOTAL:	**108**	**5**	**59**	**44**	**7**	**58**	**23**	**13**	**7**

2014/05/01* (PUBLIC HOLIDAY)	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND									
FINANCIAL SECTOR									
MINISTER OF S & S									
OTHER									
TOTAL:	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**

02 May 2014	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	70	3	42	25	9	33	16	7	5
FINANCIAL SECTOR	1	1	0	0	0	1	0	0	0
MINISTER OF S & S	8	1	4	3	0	5	0	0	3
OTHER	17	3	3	11	1	7	7	2	0
TOTAL:	**96**	**8**	**49**	**39**	**10**	**46**	**23**	**9**	**8**

TOTAL WEEK 3	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	240	11	156	73	29	123	52	23	13
FINANCIAL SECTOR	3	2	0	1	0	1	1	1	0
MINISTER OF S & S	19	4	6	9	0	12	1	3	3
OTHER	63	5	14	44	4	24	21	10	4
TOTAL:	**325**	**22**	**176**	**127**	**33**	**160**	**75**	**37**	**20**

HIGH COURT: GAUTENG DIVISION PRETORIA TERM 2 WEEK: **4: 05/05-09/05**

05 May 2014	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	110	9	77	24	11	55	19	19	6
FINANCIAL SECTOR	0	0	0	0	0	0	0	0	0
MINISTER OF S & S	2	1	0	1	0	1	1	0	0
OTHER	5	0	1	4	0	0	3	1	1
TOTAL:	**117**	**10**	**78**	**29**	**11**	**56**	**23**	**20**	**7**

06 May 2014	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	74	3	50	21	7	34	23	3	7
FINANCIAL SECTOR	4	0	2	2	0	1	1	1	1
MINISTER OF S & S	3	3	0	0	0	2	1	0	0
OTHER	26	4	7	15	2	7	5	4	8
TOTAL:	**107**	**10**	**59**	**38**	**9**	**44**	**30**	**8**	**16**

2014/05/07* (NATIONAL ELECTIONS)	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND									
FINANCIAL SECTOR									
MINISTER OF S & S									
OTHER									
TOTAL:	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**

08 May 2014	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	211	10	126	75	24	96	51	22	18
FINANCIAL SECTOR	0	0	0	0	0	0	0	0	0
MINISTER OF S & S	1	0	0	1	0	0	1	0	0
OTHER	2	0	1	1	1	0	1	0	0
TOTAL:	**214**	**10**	**127**	**77**	**25**	**96**	**53**	**22**	**18**

09 May 2014	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	73	5	41	27	9	31	15	10	8
FINANCIAL SECTOR	0	0	0	0	0	0	0	0	0
MINISTER OF S & S	6	1	3	2	0	3	1	0	2
OTHER	26	4	6	16	2	14	3	3	4
TOTAL:	**105**	**10**	**50**	**45**	**11**	**48**	**19**	**13**	**14**

TOTAL WEEK 4	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	468	27	294	147	51	216	108	54	39
FINANCIAL SECTOR	4	0	2	2	0	1	1	1	1
MINISTER OF S & S	12	5	3	4	0	6	4	0	2
OTHER	59	8	15	36	5	21	12	8	13
TOTAL:	**543**	**40**	**314**	**189**	**56**	**244**	**125**	**63**	**55**

HIGH COURT: GAUTENG DIVISION PRETORIA TERM 2 WEEK: **5: 12/05-16/05**

12 May 2014	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	84	5	42	37	9	40	15	10	10
FINANCIAL SECTOR	4	0	2	2	0	1	3	0	0
MINISTER OF S & S	2	1	0	1	0	2	0	0	0
OTHER	24	2	7	15	2	8	9	1	4
TOTAL:	**114**	**8**	**51**	**55**	**11**	**51**	**27**	**11**	14

13 May 2014	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	95	1	58	36	12	40	20	11	12
FINANCIAL SECTOR	0	0	0	0	0	0	0	0	0
MINISTER OF S & S	4	0	2	2	0	3	0	0	1
OTHER	26	1	8	17	0	11	7	3	5
TOTAL:	**125**	**2**	**68**	**55**	**12**	**54**	**27**	**14**	**18**

14 May 2014	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	105	7	79	19	17	48	24	9	7
FINANCIAL SECTOR	2	1	0	1	0	1	1	0	0
MINISTER OF S & S	1	0	0	1	0	0	0	0	1
OTHER	26	4	4	18	0	10	6	2	8
TOTAL:	**134**	**12**	**83**	**39**	**17**	**59**	**31**	**11**	**16**

2014/05/15* (UNAVAILABLE DATA)	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND									
FINANCIAL SECTOR									
MINISTER OF S & S									
OTHER									
TOTAL:	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**

2014/05/16* (UNAVAILABLE DATA)	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND									
FINANCIAL SECTOR									
MINISTER OF S & S									
OTHER									
TOTAL:	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**

TOTAL WEEK 5	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	284	13	179	92	38	128	59	30	29
FINANCIAL SECTOR	6	1	2	3	0	2	4	0	0
MINISTER OF S & S	7	1	2	4	0	5	0	0	2
OTHER	76	7	19	50	2	29	22	6	17
TOTAL:	**373**	**22**	**202**	**149**	**40**	**164**	**85**	**36**	**48**

HIGH COURT: GAUTENG DIVISION PRETORIA TERM 2 WEEK: **6: 19/05-23/05**

2014/05/19* (UNAVAILABLE DATA)	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND									
FINANCIAL SECTOR									
MINISTER OF S & S									
OTHER									
TOTAL:	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**

2014/05/20* (UNAVAILABLE DATA)	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND									
FINANCIAL SECTOR									
MINISTER OF S & S									
OTHER									
TOTAL:	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**

21 May 2014	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	99	0	60	39	7	46	26	12	8
FINANCIAL SECTOR	2	0	2	0	0	1	0	0	1
MINISTER OF S & S	4	1	2	1	0	3	0	0	1
OTHER	25	3	2	20	0	14	7	1	3
TOTAL:	**130**	**4**	**66**	**60**	**7**	**64**	**33**	**13**	**13**

22 May 2014	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	127	5	80	42	17	46	40	15	9
FINANCIAL SECTOR	0	0	0	0	0	0	0	0	0
MINISTER OF S & S	1	0	0	1	0	1	0	0	0
OTHER	2	0	0	2	0	2	0	0	0
TOTAL:	**130**	**5**	**80**	**45**	**17**	**49**	**40**	**15**	**9**

23 May 2014	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	102	10	63	29	16	52	18	9	7
FINANCIAL SECTOR	2	0	2	0	0	0	2	0	0
MINISTER OF S & S	8	2	1	5	2	4	1	0	1
OTHER	21	3	8	10	0	7	6	5	3
TOTAL:	**133**	**15**	**74**	**44**	**18**	**63**	**27**	**14**	**11**

TOTAL WEEK 6	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	328	15	203	110	40	144	84	36	24
FINANCIAL SECTOR	4	0	4	0	0	1	2	0	1
MINISTER OF S & S	13	3	3	7	2	8	1	0	2
OTHER	48	6	10	32	0	23	13	6	6
TOTAL:	**393**	**24**	**220**	**149**	**42**	**176**	**100**	**42**	**33**

HIGH COURT: GAUTENG DIVISION PRETORIA | TERM 2 | WEEK: **7: 26/05-30/05**

26 May 2014	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	126	6	72	48	31	47	28	11	9
FINANCIAL SECTOR	0	0	0	0	0	0	0	0	0
MINISTER OF S & S	0	0	0	0	0	0	0	0	0
OTHER	12	3	2	7	1	3	5	1	2
TOTAL:	**138**	**9**	**74**	**55**	**32**	**50**	**33**	**12**	**11**

27 May 2014	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	95	4	91	0	19	40	14	15	7
FINANCIAL SECTOR	3	2	1	0	0	1	0	0	2
MINISTER OF S & S	10	0	3	7	1	6	1	2	0
OTHER	15	1	5	9	0	9	1	5	0
TOTAL:	**123**	**7**	**100**	**16**	**20**	**56**	**16**	**22**	**9**

28 May 2014	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	95	6	60	29	14	51	14	12	4
FINANCIAL SECTOR	7	1	1	5	0	3	3	1	0
MINISTER OF S & S	4	0	2	2	0	2	2	0	0
OTHER	18	1	2	15	0	12	1	2	3
TOTAL:	**124**	**8**	**65**	**51**	**14**	**68**	**20**	**15**	**7**

29 May 2014	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	120	3	79	38	27	64	22	4	3
FINANCIAL SECTOR	0	0	0	0	0	0	0	0	0
MINISTER OF S & S	0	0	0	0	0	0	0	0	0
OTHER	0	0	0	0	0	0	0	0	0
TOTAL:	**120**	**3**	**79**	**38**	**27**	**64**	**22**	**4**	**3**

30 May 2014	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	89	5	64	20	10	39	26	10	4
FINANCIAL SECTOR	0	0	0	0	0	0	0	0	0
MINISTER OF S & S	3	2	1	0	1	2	0	0	0
OTHER	20	1	1	18	1	8	5	2	4
TOTAL:	**112**	**8**	**66**	**38**	**12**	**49**	**31**	**12**	**8**

TOTAL WEEK 7	**ON ROLL**	**RESULT**			**TIME**				
		A	**B**	**C**	**2013**	**2012**	**2011**	**2010**	**2009+**
ROAD ACCIDENT FUND	525	24	366	135	101	241	104	52	27
FINANCIAL SECTOR	10	3	2	5	0	4	3	1	2
MINISTER OF S & S	17	2	6	9	2	10	3	2	0
OTHER	65	6	10	49	2	32	12	10	9
TOTAL:	**617**	**35**	**384**	**198**	**105**	**287**	**122**	**65**	**38**

HIGH COURT: GAUTENG DIVISION PRETORIA TERM 2 WEEK: **8: 02/06-06/06**

02 June 2014	ON ROLL	RESULT			TIME				
		A	B	C	2013	2012	2011	2010	2009+
ROAD ACCIDENT FUND	105	7	68	30	16	67	14	3	5
FINANCIAL SECTOR	4	0	4	0	0	1	1	2	0
MINISTER OF S & S	6	0	5	1	0	5	0	0	1
OTHER	25	8	8	9	2	13	4	4	2
TOTAL:	**140**	**15**	**85**	**40**	**18**	**86**	**19**	**9**	**8**

03 June 2014	ON ROLL	RESULT			TIME				
		A	B	C	2013	2012	2011	2010	2009+
ROAD ACCIDENT FUND	135	8	84	43	29	63	18	13	12
FINANCIAL SECTOR	0	0	0	0	0	0	0	0	0
MINISTER OF S & S	1	0	0	1	0	0	0	1	0
OTHER	0	0	0	0	0	0	0	0	0
TOTAL:	**136**	**8**	**84**	**44**	**29**	**63**	**18**	**14**	**12**

04 June 2014	ON ROLL	RESULT			TIME				
		A	B	C	2013	2012	2011	2010	2009+
ROAD ACCIDENT FUND	105	4	73	28	20	43	24	9	9
FINANCIAL SECTOR	3	0	3	0	0	0	1	1	1
MINISTER OF S & S	2	1	1	0	0	0	1	1	0
OTHER	26	4	11	11	1	14	7	2	2
TOTAL:	**136**	**9**	**88**	**39**	**21**	**57**	**33**	**13**	**12**

05 June 2014	ON ROLL	RESULT			TIME				
		A	B	C	2013	2012	2011	2010	2009+
ROAD ACCIDENT FUND	86	3	48	35	20	34	23	7	2
FINANCIAL SECTOR	0	0	0	0	0	0	0	0	0
MINISTER OF S & S	5	2	2	1	2	1	2	0	0
OTHER	26	2	4	20	3	10	4	5	4
TOTAL:	**117**	**7**	**54**	**56**	**25**	**45**	**29**	**12**	**6**

06 June 2014	ON ROLL	RESULT			TIME				
		A	B	C	2013	2012	2011	2010	2009+
ROAD ACCIDENT FUND	119	3	82	34	25	46	30	8	10
FINANCIAL SECTOR	1	0	1	0	0	1	0	0	0
MINISTER OF S & S	2	1	0	1	0	1	0	1	0
OTHER	26	1	7	18	1	7	8	6	4
TOTAL:	**148**	**5**	**90**	**53**	**26**	**55**	**38**	**15**	**14**

TOTAL WEEK 8	ON ROLL	RESULT			TIME				
		A	B	C	2013	2012	2011	2010	2009+
ROAD ACCIDENT FUND	550	25	355	170	110	253	109	40	38
FINANCIAL SECTOR	8	0	8	0	0	2	2	3	1
MINISTER OF S & S	16	4	8	4	2	7	3	3	1
OTHER	103	15	30	58	7	44	23	17	12
TOTAL:	**677**	**44**	**401**	**232**	**119**	**306**	**137**	**63**	**52**

HIGH COURT: GAUTENG DIVISION PRETORIA TERM 2 TOTALS ANALYSIS

TOTAL WEEK 1	ON ROLL	RESULT			TIME				
		A	B	C	2013	2012	2011	2010	2009+
ROAD ACCIDENT FUND	316	14	204	98	27	141	78	49	21
FINANCIAL SECTOR	5	4	0	1	0	5	0	0	0
MINISTER OF S & S	17	5	1	11	0	13	2	0	2
OTHER	101	11	18	72	4	39	32	16	10
TOTAL:	**439**	**34**	**223**	**182**	**31**	**198**	**112**	**65**	**33**

TOTAL WEEK 2	ON ROLL	RESULT			TIME				
		A	B	C	2013	2012	2011	2010	2009+
ROAD ACCIDENT FUND	333	16	207	110	36	174	71	29	23
FINANCIAL SECTOR	8	1	2	5	0	1	4	3	0
MINISTER OF S & S	21	7	3	11	6	10	4	0	1
OTHER	93	9	16	68	5	41	29	10	8
TOTAL:	**455**	**33**	**228**	**194**	**47**	**226**	**108**	**42**	**32**

TOTAL WEEK 3	ON ROLL	RESULT			TIME				
		A	B	C	2013	2012	2011	2010	2009+
ROAD ACCIDENT FUND	240	11	156	73	29	123	52	23	13
FINANCIAL SECTOR	3	2	0	1	0	1	1	1	0
MINISTER OF S & S	19	4	6	9	0	12	1	3	3
OTHER	63	5	14	44	4	24	21	10	4
TOTAL:	**325**	**22**	**176**	**127**	**33**	**160**	**75**	**37**	**20**

TOTAL WEEK 4	ON ROLL	RESULT			TIME				
		A	B	C	2013	2012	2011	2010	2009+
ROAD ACCIDENT FUND	468	27	294	147	51	216	108	54	39
FINANCIAL SECTOR	4	0	2	2	0	1	1	1	1
MINISTER OF S & S	12	5	3	4	0	6	4	0	2
OTHER	59	8	15	36	5	21	12	8	13
TOTAL:	**543**	**40**	**314**	**189**	**56**	**244**	**125**	**63**	**55**

TOTAL WEEK 5	ON ROLL	RESULT			TIME				
		A	B	C	2013	2012	2011	2010	2009+
ROAD ACCIDENT FUND	284	13	179	92	38	128	59	30	29
FINANCIAL SECTOR	6	1	2	3	0	2	4	0	0
MINISTER OF S & S	7	1	2	4	0	5	0	0	2
OTHER	76	7	19	50	2	29	22	6	17
TOTAL:	**373**	**22**	**202**	**149**	**40**	**164**	**85**	**36**	**48**

TOTAL WEEK 6	ON ROLL	RESULT			TIME				
		A	B	C	2013	2012	2011	2010	2009+
ROAD ACCIDENT FUND	328	15	203	110	40	144	84	36	24
FINANCIAL SECTOR	4	0	4	0	0	1	2	0	1
MINISTER OF S & S	13	3	3	7	2	8	1	0	2
OTHER	48	6	10	32	0	23	13	6	6
TOTAL:	**393**	**24**	**220**	**149**	**42**	**176**	**100**	**42**	**33**

ANNEXURE E

DATE ANALYSIS TABLE

CASE NUMBER	ISSUE OF SUMMONS	SUMMONS SERVED	DEFEND ACTION	CLOSE OF PLEADINGS	ENROLL-MENT	PRE-TRIAL	TRIAL DATE
ROAD ACCIDENT FUND MATTERS (13 OF 134 MATTERS ALLOCATED)							
6068/13	31/01/2013	04/02/2013	12/02/2013	26/03/2013	24/07/2013	x1	15/04/2014
13873/13	15/01/2013	24/01/2013	19/02/2013	19/03/2013	-		08/05/2014
24809/12	07/05/2012	15/05/2012	24/05/2012	28/06/2012	27/03/2013	X3	06/05/2014
19536/12	05/04/2012	10/04/2012	13/04/2012	23/07/2012	15/04/2013	X1	08/05/2014
51669/12	05/09/2012	-	20/09/2012	11/11/2012	23/03/2013	-	13/05/2014
10044/12	20/02/2012	24/02/2012	08/03/2012	29/03/2012	08/03/2013	X2	16/04/2014
61619/12	25/10/2012	-	01/11/2012	23/01/2013	01/03/2013	X2	16/04/2014
45247/12	03/08/2012	10/08/2012	-	-	-	X1	14/05/2014
37345/12	11/08/2012	-	09/04/2013	16/05/2013	11/05/2013	-	17/04/2014
29698/11	26/05/2011	31/05/2011	26/08/2011	23/09/2011	10/12/2012	X1	17/04/2014
55112/11	26/09/2011	-	10/11/2011	31/01/2012	-	X1	22/04/2014
30014/11	27/05/2011	-	04/08/2011	18/11/2011	04/11/2011	X1	22/04/2014
66645/11	22/11/2011	29/11/2011	07/12/2011	31/01/2012	-	X1	28/02/2014
OTHER MATTERS (5 OF 57 MATTERS ALLOCATED)							
10565/12	24/02/2012	09/03/2012	23/03/2012	06/08/2012	08/03/2013	NONE	16/04/2014
23504/12	-	09/05/2012	21/05/2012	13/06/2012	26/02/2013	X1	17/04/2014
16233/13	08/02/2013	11/02/2013	25/02/2013	18/03/2013	09/04/2013	-	15/04/2014
45536/11	16/05/2011	23/05/2011	06/09/2011	--/02/2012	05/03/2013	NONE	15/04/2014
69112/11	11/02/2011	11/02/2011	13/03/2012	06/09/2012	-	NONE	14/04/2014
CASE NUMBER	**ISSUE OF SUMMONS**	**SUMMONS SERVED**	**DEFEND ACTION**	**CLOSE OF PLEADINGS**	**ENROLL-MENT**	**PRE-TRIAL**	**TRIAL DATE**

FINANCIAL SECTOR MATTERS (1 OF 11 MATTERS ALLOCATED)							
58839/12	11/10/2012	18/10/2012	13/12/2012	26/03/2013	-	-	17/04/2014
MINISTER OF SAFETY AND SECURITY (2 OF 27 MATTERS ALLOCATED)							
71778/12	25/04/2012	31/05/2012	28/06/2012	12/09/2012	-	X1	14/04/2014
19095/12	04/04/2012	04/04/2012	14/05/2012	18/06/2012	-	X1	22/04/2014

MONTH ANALYSIS TABLE

CASE NUMBER	TIME LAPSE SUMMONS TO CLOSE OF PLEADINGS (MONTHS)	TIME LAPSE CLOSE OF PLEADINGS TO APPLICATION FOR ENROLLMENT (MONTHS)	TIME LAPSE ENROLLMENT TO TRIAL DATE (MOTHS)
ROAD ACCIDENT FUND MATTERS (13 OF 134 MATTERS ALLOCATED)			
6068/13	**3**	**4**	**9**
13873/13	**3**	**-**	**-**
24809/12	**1**	**8**	**14**
19536/12	**3**	**7**	**11**
51669/12	**2**	**5**	**14**
10044/12	**1**	**12**	**14**
61619/12	**3**	**2**	**13**
45247/12	**-**	**-**	**-**
37345/12	**9**	**-1**	**11**
29698/11	**4**	**3**	**16**
55112/11	**4**	**-**	**-**
30014/11	**6**	**-1**	**29**
66645/11	**2**	**-**	**-**
OTHER MATTERS (5 OF 57 MATTERS ALLOCATED)			
10565/12	**6**	**8**	**13**
23504/12	**1**	**8**	**14**

16233/13	**1**	**1**	**12**
45536/11	**9**	**13**	**13**
69112/11	**19**	**-**	**-**
FINANCIAL SECTOR MATTERS (1 OF 11 MATTERS ALLOCATED)			
58839/12	**5**	**-**	**-**
MINISTER OF SAFETY AND SECURITY (2 OF 27 MATTERS ALLOCATED)			
71778/12	**5**	**-**	**-**
19095/12	**2**	**-**	**-**

PERCENTAGE ANALYSIS TABLE

	TIME PERIOD A	**TIME PERIOD B**	**TIME PERIOD C**	**TIME PERIOD D**
1-3 MONTHS	11 = **55%**	4 = **33.3%**	1 = 7.6%	-
3-6 MONTHS	6 = 30%	2 = 16.6%	1 = 7.6%	-
6-9 MONTHS	2 = 10 %	4 = **33.3%**	5 = **38.4%**	1 = 7.6%
9-12 MONTHS	-	1 = 8.3%	3 = 23%	3 = 23%
12+ MONTHS	1 = 5%	1 = 8.3%	3 = 23%	9 = **69.2%**
TOTALS:	**20**	**12**	**13**	**13**

KEY: TIME PERIOD A= TIME LAPSE SUMMONS TO CLOSE OF PLEADINGS (MONTHS**)**
TIME PERIOD B= TIME LAPSE CLOSE OF PLEADINGS TO ENROLLMENT (MONTHS)
TIME PERIOD C= TIME PERIOD "A" AND "B" COMBINED (MONTHS)
TIME PERIOD D= TIME LAPSE ENROLLMENT TO TRIAL DATE (MONTHS)