

## IMPORTANT NEWS

### TAXPAYERS HAVE A MONTH TO DECLARE OFFSHORE ASSETS

Local taxpayers who may have stashed their assets in cash and property offshore have a month to disclose their earnings and ownership details to SARS, notes a report in The Citizen. It says the deadline for the Special Voluntary Disclosure Programme (SVDP) is **31 August 2017**. 'SVDP is a window period for individuals and companies to regularise undisclosed or unauthorised foreign assets and associated income. It came into effect on 01 October 2016,' SARS said. The report notes that Common Reporting Standard (CRS), a new global entity that authorises the automatic exchange of information between tax authorities, will enable SARS to start receiving offshore third-party financial data from other tax authorities on a regular basis from September 2017.

Source: Legalbrief, 2 August 2017

### JUDICIAL MATTERS, COURTS OF LAW ACTS GAZETTED

Most sections of the 2017 Judicial Matters Amendment Act are now in force. According to section 41 (short title and commencement) sections 19, 20 and 21 (moneys held in the trust accounts of court sheriffs), 24 (the retirement age of magistrates), and 35 and 38 (sexual offences courts) will come into effect on dates yet to be announced. Also gazetted, the 2017 Courts of Law Amendment Act is not yet operational and is expected to be implemented incrementally.

As Legalbrief Today has already reported, by aligning the 1944 Magistrates' Courts Act with the requirements of last year's Constitutional Court judgment affecting emolument attachment orders (EAOs), the Courts of Law Amendment Act seeks to ensure that presiding officers considering issuing an EAO take account of: the size of a debt; the circumstances in which it arose; available alternative recovery options; a judgment debtor's income; the rights and needs of vulnerable people and children likely to be affected by an EAO; and how much of the debtor's income is required to meet basic living expenses and those of his/her dependents.

Source: Legalbrief, 3 August 2017

### NO AUTOMATIC EXEMPTIONS FOR MULTATIONALS - FSCC

Multinational companies will not have an automatic exemption from ownership elements of the broad-based BEE scorecard under a revised draft of the Financial Sector Charter that is under discussion by the Financial Sector Charter Council (FSCC) and the Department of Trade and Industry, notes a Business Day report. The FSCC's Busisiwe Dlamini said yesterday that in terms of the proposals, multinationals would have to apply to Trade and Industry Minister Rob Davies, who would have the discretion to grant exemptions and decide whether the companies met the qualifying criteria to substitute the ownership element of the scorecard with equity equivalents. Dlamini said this was a new element of the draft charter that was introduced through engagements with the department after the draft was released. Once the Minister has granted his approval, the multinationals will be able to submit their equity equivalent schemes to the department for approval. Also introduced is a penalty clause for not reporting to the FSCC annually on performance related to the scorecard. If a report is not submitted, one point will be deducted from the following year's scorecard. Each subsidiary of a group that is a registered legal entity in its own right will have to have its own individual scorecard and cannot just be subsumed into the group.

Source: Legalbrief, 28 July 2017

### B-BBEE TO BE 'ENFORCED' IN AGRICULTURAL SECTOR?

Government is finalising agricultural-sector-specific 'regulations' to 'enforce' broad-based black economic empowerment using 'levers' that will include 'licenses, permits, concessions, authorisations, grants and incentives'. Announcing this at an African Farmers Association of SA transformation conference gala dinner in Johannesburg earlier in the week, President Jacob Zuma described as 'significant' the inclusion of farmworkers in the ownership element of the sector's

code of good practice. He may have been referring to amended codes last seen towards the end of 2015 in draft form. According to the President, discussions at a recent ANC national executive committee lekgotla included granting emerging farmers preferential access to large government contracts for supplying hospitals, schools and prisons. A media statement on the gathering alluded to 'intensified' support measures for the sector in general – and small-scale farmers in particular.

Meanwhile, South African Reserve Bank (SARB) governor Lesetja Kganyago has called for policy certainty if the agricultural and mining sectors are to continue contributing to economic growth as evidenced in this year's first quarter statistics (Engineering News) – albeit somewhat modestly. Briefing the National Assembly's Finance Standing Committee yesterday on the role of the SARB and reasons for monetary policy committee concerns about the country's economic outlook, he warned members that – in the absence of moves to boost business and investor confidence – the recession could deepen. Noting that long-term investments in commercial farming and mining cannot be 'expected' if policies change 'every time a new Minister is appointed', Kganyago said that SA's woes are 'idiosyncratic' and should not 'merely be blamed' on the state of the global economy.

*Source: Legalbrief, 2 August 2017*

## **DEFENCE SECTOR B-BBEE CODES TARGET MILITARY VETERANS**

Draft revised broad-based black economic empowerment (B-BBEE) codes of good practice for the defence sector gazetted on 4 August for comment include ownership compliance targets for military veterans of 3% ownership. Other veteran-specific targets proposed are: 30% board membership; 1% of annual payroll to skills development, 4% of which should be dedicated to learning programmes for military veterans; and 0.5% of the annual net profit after tax value of socio-economic contributions. The draft codes also create a category of exempted qualifying micro and small enterprises owned by military veterans. It is proposed that 1% of the value of any contract with Armscor and/or the Department of Defence and Military Veterans should be contributed to a defence industry skills development fund to be established and administered by the sector – and that measured entities contributing to the fund should be exempt from paying the skills levy.

The term 'military veteran' is defined as 'any black South African citizen' who: served in 'any of the non-statutory military organisations ... involved in SA's liberation war' between 1960 and 1994, or in the Union Defence Force before 1961; became a member of the 'new South African National Defence Force' after 1994; or who has completed military training but no longer 'performs military service'. The definition excludes anyone dishonourably discharged from any of the organisations concerned – but includes anyone who, during military training, sustained an injury or contracted a disease associated with it and was therefore unable to complete the programme.

The objectives of the proposed new codes extend beyond those traditionally associated with B-BBEE, incorporating the policy imperatives of government's defence industrial participation programme and the 2014 South African Defence Review. Against that backdrop, among other things the new codes seek to: contribute towards protecting the 'sovereign capability' of the country's defence industry; 'advance the acquisition, retention and transfer of critical, technical and scarce skills'; and 'promote local manufacturing capability ... for local and export purposes'. Interestingly, challenges facing the industry are perceived to include 'the rising threat of socio-political instability ... (resulting from) income inequality'; the economic exclusion of 'former liberation fighters'; and the industry's 'continued over-reliance' on 'monopolies, oligopolies and foreign-owned enterprises'. It is envisaged that, ultimately, 60% of 'defence matériel' products and services will be procured from local enterprises.

Interested and affected parties have 60 days to comment on the proposed new codes.

*Source: Legalbrief, 7 August 2017*

## **COPYRIGHT AMENDMENT BILL UNDER FIRE**

The first round of parliamentary hearings on the Copyright Amendment Bill included input from two academics whose differing perspectives on the proposed new piece of legislation nevertheless clearly illustrated the fundamental importance of creating a more appropriate balance between proprietary rights and access to a more open system. While Stellenbosch University's Sadulla Karjiker was unapologetic in his scathing attack on a Bill he believes to be 'ill considered', 'ineptly drafted' and – 'riding roughshod' over IP rights – a disincentive to the 'greater monetarisation' of IP, the University of Cape Town's Tobias Schonwetter – acknowledging the need to realistically 'reward' creativity – nevertheless emphasised the importance of crafting legislation that responds more effectively to the South African context as a developing country with 'unique challenges'. Both presentations drew attention to the Bill's erroneous use of the terms 'author', 'rights owner' and 'user rights', as well as to flaws in provisions dealing with resale royalty rights –

pointing to the likelihood of substantive redrafting.

According to Schonwetter, most concerns about the existing system expressed by ‘real grassroots creators’ are not necessarily copyright issues but instead relate to ‘unfair competition, (the) abuse of privacy rights, defamation, and ... exploitative contract clauses’. Against that backdrop, he warned that – in processing the Bill – National Assembly Trade and Industry Committee members should be wary of ‘smokescreens’ created by some interest groups to preserve the status quo. This notwithstanding, a submission from the South African Institute of IP Law (SAIPL) observed that – in its present form – the proposed new statute could undermine the very rights of ‘authors, creators, songwriters, artists and other individuals’ it ‘ostensibly’ seeks to improve and protect: a view shared by Karjiker.

Presenting on behalf of SAIPL and the Law Society of SA, Esmé du Plessis – while supporting moves to update and modernise the 1978 Copyright Act – emphasised the importance of making amendments that are ‘legally correct, ‘effective’ and likely to result in ‘fair and equitable’ outcomes. Noting ‘contentious policy issues’ in a Bill she believes will create legal uncertainty, Du Plessis expressed reservations about the ‘US-based fair-use system’ – the adoption of which, in her view, could lead to ‘increased litigation’ and ‘interpretation difficulties’ inevitably ending up in the Constitutional Court. She urged committee members to consider appointing a ‘task team of experts’ to assist in addressing this and related issues.

Proceedings having been delayed in the absence of a quorum, time constraints prevented any meaningful engagement between presenters and committee members, many of whom remained conspicuously absent and could well be rapped over the knuckles if this becomes a habit. Fortunately, however – recognising the value of input from legal experts in particular – committee chair Joan Fubbs alluded to opportunities for further input as the process unfolds. Hopefully, there will be a better MP turnout at tomorrow’s hearings and those scheduled to take place on Friday.

*Source: Legalbrief, 2 August 2017*

#### **LEAVE TO APPEAL GRANTED IN LANDMARK COST RULING**

KZN High Court (Durban) Judge Dhaya Pillay has granted Durban City officials leave to appeal her April ruling that they were personally liable for the costs of court action following their bungling of an R80m tender. The Mercury reports that Westwood Insurance Brokers took the city to court last year over a three-year water loss insurance tender it lost to South West Brokers, claiming that South West had not complied with an undertaking for water leak insurance. In December, Pillay set aside the tender award and ordered the city to file affidavits naming all the officials involved in awarding it. Then, in April this year, she ordered that, collectively, 16 officials pay the municipality 50% of the costs it was ordered to pay Westwood, and that South West pay it the other 50%. This week, Pillay said if the city had made representations to assure the court it would act to hold the responsible employees accountable, the court would have exercised its discretion differently. She said the question of why the city had awarded a tender for water loss insurance to a bidder who tendered professional indemnity insurance remained unanswered. Regardless of all this, she said, another court may find differently on the liability of the employees. The report adds the appeal will be heard by a full Bench of the KZN High Court.

*Source: Legalbrief, 3 August 2017*

#### **PROTECTED DISCLOSURES AMENDMENT ACT GAZETTED**

The 2017 Protected Disclosures Amendment Act was gazetted and may well be in force, since nothing to the contrary features under the Act’s short title – where references to the commencement of a new piece of legislation usually appear. As Legalbrief Today has regularly reported, expected to facilitate and encourage the disclosure of unlawful or irregular conduct on the part of both public and private sector employers, the Act nevertheless: criminalises the intentional disclosure of false information; and does not provide whistle-blowers with blanket immunity from civil and criminal liability. Opposed by the DA and ACDP, the new statute has been criticised by some public interest organisations for its perceived potential to deter whistle-blowing (GroundUp).

Affecting independent contractors, consultants, agents and anyone rendering services to the client of a temporary employment agency, among other things the Act introduces joint liability for situations in which ‘an employer, under the express or implied authority or with the knowledge of a client, subjects an employee or worker to an occupational detriment’ (section 4). According to the Act’s definition of ‘occupational detriment’, the term includes: disciplinary action; dismissal, suspension; demotion; harassment; and intimidation. It also refers to circumstances where the individual concerned is: subjected to a civil claim ‘for the alleged breach of a duty of confidentiality ... arising out of a disclosure’; refused a reference, or given one deemed to be adverse; denied appointment to any form of employment; or subjected

to any change in original employment conditions, terms of employment or terms of retirement considered comparatively disadvantageous.

Source: *Legalbrief*, 3 August 2017

## RECOMMENDED READING

**Verjaring, verjaringstermyne en verbande – hoogste hof van appèl saai verwarring**, JC Sonnekus, *TSAR*, 2017.3

**Terugtrede by kontrakbreuk met besondere klem op kredietooreenkomste**, JM Otto, *TSAR*, 2017.3

**Middellike werkgeweraanspreeklikheid weens seksuele teistering deur 'n werknemer**, J Scott, *TSAR*, 2017.3

**Gierigheid van voormalige gade of lewensgenoot is geen regverdiging om af te wyk van die selektiewe waan van 'n voormalige gade na egskeiding as vooroorlede nie**, JC Sonnekus, *TSAR*, 2017.3

**School admission policy versus equal access to education: the end of the road for school governing bodies?** R Venter & D Kgori, *TSAR*, 2017.3

**Construction Works: Defects liability before and after the issuing of final completion certificate**, MJ Maritz & SC Gerber, *THRHR*, 80.1

**Initialling of alterations**, A West, [www.ghostdigest.com](http://www.ghostdigest.com), July 2017

**Draft legislation proposes significant changes to the tax treatment of share buy-backs and dividend stripping**, by C McFadden & S Mokoena of Fasken Martineau's tax group, [www.polity.org.za](http://www.polity.org.za)

**Pension funds and commercial transactions**, by L Salt & D Joffe of Baker McKenzie, [www.polity.org.za](http://www.polity.org.za)

## RECENT CONSTITUTIONAL COURT JUDGMENTS

### BARLOW v S (CCT233/15) [2017] ZACC 27 (3 AUGUST 2017)

Application for leave to appeal — no prospects of success — not in the interests of justice to grant leave — application is dismissed.

Section 35(3)(a) of the Constitution — right to be informed of charge with sufficient detail to answer to it — inadvertent omission — detail given in the course of judgment — no violation.

Section 35(3)(o) — right to appeal — no express consideration — no reason to interfere with factual finding of trial Court — no violation.

### SNYDERS NO v LOUISTEF (PTY) LTD AND ANOTHER (CCT311/16) [2017] ZACC 28 (3 AUGUST 2017)

Petroleum Products Amendment Act 58 of 2003 — legal nature of site licences under section 2D — licence is asset, but subject to constraint.

Source: <http://www.saflii.org/za/cases/ZACC/2017/>

## ALL SOUTH AFRICAN LAW REPORTS – JULY 2017

### FIRSTRAND BANK LTD v KJ FOODS CC (IN BUSINESS RESCUE) [2017] 3 ALL SA 1 (SCA)

Company law – Business rescue – Companies Act 71 of 2008 – Whether a vote by a creditor against the adoption of a proposed business rescue plan should be set aside – Section 153(7) provides for a court to set aside the vote on a business rescue plan, on application, if the court is satisfied that it is reasonable and just to do so – A court must first determine whether or not the vote was inappropriate and if so, invoke the provisions of section 153(7).

Words and phrases – “inappropriate” – Section 153(7) of the Companies Act 71 of 2008 provides for a court to set aside the vote on a business rescue plan, on application, if the court is satisfied that it is reasonable and just to do so, and a court must first determine whether or not the vote was inappropriate and if so, invoke the provisions of section 153(7) – Dictionary definition of “inappropriate” referring to something being unsuitable, improper, wrong, inadvisable, misguided, undesirable, misplaced.

**AM v S [2017] 3 ALL SA 23 (GJ)**

Criminal law – Rape – Complainant’s recanting of rape allegation – Appeal against conviction and sentence – Application to lead further evidence – Section 309B(5) and (6) of the Criminal Procedure Act 51 of 1977 – Test for acceding to such an application requires that there should be some reasonably sufficient explanation, based on allegations which may be true, why the evidence which it is sought to lead was not led at the trial – There should also be a prima facie likelihood of the truth of the evidence, which evidence should be materially relevant to the outcome of the trial.

**BELWANA v EASTERN CAPE MEC FOR EDUCATION AND ANOTHER; LANGEVELDT v EASTERN CAPE MEC FOR EDUCATION AND ANOTHER [2017] 3 ALL SA 32 (ECB)**

Constitutional law – Right of access to information – Section 32 of the Constitution of the Republic of South Africa, 1996 – Right to information is not absolute, and may be limited in terms of section 36 of the Constitution – Refusal is compulsory if access involves the unreasonable disclosure of a non-consenting third party’s personal information, and if access would result in a breach of confidence owed to a third party in terms of an agreement – Section 45 of the Promotion of Access to Information Act 2 of 2000 permits refusal of a request for access to a record of the body if the request is manifestly frivolous or vexatious; or the work involved in processing the request would substantially and unreasonably divert the resources of the public body – Section 44(2) protects the record of a public body if the record contains evaluative material, and the disclosure of such material would breach an express or implied promise which was made to the person who supplied the material.

**DE SOUSA AND ANOTHER v TECHNOLOGY CORPORATE MANAGEMENT (PTY) LTD AND OTHERS [2017] 3 ALL SA 47 (GJ)**

Company law – Action by minority shareholders in company – Section 252 of the Companies Act 61 of 1973 – Providing remedy for members of a company in case of oppressive or unfairly prejudicial conduct – A member seeking relief must show that the conduct complained of is unfairly prejudicial, unjust or inequitable to that member or to some part of the members – Section 252(3) confers a wide discretion on the court to do what is considered fair and equitable in all the circumstances of the case, to put right and cure the unfair prejudice which a shareholder has suffered.

**DEMOCRATIC ALLIANCE v PRESIDENT OF THE REPUBLIC OF SA; IN RE DEMOCRATIC ALLIANCE v PRESIDENT OF THE REPUBLIC OF SA AND OTHERS [2017] 3 ALL SA 124 (GP)**

Civil procedure – Application for review – Decisions by President to reshuffle Cabinet – Request for all documents relevant to making of impugned decisions – Rule 53 of the Uniform Rules of Court in terms of which the review application was brought, held to be applicable to executive decisions – Executive power conferred upon the office of the President by section 91(1) of the Constitution of the Republic of South Africa, 1996 is circumscribed by the bounds of rationality and by section 83(b) and (c) of the Constitution – Court confirming that executive decisions have to be rational and are therefore subject to judicial scrutiny.

**DU PLESSIS v INDEPENDENT REGULATORY BOARD FOR AUDITORS AND OTHERS [2017] 3 ALL SA 137 (WCC)**

Administrative justice – Decisions of the disciplinary committee of Independent Regulatory Board for Auditors – Whether constituting administrative action as defined in the Promotion of Administrative Justice Act 3 of 2000 – To qualify as administrative action, decision had to be of an administrative nature within the meaning of the Promotion of Administrative Justice Act – Character of the function concerned that is the determinative criterion.

Auditors – Disciplinary proceedings against – Application for review of finding of guilt – Averment that disciplinary committee’s verdict was premised on findings of fact in respect of matters that had not been adumbrated in the factual allegations made in the charge sheet in support of the charge levelled and in the face of findings that some of the alleged facts that were material to the charges had been found by the committee not to have been proved – Whether conviction was misaligned with charge – Court confirming that charge was pleaded with sufficient particularity and was formulated in a manner substantially compliant with section 49(3) of the Auditing Profession Act 26 of 2005.

**EARTHLIFE AFRICA, JOHANNESBURG AND ANOTHER v MINISTER OF ENERGY AND OTHERS [2017] 3 ALL SA 187 (WCC)**

Civil procedure – Intergovernmental agreements – Constitutionality – Where procedures set out in section 231(2) and 231(3) of the Constitution of the Republic of South Africa, 1996 to render such agreements binding over South Africa not followed, agreements violated the provisions of the Constitution and fell to be set aside.

Civil procedure – Intergovernmental agreements – Non-joinder of foreign governments with whom agreements were signed – Minister's obligations to act constitutionally and in accordance with section 231 of the Constitution of the Republic of South Africa, 1996 are owed to the citizens of this country and not to foreign governments – None of the foreign governments that were party to the intergovernmental agreements had any direct and substantial legal interest, as a matter of South African domestic law, in the constitutionality of the Minister's actions – Joinder not necessary.

Energy – Determinations made by Minister of Energy in terms of section 34 of the Electricity Regulation Act 4 of 2006 – Procedural challenge – Delay in gazetting decision rendering it irrational and unlawful, and violated the requirements of open, transparent and accountable government – Determination rendered unconstitutional and unlawful.

Energy – Determinations made by Minister of Energy in terms of section 34 of the Electricity Regulation Act 4 of 2006 – Whether the Minister and National Energy Regulator breached statutory and constitutional prescripts in making the section 34 determinations – Decision by the Minister or the National Energy Regulator falling short of constitutional legality for want of consultation with interested parties.

**ELITE BINGO (UTH) (PTY) LTD v ZWANE NO AND OTHERS [2017] 3 ALL SA 236 (ECG)**

Local government – Gambling – Disqualification of applicant for licence to operate a bingo hall due to failure to obtain special consent for use of property – Zoning of property – Whether special consent to operate bingo hall on property was required – Interpretation of provisions of zoning scheme – Property zoned as place of amusement not encompassing use as place of gambling – Special consent was therefore required.

**HELEN SUZMAN FOUNDATION AND ANOTHER v MINISTER OF POLICE AND OTHERS [2017] 3 ALL SA 253 (GP)**

Civil procedure – Leave to appeal – Effect of – Suspension of impugned order – Application for order declaring that the operation of order would not be suspended and would continue to be operational regardless of any applications for leave to appeal – Section 18(1) of the Superior Courts Act 10 of 2013 provides that unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal – In terms of section 18(3), a court may only order otherwise if the party who applied to the court proves on a balance of probabilities that he will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.

Words and phrases – “exceptional circumstances” – Section 18(1) of the Superior Courts Act 10 of 2013 provides that unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal – What is contemplated by exceptional circumstances, is something out of the ordinary and of an unusual nature.

**KWAZULU-NATAL LAW SOCIETY v SHARMA AND ANOTHER [2017] 3 ALL SA 264 (KZP)**

Civil procedure – Appeal – Doctrine of peremption – If the conduct of an unsuccessful litigant is such as to point indubitably and necessarily to the conclusion that he does not intend to attack the judgment, then he is held to have acquiesced in it.

Civil procedure – Leave to appeal – Test – In terms of section 17(1) of the Superior Courts Act 10 of 2013, leave to appeal may only be granted where the court is of the opinion that the appeal would have a reasonable prospect of success, or failing that, where there is some other compelling reason justifying the matter receiving the attention of the court of appeal.

Professions – Attorneys – Striking from roll – Granting of lesser sanction – Costs – Whether law society was as a matter of course, entitled to costs in striking off application – Decision regarding costs in such circumstances would depend upon the particular facts of the matter, would fall within the discretion of the court of first instance and that a court on appeal would be reluctant to intervene in this regard, unless the lower court failed to exercise a judicial discretion.

**NGOMANE AND OTHERS v CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY AND ANOTHER [2017] 3 ALL SA 276 (GJ)**

Constitutional law – Right to occupy traffic island where shelters were erected at night – Act of sleeping on a traffic island in a “shelter” put up and taken down each night is not an act, which properly construed, can constitute an “occupation” for the purposes of section 26 of the Constitution of the Republic of South Africa, 1996 or of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

Property – Spoliation – Vindictory claim by homeless persons whose personal possessions were seized by city officials – Claim not sustainable where items not properly identified and issue was moot – Claim for supply of similar items not sustainable as the standard alternative to the (unsuccessful) vindication of property is a claim for damages, not the provision of alternative goods.

Words and phrases – “building or structure” – Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 – Includes any hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter.

Words and phrases – “evict” – Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 – “Evict” means to deprive a person of occupation of a building or structure, or the land on which such building or structure is erected, against his will.

Words and phrases – “unlawful occupier” – Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 – An unlawful occupier refers to a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land.

**SHANGE AND OTHERS v S [2017] 3 ALL SA 289 (KZP)**

Criminal procedure – Criminal trial – Assessment of evidence – Court’s duties – A court must neither look at evidence implicating the accused in isolation to determine whether there is proof beyond reasonable doubt, nor should it look at exculpatory evidence in isolation to determine whether an accused’s version is reasonably possibly true – Correct approach is to consider all the evidence in the light of the totality of the evidence of the case – A court of appeal, shall not interfere in the findings of the trial court in regard to conviction unless there is a material misdirection which resulted in an incorrect conclusion being reached.

Evidence – Circumstantial evidence – In drawing any inferences from circumstantial evidence, the inference sought to be drawn must be consistent with all the proven facts; and the proven facts must be such that they exclude every other reasonable inference.

**ST CHARLES COLLEGE v DU HECQUET DE RAUVILLE AND OTHERS [2017] 3 ALL SA 358 (KZP)**

Constitutional law – Action by independent school against defaulting parents – Attachment of home – Whether it is unconstitutional that the dwelling of a parent of a learner at an independent school may be attached to recover tuition fees, while the dwelling of a parent of a learner at a public school may not be so attached in terms of section 41(6) of the South African Schools Act 84 of 1996 – Court finding differential treatment not to constitute unfair discrimination, and declaring immovable property of debtors executable.

Source: [www.Legalbrief.co.za](http://www.Legalbrief.co.za)

**PROCLAMATIONS AND NOTICES**

DEPARTMENT OF HOME AFFAIRS	White Paper on International Migration for South Africa published	GG 41009 (28.07.17)
INCOME TAX ACT 58 OF 1962	Amendment of Agreement between the Republic of South Africa and the Republic of Turkey for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income published under GN 1265 in GG 29464 of 11 December 2006 published with effect from 15 July 2017	GG 41009 (28.07.17)

	Agreement between the Government of the Republic of South Africa and the Government of Samoa for the exchange of information relating to tax matters published with effect from 28 May 2017	
CUSTOMS AND EXCISE ACT 91 OF 1964	Schedule 1 amended	GG 41012 (28.07.17)
MEDICINES AND RELATED SUBSTANCES ACT 101 OF 1965	Schedules 1–4, 6 and 7 amended	GG 41009 (28.07.17)
HEALTH PROFESSIONS ACT 56 OF 1974	Notice of name change from 'Professional Board for Dental Therapy and Oral Hygiene' to 'Professional Board for Dental Assisting, Dental Therapy, and Oral Hygiene' published	GG 41003 (25.07.17)
PLANT BREEDERS' RIGHTS ACT 15 OF 1976	Receipt of applications for plant breeders' rights published	GG 41009 (28.07.17)
ROAD ACCIDENT FUND ACT 56 OF 1996	Adjustment of statutory limit in respect of claims for loss of income and loss of support published with effect from 31 July 2017	GG 41013 (28.07.17)
SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS ACT 74 OF 1996	Referral of matters to existing special investigating unit in respect of the affairs of the following bodies published: <ul style="list-style-type: none"> <li>• Gauteng Provincial Department of Health</li> <li>• Department of Rural Development and Land Reform</li> <li>• Lesedi Local Municipality</li> </ul>	GG 4100 (24.07.17)
NATIONAL RESEARCH FOUNDATION ACT 23 OF 1998	Notice of withdrawal of the declaration of the Hartebeesthoek Radio Astronomy Observatory (HartRAO) as a National Research Facility and declaration of the South African Radio Astronomy Observatory (SARAO) as a National Facility published	GG 41009 (28.07.17)
PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000	Descriptions submitted in terms of s. 15 (1) by the Gauteng Provincial Government: Department of Community Safety published	GG 41009 (28.07.17)
PROPERTY VALUERS PROFESSION ACT 47 OF 2000	Fees and charges published with effect from 1 April 2017	GG 41009 (28.07.17)
PROJECT AND CONSTRUCTION MANAGEMENT PROFESSIONS ACT 48 OF 2000	South African Council for the Project and Construction Management Professions (SACPCMP): Notice of publication of Revised Code of Conduct published with effect from 1 August 2017	GG 41009 (28.07.17)
INTERNATIONAL TRADE ADMINISTRATION ACT 71 OF 2002	International Trade Administration Commission of South Africa (ITAC):  Notice of expiry of certain anti-dumping duties published	GG 40998 (21.07.17)

	Notice of an initiation of a sunset review of the anti-dumping duties on clear float glass originating in or imported from Indonesia published	
BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT 53 OF 2003	Codes of Good Practice on Broad-Based Black Economic Empowerment: Draft Statement 005 of 2017 published for comment	GG 40997 (21.07.17)
ELECTRONIC COMMUNICATIONS ACT 36 OF 2005	Independent Communications Authority of South Africa (ICASA): Notice of expiry of Class Electronic Communications Service Licence (C-ECS) issued to Bultimex cc t/a INetSure and Individual Electronic Network Communications Services (I-ECS) and Individual Electronic Communications Services (I-ECS) licences issued to Netwave Internet published	GG 41009 (28.07.17)
SPECIAL ECONOMIC ZONES ACT 16 OF 2014	Designation of Special Economic Zone: Richards Bay Industrial Development Zone published	GG 41002 (25.07.17)
LEGAL AID SOUTH AFRICA ACT 39 OF 2014	Regulations in terms of section 23(1) of the Act published with effect from 22 August 2017	GG 41005 (26.07.17)

## PROVINCIAL LEGISLATION

### Eastern Cape

EASTERN CAPE TRADITIONAL LEADERSHIP AND GOVERNANCE ACT 1 OF 2017	Regulations for the election of members of the Eastern Cape Houses of Traditional Leaders published for comment	PG 3884 (27.07.17)
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### Gauteng

NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE ACT 59 OF 2008 AND GAUTENG HEALTH CARE WASTE MANAGEMENT REGULATIONS, 2004	List of transporters authorised in 2016 to transport health care risk waste and list of treatment facilities authorised to treat health care risk waste published	PG 186 (26.07.17)
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### Kwazulu - Natal

LOCAL GOVERNMENT: MUNICIPAL PROPERTY RATES ACT 6 OF 2004	Impendle Local Municipality: Resolution levying rates on property published with effect from 1 July 2017	PG 1860 (27.07.17)
NATIONAL ROAD TRAFFIC ACT 93 OF 1996	eThekweni Metropolitan Municipality: Registration of Kens One Stop Repairs in Tongaat as a private Grade 'A' vehicle testing station published with effect from 1 February 2017  Ubuhlebezwe Local Municipality: Relocation of Ixopo Registering Authority published with effect from 1 September 2017	PG 1860 (27.07.17)

SPATIAL PLANNING AND LAND USE MANAGEMENT ACT 16 OF 2013	KwaDukuza Local Municipality: Revision of the adopted Spatial Development Framework published for comment	PG 1860 (27.07.17)
	Inkosi Langalibalele Local Municipality: Spatial Planning and Land Use Management By-law, 2017 published	
	Endumeni Local Municipality: Draft Spatial Development Framework 2017–2022 published for comment	
KWAZULU-NATAL TRADITIONAL LEADERSHIP AND GOVERNANCE ACT 5 OF 2005	Recognition of iNkosi and amaBambabukhosi in various districts published with effect from 7 June 2017	PG 1861 (27.07.17)
<b>Limpopo</b>		
LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT 32 OF 2000	Ba-Phalaborwa Local Municipality: Erratum to the Determination of tariffs for the 2017/2018 financial year as published under LAN 63 in PG 2820 of 14 June 2017 published with effect from 1 July 2017	PG 2836 (21.07.17)
<b>Mpumalanga</b>		
LOCAL GOVERNMENT: MUNICIPAL PROPERTY RATES ACT 6 OF 2004	Bushbuckridge Local Municipality: Resolution levying property rates for the financial year 1 July 2017 to June 2018 published with effect from 1 July 2017	PG 2835 (28.07.17)
SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAW, 2015	Nkangala District Municipality: Notice of officials appointed to, and commencement of, Appeal Tribunal published	PG 2835 (28.07.17)
<b>Northern Cape</b>		
LOCAL GOVERNMENT: MUNICIPAL STRUCTURES ACT 117 OF 1998	Gamagara and Siyancuma Local Municipalities: Notice of amendment of section 12 notice as published under PremN 6 in PG 463 of 5 May 2000; to give effect to the change of structure from a Plenary Executive System with a Ward Participatory System to a Collective Executive System with a Ward Participatory System published	PG 2113 (21.07.17)
DIVISION OF REVENUE ACT 3 OF 2017	Northern Cape Provincial Treasury: Notice of publication of allocations to be made to schools and hospitals for the 2017/18 financial year published	PG 2114 (24.07.17)
LOCAL GOVERNMENT: MUNICIPAL PROPERTY RATES ACT 6 OF 2004	Ga-Segonyana Local Municipality: Resolution levying property rates for the financial year 1 July 2017 to 30 June 2018 published with effect from 1 July 2017	PG 2114 (24.07.17)
	Richtersveld Local Municipality: Resolution levying property rates for the 2017/2018 financial year published with effect from 1 July 2017	
	Thembelihle Local Municipality: Resolution levying property rates for the financial year 1 July 2017 to 30 June 2018 published with effect from 1 July 2017	

LOCAL GOVERNMENT:  
MUNICIPAL FINANCE  
MANAGEMENT ACT 56 OF  
2003 AND LOCAL  
GOVERNMENT:  
MUNICIPAL PROPERTY  
RATES ACT 6 OF 2004

Siyancuma Local Municipality: Property rates tariffs for the 2017/2018 financial year published with effect from 1 July 2017

PG 2114 (24.07.17)

#### North West

LOCAL GOVERNMENT:  
MUNICIPAL PROPERTY  
RATES ACT 6 OF 2004

Lekwa-Teemane Local Municipality: Notice of assessment of general rates for the financial year 2017/2018 and final dates of payment published

PG 7783 (25.07.17)

Rustenburg Local Municipality: Resolution levying property rates for the financial year 1 July 2017 to 30 June 2018 published with effect from 1 July 2017

NATIONAL  
ENVIRONMENTAL  
MANAGEMENT ACT 107  
OF 1998

Greater Taung Local Municipality and Dr Kenneth Kaunda District Municipality Notice of intention to adopt the Environmental Management Framework published for comment

PG 7783 (25.07.17)

LOCAL GOVERNMENT:  
MUNICIPAL SYSTEMS ACT  
32 OF 2000 AND LOCAL  
GOVERNMENT:  
MUNICIPAL PROPERTY  
RATES ACT 6 OF 2004

Kgetlengrivier Local Municipality: Determination of property rates tariffs for the financial year 1 July 2017 to 30 June 2018 published

PG 7783 (25.07.17)

SUPERIOR COURTS ACT  
10 OF 2013

Practice Directive for the North West Division of the High Court, Mahikeng published with effect from 1 August 2017

PG 7784 (28.07.17)

### SEMINARS

NAME OF SEMINAR	DATES	PRESENTER
MEDIATION CIVIL	Pretoria: 21 - 25 August 2017 Port Elizabeth: 4 - 8 September 2017 Nelspruit: 11 - 15 September 2017 Bloemfontein: 2 - 6 October 2017	Various Presenters
WILLS & TESTAMENTARY TRUSTS	Durban: 16 - 18 August 2017 Cape Town: 13 - 15 September 2017 Pretoria: 11 - 13 October 2017 Johannesburg: 15 - 17 November 2017	Ceris Field
ENGINEERING AND CONSTRUCTION	Cape Town: 22 - 23 August 2017 Durban: 3 - 4 October 2017	Hugh Lane
DEBT COLLECTION	Durban: 5 September 2017 Cape Town: 8 September 2017 Pretoria: 12 September 2017 Johannesburg: 13 September 2017 East London: 21 September 2017	Brett Bentley

Post Elizabeth: 22 September 2017  
 Bloemfontein: 28 September 2017

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