

**SOUTH AFRICAN ASSOCIATION OF PERSONAL INJURY FOR LAWYERS  
VERSUS HEATH AND OTHERS**

**CONSTITUTIONAL COURT 27/00**

---

**Explanatory Note**

---

*The following explanation is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

On Thursday 7 September 2000 the Constitutional Court will hear this case involving the constitutionality of the functioning of a Special Investigating Unit (SIU). The SIU, headed by Judge Heath, was established by the President under the Special Investigating and Special Tribunals Act 74 of 1996 (the Act) to investigate allegations that attorneys acting for road accident claimants had failed to pay over to their clients all the compensation due to them.

The appellant, an association of lawyers engaged in personal accident litigation, appeals directly to the Constitutional Court against the dismissal of three constitutional challenges it raised in the Transvaal High Court. The government, represented by the President and the Minister of Justice, opposes the appeal.

The appellant argues in the first place that the appointment of a judge to head the SIU violates a principle in the Constitution that the powers of the executive and judicial branches of state should be kept separate: the SIU performs executive functions that should not be headed by a judge. The appointment is said to breach section 165(2) of the Constitution, which entrenches the independence of the judiciary. The government answers that under our Constitution the separation of state powers is flexible and, in any event, the head of an SIU is not a fully fledged member of the executive and Judge Heath does not act as a judge when he performs his SIU functions.

Secondly, the appellant argues that the allegation that was referred to the SIU for investigation was beyond the scope of the Act: the allegation is overbroad since it places all attorneys under possible investigation. Further, the Act only allows investigations regarding public money, while the money alleged to have been misappropriated here is private money that falls outside the scope of the Act. The government's response is, first, that the members of the appellant, who have done no wrong, have nothing to fear from the investigation and, second, that road accident compensation is indeed public money. Finally, the appellant alleges that the search and seizure powers of the SIU unjustifiably infringe the constitutional right to privacy. They argue that the Act should permit search and seizure only where there is a reasonable suspicion that an offence has been committed, while the government contends that the powers are justified as an SIU investigation is aimed at fighting corruption and preserving state funds.