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NEWSLETTER

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www.statssa.gov.za: This website of the Department of Statistics gives the latest CPI (3,4%), the latest CPIX (4,2%) and the latest unemployment rate (26,5%). More interestingly the statistical reports include labour statistics. Report P0277.1 for March 2005 records that 7 million employees (roughly 70% of the employed workforce) earned an average of R85000 per year (including fringe benefits). In terms of formal sector salary surveys this is the same level as for a Peromnes level 14 median (Paterson level B2) which covers semi-skilled occupations. One implication of this statistic is that some 70% of the working population are earning at levels comparable to those reported in the formal sector earnings surveys (Paterson and Peromnes).

The 2001 census reported a population of 28 million potential workers between the ages of 15 and 65. Of these 12 million reported being "economically inactive" (housewives, disabled persons) and 6½ million reported being "unemployed" (23% of 28 million). It is possible that some self-employed persons preferred not to report their earnings or employment to the authorities and the true size of the gainfully employed workforce may be thus be understated. The Department of Statistics lists the following definitions:

Formal sector: This "includes all employing businesses that are registered in any way". The earnings reported from this 70% of the employed workers include "salaries, wages, performance and other bonuses, allowances, commissions, etc".

Informal sector: This "consists of those businesses which are not registered in any way. They are generally small in nature, and are seldom run from business premises. Instead they are generally run from homes, street pavements and other informal arrangements". The most recent available statistics for earnings in this sector is the table published at page 109 of the *Quantum Yearbook 2005*.

Against this background I have constructed the following table:

Peromnes/ Paterson	Formal Surveys 2005 rands	Building IC minimums 2005 rands	RAF Claim Earns Certs 2005 rands	Government min wage 2005 rands
P19/A1	37000 (LQ)	28210	23000 (28 items)	11160
P15/B1	60400 (LQ)	54723	68682 (5 items)	-
P11/C1	119200 (LQ)	86083	-	-

This suggests that for semi-skilled and higher occupations the Peromnes/Paterson survey figures are a reliable guide to remuneration levels. However, for the lowest grade

occupations the survey figures are too high. This is the mysterious 30% "informal sector". The massive weighting of the RAF claim data towards the very low income groups (28 persons out of 33 in my preliminary survey) suggest that the vast majority of MVA claims arise for persons from the lowest income groups. This conclusion is intuitively self-evident because these are the persons who have to walk, ride bicycles, or use wobbly microbus services. These are also persons for whom the hardship of survival and low education prevents meaningful management of the risks of life. Although there is undoubted upward mobility the opportunities are restricted by inadequate skills and job shortages in the formal sector. The harsh conclusion is that for a large proportion of MVA claimants the Peromnes/Paterson survey earnings are unattainable and should thus be used with caution when assessing compensation. This presumes, of course, that MVA compensation continues to be based on "likely earnings" (see *Carstens v Southern Insurance Assn* 1985 3 SA 1010 (C) 1020G; *Minister van Veiligheid v Geldenhuys* 2004 1 SA 515 (SCA) 'Die vraag is nie wat Geldenhuys kon verdien nie, maar wat hy waarskynlik sou verdien' at 536I) rather than an idealistic notion of loss of "earning capacity" (possible highest and best use).

The formal sector is substantially structured, homogeneous, and predictable. The same cannot be said of the informal sector. What is more there is a dearth of reliable statistics. For persons in the informal sector closer regard should thus be had to actual earnings rather than salary surveys (for child claims to the earnings of the parents and/or siblings).

Jurisdiction for actuaries: It is sad but true that some attorneys do not pay their actuary until presented with a summons. Because there are very few actuaries the instructing attorney is commonly resident in a different town from the actuary and jurisdiction becomes an issue. The actuary can always issue summons in the jurisdiction of the defaulting attorney. But why must the actuary travel to a remote town to collect his fees? After all, it was the attorney who elected to send instructions (the offer) outside the attorney's jurisdiction? In order to bring an action in the actuary's Magistrates' Court "the entire cause of action" must have arisen in the actuary's jurisdiction. These words have been subject to special interpretation and a fine distinction is made between *facta probanda* and *facta probantia*. In *Herholdt v Rand Debt Collecting* 1965 3 SA 752 (T) the offer to enrol with a correspondence college was signed in Pietersburg and then sent to Johannesburg where it was accepted by the college. The Johannesburg Magistrates' Court was held to have jurisdiction. The fact that some of the *facta probantia* related to facts outside the Johannesburg Court's jurisdiction did not prevent that Court having jurisdiction. Thus, it seems, that if an attorney in Pietersburg sends an instruction (an offer) to an actuary in Johannesburg and the actuary accepts that offer in Johannesburg then the Johannesburg Magistrates' Court will have jurisdiction.

Quite apart from the fine distinction between *facta probanda* and *facta probantia* is the argument that an attorney who elects to instruct an actuary in a different jurisdiction thereby tacitly consents to the jurisdiction of the actuary's office. What is more certain is that if the actuary issues summons from his own jurisdiction and the attorney then pleads to that summons without objecting to jurisdiction then the act of pleading constitutes consent to the actuary's jurisdiction (*William Spilhaus v Marx* 1963 4 SA 994 (C)).

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