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chokes that trap us
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Experience Learning

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LITIGATE, ADVOCATE, EDUCATE: WHY GOING TO COURT CAN HELP TO FIGHT ALCOHOL HARMS

South Africa is a nation of heavy drinkers. In fact, data shows that the country's drinkers consumed, on average, about 27 litres of pure alcohol each in 2019. That works out to roughly five glasses of wine, five cans of beer or five shots of spirits every day.

Rethink Your Drink, DGMT's project for reducing alcohol harms, works specifically to address excessive drinking to prevent the social ills and poor health outcomes that stem from it. One of the key strategies is to take legal action against an actor believed to be violating people's rights — whether it's industry or the government. This is called strategic litigation, because cases for this type of legal action are chosen very carefully to ensure that the outcome will bring about change that will have a broader impact on society and not just on the immediate parties involved in the case.

This learning brief looks at the ins and outs of strategic litigation as part of a social justice campaign such as Rethink Your Drink, what the potential risks and benefits are, and how the strategy has been used so far to fight alcohol harms in South Africa.

DRINKING IN SOUTH AFRICA

It's easy to get a drink in South Africa. In fact, studies show that in some residential areas, you can expect to find around three to six liquor outlets per square kilometre,¹ and in some areas as many as 33.² Research also shows that the more available alcohol is, the more people drink — and the higher the chance that someone will get hurt, fall ill, or even die, whether because of a car accident, a fight, violent crime, or the negative health effects of consuming alcohol over a long time.³

Figures from the World Health Organisation (WHO) show that in 2019 — the most recent year for which data is available before COVID-19 lockdowns and their associated alcohol restrictions — South African drinkers consumed, on average, about 27 litres of pure alcohol each.⁴ That's more than 1.5 times what German drinkers consumed in the same year, almost double the amount of Australians and Britons, and 2.5 times as much as Italians. In fact, South Africa's figures put the country among the top 10 drinking countries in the world.⁵

Rethink Your Drink,⁶ DGMT's project for reducing alcohol harms, works specifically to address excessive drinking to prevent the social ills and poor health outcomes that stem from it. "Our main objective is to reduce heavy and binge drinking," says Kashifa Ancer, campaign manager for Rethink Your Drink.

Heavy drinking, she explains, is having five or more standard drinks every day, whereas binge drinking is having five or more such drinks in one sitting. (A standard drink is a beverage that contains 15 ml of pure alcohol and works out to roughly 125 ml of wine, one 330 ml can of beer, or about 40 ml of hard liquor.)

SOBERING STATISTICS

An analysis of data from 2014/15 shows that 43% of drinkers in South Africa qualify as heavy drinkers⁷ and in 2019, four out of 10 drinkers reported binge drinking alcohol.⁸ Drinking heavily, whether habitually or on a binge, is bad not only for an individual's health, but for society as a whole. A modelling study shows that in 2015, roughly 62 300 South Africans died from alcohol-related causes, and that poorer communities saw 4.5 times as many of these deaths as those with high incomes.⁹ Over the long term, excessive alcohol consumption is linked to an increased risk of many types of cancer, liver and heart disease, high blood pressure and stroke, while short-term effects include a high chance of injuries, violence, road accidents, miscarriage, stillbirths or babies developing foetal alcohol spectrum disorder.¹⁰

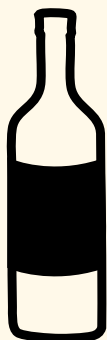
But the harms of heavy alcohol use extend far beyond the individuals who drink. "The effects on an individual are clear," says Zimasa Mpemnyama, project lead of Rethink Your Drink, "But if we have a large number of adults who are not well because they've gone through periods of heavy drinking all their lives, it impacts the whole public health system, which is already under pressure in many communities in South Africa." Add to that the effect of heavy drinking on interpersonal and gender-based violence as someone's ability to think straight shuts down, she says, and the societal harms only compound.



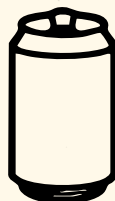
- 1 Ramsommar, L., et al. 2024. *Mapping alcohol outlet density and outlet trading times in two South African communities: A community-centred approach*. South African Medical Research Council. Available at: <https://saapa.africa/mapping-alcohol-outlet-density-and-outlet-trading-times-in-two-south-african-communities-a-community-centred-approach>
- 2 Ibid.
- 3 Campbell, C.A. et al. 2009. The effectiveness of limiting alcohol outlet density as a means of reducing excessive alcohol consumption and alcohol-related harms. *Am J Prev Med* 37(6), 556–569. doi: 10.1016/j.amepre.2009.09.028
- 4 World Health Organisation. 2025. Global Health Observatory: Alcohol levels of consumption. Available at: [https://www.who.int/data/gho/data/indicators/indicator-details/GHO/alcohol-drinkers-only-per-capita-\(15-\)consumption-in-litres-of-pure-alcohol](https://www.who.int/data/gho/data/indicators/indicator-details/GHO/alcohol-drinkers-only-per-capita-(15-)consumption-in-litres-of-pure-alcohol).
- 5 Ibid.
- 6 DGMT. 2025. Available at: <https://rethinkyourdrink.co.za/>.

- 7 Vellios, N.G. & Van Walbeek, C.P. 2018. Self-reported alcohol use and binge drinking in South Africa: Evidence from the National Income Dynamics Study, 2014–2015. *South African Medical Journal* 108(1). <https://doi.org/10.7196/samj.2018.v108i1.12615>
- 8 World Health Organisation. 2024. Global status report on alcohol and health and treatment of substance use disorders. Geneva: WHO. Data for the WHO report is sourced from the South African Wine Industry Information and Systems.
- 9 Probst, C. et al. 2018. The socioeconomic profile of alcohol-attributable mortality in South Africa: A modelling study. *BMC Medicine* 16, 97.
- 10 World Health Organisation. 28 June 2024. Alcohol. Available at: <https://www.who.int/news-room/fact-sheets/detail/alcohol>; <https://www.cdc.gov/alcohol/about-alcohol-use/index.html>; National Institute on Alcohol Abuse and Alcoholism. June 2025. Alcohol's effects on the body. <https://www.niaaa.nih.gov/alcohols-effects-health/alcohols-effects-body>

HOW MUCH DO SOUTH AFRICANS DRINK?



A bottle of wine (**750 ml**) with an alcohol concentration of **12%** contains **90 ml** pure alcohol.



A **330 ml** can of a beer with **4.5%** alcohol-by-volume has about **15 ml** pure alcohol.



Spirits like whiskey or vodka often have a **40%** alcohol content. A **35 ml** glass will give you **14 ml** of pure alcohol.

With South African drinkers consuming **27 litres** of pure alcohol a year, these numbers mean that in a week, on average, someone drinks about:



bottles of wine

OR



cans of beer

OR



shots of a spirit

Per day, this translates to roughly:



glasses of wine

OR



cans of beer

OR



shots of a spirit

In South Africa, a unit of alcohol is regarded as **15 ml** of pure alcohol, and a drink with one unit is called a 'standard drink'.

LITIGATION AS A STRATEGY

Despite South Africa's drinking problem, the laws and policies that should put a lid on alcohol consumption are patchy and inconsistent, making it difficult to regulate where and when people can buy liquor — and therefore the availability of alcohol. For this reason, taking legal action strategically is one of the ways in which Rethink Your Drink helps to protect people.

Because strategic litigation usually forms part of a bigger advocacy campaign around a certain cause, it's often brought by civil society against an actor believed to be violating people's rights — whether it's industry or the government. Judgment following from such cases often helps to set precedent for how a law or policy should be interpreted, thereby building up legal context that can help authorities to decide whether, given the rules set out by these laws, an action is permissible or not.

A good example of how litigation was used as a strategic tool to achieve a public health objective in South Africa, is the case of the Treatment Action Campaign (TAC) taking the government to court in 2001 to compel the state to give antiretroviral treatment to HIV-positive pregnant women in order to prevent the virus from being transmitted to their babies.¹¹ The case centred on the government acting in an unconstitutional manner; it was argued that not making medicine available violated the right of people to have access to public healthcare and the right of children to be protected. The judgment in 2002, in which the court ordered the government to make HIV treatment available to affected pregnant women, is widely considered to have been what changed the course of the HIV epidemic in South Africa, setting the country on a path to eventually establishing the world's largest HIV treatment programme.

In that case, the TAC was the main applicant, but a number of other civil society organisations joined as “friends of the court” (called *amici curiae* in legal speak). Such a “friend of the court” is someone who is not the primary applicant in a case but has a strong interest in the matter and is willing to offer information or expert insight. Another way to get involved in strategic litigation is by offering financial support to the applicants in a case. All three roles (main applicant, friend of the court or benefactor) are options for DGMT, explains Stephen Harrison, a consulting attorney advising the organisation on its approach to legal action for social change.

LAWS ABOUT LIQUOR

In South Africa, laws are made by national, provincial or local governments. According to the Constitution each of these is an individual sphere of government, with its own powers and functions, although there is some overlap between them. When it comes to rules about the availability of liquor, national laws set the rules about alcohol manufacturing and wholesale distribution, whereas provincial governments legislate retail sales and micro-manufacturing of liquor. Local governments can also make laws that regulate how, where and when liquor is sold to the public.



¹¹ Constitutional Court of South Africa. 2002. Minister of Health and Others v Treatment Action Campaign and Others (No 2) (CCT8/02). Available at: <https://www.saflii.org/za/cases/ZACC/2002/15.html>

WHAT'S YOUR CASE?

The decision to start legal proceedings should be well thought through and form part of a broader campaign that also includes mobilising society, creating awareness about the issue, supporting research around it and educating communities, says Harrison.

“The issue that you want to challenge through legal action has to be really clear,” he cautions. “First, one has to consider whether there’s good legal merit for the case and whether there’s a reasonable chance of success. And if so, will the outcome of the case have the intended strategic impact? In other words, will it set important precedent or add to the body of legal guidance in such a way that there will be social change?”

Because litigation is not only expensive but also time consuming and resource intensive, deciding which case to take to court is essentially a question of where the most “bang” will be felt for the applicant’s “buck”, Harrison says.

So far, the cases DGMT has been involved with have been against local or provincial governments — and specifically focused on rules about when alcohol can be sold, because that’s been where legal action can currently have the biggest impact on reducing alcohol-related harms.

“In each of the cases DGMT got involved in, the organisation was of the view that the state has not met its constitutional obligations adequately to protect the rights of the public, and so people were left vulnerable to alcohol-related harms,” explains Harrison. By challenging how laws around alcohol availability are made, legal action is a way to hold someone — in this case the government — accountable for their actions. “Government can’t just do as they please; they have to abide by the Constitution.”

But there are other factors to consider before approaching the courts. One is the possible reputational damage that an organisation may face when starting legal proceedings if there’s little merit for the case. “If you go into litigation that is frivolous or poorly crafted, and in response, the judge has choice words for the applicant because the case wasted the court’s time and money, it could deal a considerable blow to the organisation’s reputation in this space,” says Harrison.

The impact of litigation on an organisation’s relationship with their opponent is another risk to consider before heading to court. This is especially important for DGMT, which

often works with government bodies to achieve its broader objectives of creating social change. “Ultimately one hopes that, even in the context of litigation, there will be mutual respect for the fact that public interest is what’s important — it’s not personal.”

LAST ROUNDS

Challenging laws that control when alcohol can be sold links to one of the WHO’s “five best buys” for making alcohol use safer for society. The reasoning is that if alcohol is less available as a result of restricted trading hours, people tend to drink less, and so the chance of negative fallout drops too.

International research backs up this thinking. For example, modelling studies predict a considerable drop in negative consequences of alcohol use when liquor outlets like bars, taverns and clubs, where alcohol is bought and drunk on site, close two hours earlier. Harms reduce even further when places have to close four hours earlier than their normal time. On the flip side, studies show that when bottle stores are allowed to close later or trade on more days of the week, the chances of harms like injuries, accidents or violence in communities increase — and the effects are most pronounced when they are allowed to trade late into the night.

A local modelling study by the Research Unit on the Economics of Excisable Products¹² at the University of Cape Town shows similar trends.¹³ If current laws were to change in the Western Cape so that bars, clubs or restaurants would have to stop selling alcohol by midnight, up to 380 500 fewer cases of intentional injuries (e.g. domestic violence and assault) linked to drinking and up to 44 300 deaths could be avoided over the next 20 years.

Decisions about closing times also have financial implications, with longer trading times being better for business (and ultimately the government’s tax revenue). However, when factoring in costs such as dealing with alcohol-related injuries and enforcement efforts, the financial benefit of extended trading hours reduces.

¹² See: <https://commerce.uct.ac.za/reep>

¹³ Filby, S. et al. March 2023. *The impact of reducing trading times of retailers selling alcohol for onsite consumption: Western Cape analysis*. The study was commissioned by DGMT and submitted as part of expert evidence in legal proceedings brought against Kannaland Local Municipality in 2024.

THE FIVE “BEST BUYS”

According to the WHO, these five strategies pack the most punch in reducing alcohol harms in societies:¹⁴

- 1** Restrict alcohol availability — this includes limiting trading times.
- 2** Stop people from drinking and driving.
- 3** Help people to stop or change their drinking habits.
- 4** Restrict or ban adverts that promote alcohol sales.
- 5** Raise the price of alcohol, including through excise tax.

A CASE IN POINT: CHALLENGING BY-LAWS IN THE KANNALAND LOCAL MUNICIPALITY

On 28 March 2024, DGMT’s attorneys lodged an urgent application with the Western Cape High Court to have a new by-law announced by the Kannaland Municipality set aside, at least until the matter could be heard in court.

The issue was that the municipality, which is responsible for the towns and surrounds of Ladismith, Calitzdorp and Zoar in the Little Karoo, announced that outlets that sell liquor

for on-site consumption could trade for four hours longer than before (allowing them to close at 04:00 rather than at midnight) and off-site consumption outlets such as bottle stores and wine farms could sell alcohol every day of the week, and for considerably longer than was allowed before.

The longer trading times were said to be irrational and unreasonable because they didn’t take into account how the local community would be affected. Moreover, the new rules came into effect without the community or other interested parties, such as civil society, having had a chance to give their input.

And this, DGMT’s legal counsel argued, was unconstitutional.

As part of the application, DGMT submitted solid research on the impact of reducing trading hours and retail days, which would also add to legal guidance on this matter. The reports showed that extending trading hours may be beneficial from a business perspective, because it could lead to businesses making more money and generating more tax revenue for the government. However, the social and health costs to communities were argued not to have been considered, as making alcohol available for longer was likely to lead to more deaths, serious injuries and domestic violence — which also negatively impact the economy.

Just more than a week after DGMT let the municipality know that it intended to take them to court, the respondents said they would oppose the matter, and so a legal battle was set in motion.



¹⁴ See: <https://www.who.int/initiatives/SAFER>

The case was first heard in court on 11 April 2024. A judge of the High Court granted urgent interim relief, ruling that operation of the trading hour provisions of the new by-law was suspended until the matter could be fully argued on 30 July 2024. In the meantime, the trading hour provisions of the previous by-law would apply.

But about a week before the case was to be finally heard in court, the two parties settled and a judge, upon reading DGMT's submission, gave an order, agreed to by the parties, that declared the new by-law was unconstitutional. This ruling sent a clear message to the Kannaland Municipality and other local governments that they had a constitutional obligation to protect citizens against alcohol harms — exactly the kind of outcome that strategic litigation aims to achieve.

Although the municipality was ordered to pay DGMT's legal fees, the organisation waived the costs, mindful of the municipality's financial constraints and more interested in reaching a collaborative solution. The main goal of protecting society against the negative effects of alcohol use was achieved, without fostering ill will or damaging relationships.

PUTTING PRESSURE ON A PROVINCE: LITIGATION IN THE NORTHERN CAPE

In 2025, DGMT took the Northern Cape Provincial Government to court for allegedly acting unconstitutionally when passing sections governing liquor trading hours in the Northern Cape Gambling and Liquor Act of 2024. The argument was that communities were duped: the general public was invited to comment on draft legislation that would reduce hours of alcohol sales, but the law that eventually came into effect actually significantly extended trading hours.¹⁵ Night clubs, for example, can now sell liquor until 06:00, whereas they could sell liquor only until 02:00 before the 2024 Act was passed. Moreover, the final changes to the Act were pushed through hastily, without proper public participation processes.

DGMT submitted expert evidence to the province's lawmakers about the links between alcohol-related harms, extended trading times, increased alcohol use and social inequality, especially in a province where one in five children are affected by foetal alcohol spectrum disorder. The government responded that the information "is not relevant" in the constitutional challenge, yet no proof could be found that the province gathered data to assess the health, social and economic impacts of its decisions to extend liquor trading times. And this, say DGMT's legal counsel, shows that the province "failed in its duty" to protect and promote people's rights to dignity, freedom and security, and children's rights to be protected from maltreatment, neglect and abuse.

The matter was argued in the Northern Cape High Court on 16 October 2025, with judgment reserved by the time this learning brief was published.

KEY LESSONS

1

LEARN FROM LEGAL EAGLES

To make informed decisions about which cases to pursue, it's important to understand the basics of constitutional law and the regulatory frameworks that govern alcohol availability. Consulting legal experts who can explain the issue carefully, have a thorough understanding of the reason for the potential litigation and are able to advise on possible pitfalls or stumbling blocks, is imperative to guide an organisation on whether strategic litigation is an appropriate route. This is especially important because of the risk of reputational and relational damage should litigation not be successful.

2

BE CLEAR ABOUT STRATEGIC OBJECTIVES

It is crucially important for an organisation to think through what they're setting out to achieve through litigation — in other words, the strategic goals of the case — and to communicate this clearly to the legal team. This can help the attorneys and advocates to craft a strategy that is most likely not only to win the case but also to achieve the broader goals of social change.

¹⁵ DGMT. 2025. *DGMT files legal application opposing extended liquor trading hours to protect public health in Northern Cape*. Media statement, 16 January. Available here: <https://dgmt.co.za/media-statement-dgmt-files-legal-application-opposing-extended-liquor-trading-hours-to-protect-public-health-in-northern-cape/>

3

STEADY WINS THE RACE

Legal action might be a slow process, but by keeping at it and not giving up, the wins will come step by step. Considerable time can be spent on background research to get solid information together before lodging an application for litigation. For example, DGMT commissioned detailed and time-consuming expert analyses before finally deciding to start legal proceedings — and it then still took about a year before the Kannaland case was lodged, and several months more before the ruling came.

4

TACKLE THE ISSUE FROM MANY ANGLES

Although going to court to protect public interest is necessary in some cases, it has to form part of a broader campaign that also involves mobilising and educating society. Understanding the context behind how people interact with alcohol helps to decide what route is the most effective in driving change, and can help to inform or support arguments in a case.

5

CHOOSE WISELY

Considerable thought must go into selecting cases to ensure that litigation will have the intended impact. Going to court is an expensive and time-intensive action and requires hard work from a big team. It should be clear that there is a high chance of success to justify committing all these resources.

WHAT'S NEXT?

In addition to the case against the Northern Cape government, DGMT filed a new application in the North West High Court against the North West Provincial Legislature and six other parties on 7 October 2025. This case challenges the constitutionality of a section of the province's Liquor Licensing Act of 2016 and recent amendments to the trading hours it sets out, purportedly made by a high-ranking provincial politician.

The Rethink Your Drink team will follow the proceedings of the cases against the Northern Cape and North West governments, prepare for new cases and also keep monitoring the policy space for new opportunities where strategic litigation could be effective.

The thinking in the current cases is that if litigation can show government where there are problems around their regulation of liquor availability, the outcomes will flow down to communities too. And in this way, communities can be empowered to stand up against unfair or ill-considered policies that will negatively affect them. It's tackling the problem from two sides.

This brief was written by Linda Pretorius and edited by Rahima Essop.

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This is the learning experience of:

