

IN THE NORTH GAUTENG HIGH COURT – PRETORIA
REPUBLIC OF SOUTH AFRICA

Case Number: 61790/2012

In the matter between

JENNIFER GRAHAM
MATTHEW GRAHAM

First Applicant
Second Applicant

and

THE LAW SOCIETY OF THE NORTHERN PROVINCES
(Incorporated as the Law Society of the Transvaal)

First Respondent

RONALD BOBROFF & PARTNERS

Second Respondent

RONALD BOBROFF

Third Respondent

DARREN BOBROFF

Fourth Respondent

FILING NOTICE

DOCUMENT:

**LAW SOCIETY'S SUPPLEMENTARY
AFFIDAVIT**

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2013 -04- 0 4

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Stella 14/4/13

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Without prejudice / Sonder benadeling	
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Sign / Ontvang	<i>[Signature]</i>
Time / Tyd	15:00

Received copy hereof on this
 day of APRIL 2013.

Obo Attorneys for Respondents

IN THE NORTH GAUTENG HIGH COURT-PRETORIA
(REPUBLIC OF SOUTH AFRICA)

Case number: 61790/2012

In the application of:

JENNIFER GRAHAM
MATTHEW GRAHAM

First Applicant
Second Applicant

and

THE LAW SOCIETY OF THE NORTHERN PROVINCES
(Incorporated as the Law Society of the Transvaal)
RONALD BOBROFF & PARTNERS
RONALD BOBROFF
DARREN BOBROFF

First Respondent
Second Respondent
Third Respondent
Fourth Respondent

LAW SOCIETY'S SUPPLEMENTARY AFFIDAVIT

I, the undersigned,

PRITZMAN BUSANI MABUNDA

do hereby make oath and say:

1. I am the President of the Law Society and I am authorised to depose to this affidavit on behalf of the Law Society. The contents of this affidavit, where they are within my own knowledge, are true and correct. Where the contents are not within my own knowledge, they have been made known to me and I believe in their veracity.

2. I deposed to the Law Society's answering affidavit in this application on 21 November 2012 and it was filed with the Honourable Court on 22 November

2012. On 15 February 2013 Van Niekerk filed an affidavit which purports to be a consolidated replying affidavit in the main application and answering affidavit to the second, third and fourth respondents' counter-application.

3. **PURPOSE OF THIS AFFIDAVIT**

3.1 The purpose of this affidavit is to assist the Honourable Court in its consideration of the facts and the adjudication of the application by:

3.1.1 providing the Honourable Court with an additional and updated chronology of events pertaining to the period late November 2012 to the present;

3.1.2 referring the Honourable Court to certain misconceptions on the part of Van Niekerk and/or the applicants which are apparent from Van Niekerk's affidavit; and

3.1.3 addressing certain aspects raised by Van Niekerk in his affidavit which require elucidation and comment.

4. **UPDATED CHRONOLOGY**

22 November 2012	Law Society files its answering affidavit.
28 November 2012	Disciplinary enquiry postponed at the request of the

	applicants and/or Van Niekerk and by agreement between the parties.
28 November 2012	Law Society instructs transcriber to prepare transcript of disciplinary proceedings held on 28 November 2012.
28 November 2012	The Bobroffs agree to furnish the Law Society with their office files relating to the matter.
30 November 2012	Council considers the matter and resolves to refer the Bobroffs' comments on Faris' report to the Law Society's disciplinary department to be dealt with in the normal course of the disciplinary enquiry.
6 December 2012	The Bobroffs' attorneys confirm the Bobroffs' undertaking to provide the Law Society with their office files.
10 December 2012	The Bobroffs furnish the Law Society with their office files.
10 December 2012	Law Society acknowledges receipt of the Bobroffs' office files.
13 December 2012	Law Society addresses letter to the Bobroffs' attorneys and acknowledges receipt of the office files.
13 December 2012	Van Niekerk requests copy of the transcript of the disciplinary proceedings held on 28 November 2012.
25 January 2013	Council resolves to refer the Bobroffs' office files,

	received by the Law Society on 10 December 2012, to the disciplinary department and to allow the disciplinary department to deal with the matter in the normal course. Council confirms that the Faris report and the Bobroffs' comments thereon will be dealt with in the normal course of the Law Society's disciplinary enquiry.
31 January 2013	Law Society directs an enquiry at the transcriber and requests her to finalize the transcript of proceedings.
31 January 2013	Law Society advises Van Niekerk that the transcriber has indicated that the transcript of proceedings will be available shortly and confirm that a copy thereof will be made available as soon as it has been received.
6 February 2013	Van Niekerk acknowledges receipt of the Law Society's letter dated 31 January 2013.
15 February 2013	Van Niekerk files consolidated replying affidavit in main application and answering affidavit to the Brobroffs' counter-application.
18 February 2013	Law Society receives transcript of proceedings from transcriber.
18 February 2013	Law Society forwards copy of transcript of proceedings held on 28 November 2012 to the

	Bobroffs' attorneys and Van Niekerk.
7 March 2013	Law Society composes disciplinary committee for purposes of the enquiry.
19 March 2013	Law Society schedules disciplinary enquiry for hearing on 13 June 2013.
26 March 2013	Law Society notifies Van Niekerk and the Bobroffs' attorneys that the disciplinary enquiry has been re-scheduled for 13 June 2013.
26 March 2013	Law Society directs enquiry at Van Niekerk as to a suitable date for purposes of consulting with the complainants, Mr Faris, Ms van Wyk and Brigadier Burger.

5. **CONSOLIDATED REPLYING AFFIDAVIT IN THE MAIN APPLICATION AND ANSWERING AFFIDAVIT TO THE BOBROFFS' COUNTER-APPLICATION AND THE DEPONENT THERETO**

- 5.1 The abovementioned affidavit is not deposed to by either the first or second applicant, but by their attorney of record (Van Niekerk).
- 5.2 I submit that it is unheard of for an attorney of record to depose to an affidavit dealing with the merits of an application on behalf of a party to the application.
- 5.3 Van Niekerk does not explain why he deposed to the said affidavit and he does

not state that he has been instructed by the applicants to depose to the said affidavit.

5.4 Having read and considered Van Niekerk's affidavit I concluded that the affidavit is essentially that of Van Niekerk himself and not an affidavit on behalf of the applicants. I refer the Honourable Court to a few relevant and pertinent excerpts from Van Niekerk's affidavit in this regard, containing my own emphasis:

- *I have read the answering affidavit in the Main Application*

(paragraph 3 of Van Niekerk's affidavit)

- *I have also read the answering affidavit filed on behalf of the First Respondent*

(paragraph 3 of Van Niekerk's affidavit)

- *I will respond to all three the abovementioned affidavits in this affidavit ...*

(paragraph 4 of Van Niekerk's affidavit)

- *..... I will respond to the contents of the affidavit under the following themes or headings...*

(paragraph 8 of Van Niekerk's affidavit)

- ... *I point out that to the extent that I do not respond to any averment contained in the founding affidavit in the Counter-Application or the answering affidavits in the Main Application, that averment should be taken to be denied and is not admitted.*

(paragraph 9 of Van Niekerk's affidavit)

- *In that regard I am advised that as attorneys and officers of this Court ...*

(paragraph 19 of Van Niekerk's affidavit)

- ... *the applicants and I:*

- a). *Continue to submit that the relief sought in the Main Application should be granted.*

(paragraph 126 of Van Niekerk's affidavit)

5.5 The abovementioned excerpts demonstrate that Van Niekerk did not merely depose to the affidavit on behalf of the applicants, but rather in a personal capacity, alternatively in a personal capacity as well as on behalf of the applicants.

- 5.6 I refer the Honourable Court to a few important aspects concerning Van Niekerk and his affidavit in more detail.
- 5.7 Van Niekerk and/or the applicants have, as explained, failed to file separate affidavits in respect of the Law Society's answering affidavit, the second, third and fourth respondents' answering affidavit and the founding affidavit in the second, third and fourth respondents' counter-application respectively. I submit that it would have been appropriate to do so. It is highly impractical to deal with facts and allegations in motion proceedings in this manner. It has resulted in difficulty in identifying the issues relating to the Law Society and it will no doubt inconvenience the Honourable Court.
- 5.8 I have also noted that Van Niekerk refers to "the respondents", which includes the Law Society, in circumstances where he in fact intends to refer to the second, third and fourth respondents. This also creates confusion.
- 5.9 In paragraph 4 of his affidavit Van Niekerk refers to confirmatory affidavits by the applicants which are *filed herewith*. No such confirmatory affidavits by either the first or the second applicant are however attached to his affidavit.
- 5.10 In paragraph 44 Van Niekerk again alleges that confirmatory affidavits by the applicants *will be filed herewith*. He does so in circumstances where confirmatory affidavits by the applicants are not attached to his affidavit.

5.11 On 25 February 2013 van Niekerk caused confirmatory affidavits by the first and second applicants to be served and filed. He no doubt did so in an attempt to cure the defects referred to above.

5.12 The contents of the applicants' confirmatory affidavits are pertinent.

5.13 The applicants do not state under oath:

- that they have been furnished with a copy of the Law Society's answering affidavit;
- that they have read and considered the said answering affidavit; and
- that they have been advised on the contents thereof by Van Niekerk.

5.14 The applicants merely state that they have read and considered Van Niekerk's consolidated replying affidavit in the main application and answering affidavit in the second third and fourth respondents' counter-application.

5.15 The applicants do not explain why they have not deposed to the consolidated affidavit. They, likewise, do not explain why their confirmatory affidavits have not been filed from the outset, but only on 25 February 2013.

5.16 The abovementioned facts considered cumulatively indicate that van Niekerk is not merely involved in the matter as the legal advisor to the applicants and that the relief provided for in the notice of motion is essentially not sought by the applicants, but by Van Niekerk and/or Discovery, on whose behalf Van Niekerk acts. It is abundantly clear that the applicants play a secondary role in these proceedings.

5.17 I also refer to my comments contained in paragraph 61 of the Law Society's answering affidavit dealing with the involvement of Discovery in this matter. I will again refer to this aspect below.

5.18 In paragraph 19 of his affidavit Van Niekerk states that he has been *advised* that attorneys and officers of the Court have a heightened duty not to play possum. The statement that it is Van Niekerk who has been advised in the matter and not the applicants, is highly significant. Van Niekerk is the attorney of record for the applicants. It is his duty to advise the applicants. The said statement by Van Niekerk confirms that he is acting in interests other than those of the applicants alternatively not only in the interests of the applicants. Van Niekerk's involvement appears to be similar to that of a client.

6. THE RAMASHALA JUDGMENT

6.1 In the Ramashala judgment which was handed down by the Honourable Court on 23 November 2012 the Court in essence found that an application for the

suspension of an attorney from practise may be adjudicated upon despite pending internal disciplinary enquiries by the Law Society, alternatively despite the fact that no disciplinary enquiry has been held by the Law Society in respect of a complaint.

6.2 The Court merely confirmed what had previously been found by our Courts in other suspension and striking applications. The Law Society may bring an application for suspension or striking at any time. Such application may be brought prior to an internal disciplinary enquiry being held, where a disciplinary enquiry has been initiated but has not yet been finalized or after a disciplinary enquiry had been held and finalized.

6.3 The Court in the Ramashala matter however dealt with an application in terms of Section 22 (1)(d) of the Attorneys' Act. This Section provides:

Any person who has been admitted and enrolled as an attorney may on application by the Society concerned be struck off the roll or suspended from practice by the Court within the jurisdiction of which he practises –

if he, in the discretion of the Court, is not a fit and proper person to continue to practice as an attorney.

6.4 The current application is not an application by the Law Society and it is not an

application in terms of Section 22 (1)(d) of the Attorneys' Act.

6.5 The other judgments to which I have referred in paragraph 6.2 and in which similar findings had been made all relate to applications in terms of Section 22 (1)(d) of the Attorneys' Act.

6.6 The proceedings in the current application and the proceedings in the Ramashala matter are not comparable and they should be distinguished.

6.7 The reliance by Van Niekerk and/or the applicants on the Ramashala judgment is therefore ill-advised and not of assistance to the Honourable Court. The Ramashala judgment will be further dealt with in legal argument during the hearing of the application, if necessary.

7. **APPARENT FLOODGATES**

7.1 Paragraphs 80 to 83 of Van Niekerk's affidavit are titled *APPARENT FLOODGATES*. Van Niekerk states that a central feature of the Law Society's opposition of the application is that, if complainants against attorneys are allowed to approach the Court in respect of their complaints, it would open a *floodgate* of litigation.

7.2 Van Niekerk's abovementioned statement is factually incorrect.

- 7.3 The Law Society did not comment on the rights of complainants to approach the Court for relief. The Law Society's answering affidavit deals specifically with an application by a complainant for the striking of an attorney's name from the roll of attorneys. A complainant and any individual or institution for that matter has the right to approach a Court for relief. In matters of this nature, however, the correct procedures must be followed in referring facts to the Court and compliance with the provisions of the Attorneys' Act is of paramount importance.
- 7.4 It is furthermore not correct that I contended that, allowing a complainant to approach the Court with a striking application, would open a so called *floodgate* of litigation. I did not refer to an escalation in litigation matters at all.
- 7.5 In paragraphs 27 to 47 of the Law Society's answering affidavit I dealt succinctly with all the reasons why a striking application by a complainant should not and cannot be entertained by the Honourable Court. Van Niekerk has failed to properly and convincingly deal with the abovementioned paragraphs. He has also failed to address the Honourable Court's approach to striking and suspension applications.
- 7.6 Van Niekerk's reference to a *floodgate* of litigation, the allegation that it is referred to in the Law Society's answering affidavit and the contention that it is a central feature of the Law Society's opposition are therefore incorrect and misleading.

8. **FOURIE'S POSITION AND THIRD RESPONDENT'S STATUS**

8.1 In paragraph 66 of his affidavit Van Niekerk refers to the status of the third respondent and the position of Fourie who is a senior legal official in the employ of the Law Society's disciplinary department. Van Niekerk's contentions may be summarized as follows:

8.1.1 the third respondent is a former President of the Law Society, is currently serving as councillor and is influential with the Law Society. Van Niekerk suggests that the pending disciplinary enquiry will not be properly attended to due to the third respondent's said position; and

8.1.2 Fourie, who acts as the *pro-forma* prosecutor in the disciplinary enquiry, is tasked with the matter in his capacity as an employee of the third respondent and he will therefore not handle the disciplinary enquiry correctly or properly.

8.2 Although the third respondent is a former President of the Law Society and currently serving as a councillor, the allegation that he is influential within the Law Society is incorrect. The third respondent is a practising attorney and a member of the Law Society like any other. He, in addition, serves on the Law Society's Council. He is one of twenty four councillors. The other twenty three councillors are, likewise, practising attorneys and members of the Law Society.

8.3 The third respondent's status and position is irrelevant as far as the applicants'

complaint is concerned. The matter is dealt with by the Law Society's disciplinary department in the normal course. The Law Society acts objectively, unbiased, in the interest of the attorneys' profession and without fear or favour. The Law Society's reputation and excellent track record in dealing with complaints against attorneys, including councillors, speaks for itself.

- 8.4 In paragraph 8 of the Law Society's answering affidavit I dealt in detail with the Law Society's disciplinary proceedings and its approach to the investigation of complaints against attorneys, irrespective of whether they serve on the Council or committees of the Council.
- 8.5 I also wish to advise the Court that the third respondent does not participate in the proceedings of the Council as far as this matter is concerned. He therefore does not partake in either discussions on the matter or the resolutions of the Council.
- 8.6 Van Niekerk significantly does not substantiate his allegation that the disciplinary enquiry will not be attended to properly due to the third respondent's position.
- 8.7 Van Niekerk's conclusion that Fourie is in the position of an employee who prosecutes his employer is, likewise, incorrect and unfounded.
- 8.8 Fourie is not employed by the third respondent in any capacity and he is not

employed by the Council. Fourie is employed by the Law Society, a statutory body in terms of Section 56 of the Attorneys' Act.

8.9 The affairs of the Law Society are managed by the Council which consists of twenty four practising attorneys who hold office in terms of the provisions of Part IV of the Law Society's Rules.

8.10 All aspects concerning the Law Society and the duties and powers of its Council are dealt with and provided for by the provisions of the Attorneys' Act. Van Niekerk should be aware of these provisions as he is an attorney of the Court.

9. **FARIS' REPORT AND THE BOBROFFS' COMMENTS ON THE REPORT**

9.1 In the Law Society's answering affidavit I referred the Honourable Court to the resolution of the Council to afford the second, third and fourth respondents an opportunity to comment on Faris' report and to the fact that their comments would be considered by the Council during its meeting to be held on 30 November 2012. The Council indeed considered the said comments on 30 November 2012 and resolved not to conduct another investigation, in addition to the one already conducted by Faris. The Council resolved to refer Faris' report as well as the second, third and fourth respondents' comments thereon to the Law Society's disciplinary department to be dealt with in the normal course of the pending disciplinary enquiry.

9.2 The Council will not interfere in the pending disciplinary proceedings and the enquiry will proceed. The Law Society will not be influenced or dictated to and it will not be deterred in executing its duties as far as the disciplinary process is concerned.

9.3 The second, third and fourth respondents' office files which were received by the Law Society during December 2012 have also been referred to the Law Society's disciplinary department. The contents of the files will, likewise, be considered and dealt with in the normal course of the disciplinary enquiry.

10. **INVOLVEMENT OF DISCOVERY**

10.1 The involvement of Discovery has already been alluded to. In paragraph 47 of his affidavit Van Niekerk denies the fact that he acts on behalf of Discovery. Van Niekerk says the following under oath:

I also deny that I act on behalf of Discovery Health or any of the entities in the Discovery Group of Companies.

10.2 Van Niekerk's abovementioned allegation is incorrect. It is well known in the legal fraternity that Van Niekerk and his firm, ENS, act for Discovery. Van Niekerk has in any event on occasion admitted the fact that he acts on behalf of Discovery.

10.3 In an official statement issued by van Niekerk, he said the following:

ENS (Edward Nathan Sonnenbergs) was instructed by Discovery Holdings to assist a number of the members of the Discovery Health Medical Scheme, who were former clients of Ronald and Darren Bobroff of Ronald Bobroff & Partners Incorporated Attorneys.

10.4 I consider it highly inappropriate for an attorney of the Honourable Court to deal with facts under oath in this manner.

10.5 Despite the obvious involvement of Discovery, Van Niekerk attempts to explain that the applicants do not act in their own interests in bringing the application, but in the interests of the general public. I do not accept this contention, especially in view of the fact that the applicants' legal costs in the application are paid for by Discovery. It is furthermore apparent that this application is the result of a personal and highly acrimonious dispute between Discovery, assisted by van Niekerk and the third respondent.

10.6 Van Niekerk denies that Discovery has a hidden agenda in this matter. It is significant that it is van Niekerk, in his personal capacity, who denies Discovery's involvement and not Discovery itself. No confirmatory affidavit on behalf of Discovery has been filed with van Niekerk's affidavit. The fact that van Niekerk personally denies the extent of Discovery's involvement evidences his intimate relationship with Discovery.

11. **DISCIPLINARY PROCEEDINGS: 28 NOVEMBER 2012**

The disciplinary proceedings which were held on 28 November 2012 have already been dealt with in the affidavits filed of record. The events of 28 November 2012 have in my view been accurately reflected in the said affidavits and I do not wish to expand on the facts which have already been referred to. The proceedings of the disciplinary committee have been transcribed and a copies of the transcript have been made available to Van Niekerk and/or the applicants and the second, third and fourth respondents.

12. **RULE 95.2.1 OF THE LAW SOCIETY'S RULES**

12.1 In the Law Society's answering affidavit I briefly referred the Honourable Court to the provisions of Rule 95.2.1 of the Law Society's Rules. This Rule provides:

95 Upon receipt of a complaint, the Council may –

95.2 where it is of the opinion that a prima facie case of unprofessional or dishonourable or unworthy conduct on the part of the practitioner concern has been made out –

95.2.1 furnish a practitioner with particulars of the complaint and call upon him to furnish the Council in writing within such time as the Council may direct, with his explanation in

answer to the complaint, and may require such explanation to be verified by affidavit;

12.2 I have also explained that the Law Society does not have the power to compel an attorney to answer to a complaint under oath. This is the correct and factual position.

12.3 Van Niekerk disputes the fact that the Law Society does not have such power. He does not, however, illustrate that the Law Society indeed has such power and he does not refer the Honourable Court to any provision empowering the Law Society to compel an attorney to reply to a complaint under oath. Such provision, needless to say, does not exist.

12.4 The provisions of Rule 95.2.1 are with respect clear and unambiguous and do not provide for a mechanism enabling the Law Society to compel an attorney to reply to a complaint under oath. Despite this clear provision Van Niekerk, in a vexatious and highly contemptuous manner, accuse the Law Society of being ignorant of its own Rules. Van Niekerk's conduct in this regard is unacceptable and reflects negatively on Van Niekerk and/or the applicants.

13. **INTERFERENCE WITH DISCIPLINARY PROCEEDINGS**

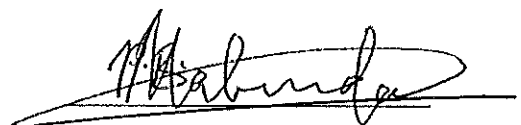
13.1 Van Niekerk's protestations that he merely acted zealously in the interests of the applicants are belied by the contents of the founding affidavit and Van

Niekerk's letters attached thereto. They are also contradicted by the allegations contained in Van Niekerk's affidavit under reply.

13.2 Van Niekerk tirelessly persists in his unmeritorious view that, as far as the Law Society's role, duties, powers and disciplinary procedures are concerned, he knows best. The views expressed by Van Niekerk in addition evidence the absence of objectivity. Van Niekerk's approach in this matter is, sadly, not in the best interests of either the applicants or the second, third and fourth respondents or the administration of justice.

14. It is the Law Society's duty to assist the Court in the adjudication of the matter and it will continue to do so. Should further relevant and important facts come to the Law Society's attention, they will be referred to the Honourable Court by way of a supplementary affidavit.

15. In the Law Society's answering affidavit I requested the Honourable Court to dismiss this application against the Law Society with costs on the attorney and own client scale. The Law Society reserves the right to, in view of Van Niekerk's conduct and involvement, recommend to the Honourable Court that an order *de bonis propriis* be granted against van Niekerk.



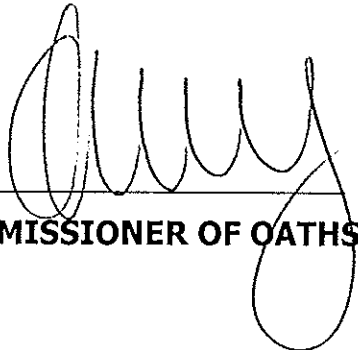
P B MABUNDA

I certify that this affidavit was signed and sworn to before me in my capacity as



commissioner of oaths at Pretoria on this the 4 day of March 2013 by the deponent who:

- (a) confirmed that he:
 - (i) knows and understands the contents of this affidavit;
 - (ii) has no reservations about making the oath;
 - (iii) considers the oath as binding on his conscience;
- (b) uttered the words "**So help me God**".



COMMISSIONER OF OATHS

Full names :

Full address :

Area

Capacity

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