

	the Law Society to appoint a new disciplinary committee.
26 March 2015	Attorney van Niekerk accuses the Law Society of leaving his clients in the dark and records further criticism, attorney van Niekerk alleges that the Law Society is unwilling and/or unable to act against the Bobroffs. Annexure 181
31 March 2015	The Bobroffs submit complaint regarding alleged touting on the part of attorney Millar and Norman Berger to the Law Society. Annexure 182
31 March 2015	Law Society advises the Bobroffs that the defamation matter will be referred to a committee of the Council for consideration on 21 April 2015. Annexure 183
31 March 2015	Law Society denies attorney van Niekerk's accusations, further advises him that the Bobroffs have failed to reply to the complaint and that comments must be received by 10 April 2015, also that the matter will be considered by a committee of the Law Society on 21 April 2015. Annexure 184

01 April 2015	Law Society refers the Bobroffs to the findings of the committee in respect of proceedings on 15 October 2015. Annexure 185
01 April 2015	Law Society re-schedules disciplinary enquiry for hearing on 18 June 2015 and 19 June 2015.
01 April 2015	Law Society notifies attorney van Niekerk and the Grahams to attend disciplinary proceedings on 18 June 2015 and 19 June 2015. Annexure 186
02 April 2015	Attorney van Niekerk directs several enquiries at the Law Society, <i>inter alia</i> , what the purpose of the disciplinary enquiry on 18 and 19 June 2015 will be, what charges will be brought on the said dates and who the committee members will be, informs Law Society that his view is that the disciplinary enquiry cannot proceed until the finalisation of the further inspection, attorney van Niekerk accuses the Law Society of posturing to take any steps in order to discipline the Bobroffs without performing the necessary preliminary work, threatens Law Society

	with an application to the High Court. Annexure 187
09 April 2015	Attorney van Niekerk confirms that he acts on behalf of attorney Millar, Mr Katz, Discovery, Mr Beamish and Ms Cora van der Merwe regarding defamation complaint, he alleges that the complaints relating to defamation should be considered by a disciplinary committee together with the Graham complaints, requests detailed response from Law Society to 16 different enquiries, advises the Law Society that his letter should be replied to by no later than 13 April 2015. Annexure 188
09 April 2015	Law Society receives the Bobroffs' comments on the inspectors' report. Annexure 189
13 April 2015	The Bobroffs advise the Law Society on their availability for the disciplinary enquiry. Annexure 190
16 April 2015	Law Society denies that the Law Society is acting as a passive bystander as alleged by attorney van Niekerk, records that Mr Fourie of the Law Society has not initially received attorney van Niekerk's letter

	<p>dated 28 October 2014, advises that the Law Society wished to ensure that the Bobroffs receive a proper opportunity to reply, advises attorney van Niekerk that proper procedures must be followed in the investigation of complaints, further advises him that once the committees, which will sit on 21 April 2015 and 28 April 2015 respectively, have provided its recommendations, the consolidation of all the complaints will be considered. Annexure 191</p>
20 April 2015	<p>The Bobroffs allege that attorney van Niekerk has been instructed by Discovery to manipulate the Law Society in serving the interests of Discovery, complains about media releases by attorney van Niekerk. Annexure 192</p>
23 April 2015	<p>The Bobroffs advise the Law Society that the complaint by Fourie has been resolved Annexure 193</p>
24 April 2015	<p>Attorney van Niekerk serves his counter-application and a confirmatory affidavit by attorney Millar.</p>

24 April 2015	Attorney Berlowitz requests further particulars regarding Law Society's charge sheet. Annexure 194
28 April 2015	Disciplinary committee considers defamation charges, postpone proceedings to 22 June 2015 and 23 June 2015 to enable Law Society to respond to the Bobroffs' request for further particulars.
30 April 2015	The Bobroffs enquire about the dates of the disciplinary enquiry. Annexure 195
5 May 2015	Attorney van Niekerk refers to meeting of the investigating committee which took place on 21 April 2015 and enquires as to the outcome of the meeting, accuses the Law Society of not taking necessary and decisive action. Annexure 196
5 May 2015	Attorney van Niekerk insists that the Law Society advises him of the names of the new disciplinary committee members and the reason for the withdrawal of the previous committee members. Annexure 197
6 May 2015	The Bobroffs complain to the Law Society that Mr

	Katz of Discovery forwards weekly lists of Discovery members to its panel of attorneys for purposes of touting. Annexure 198
11 May 2015	Attorney van Niekerk serves confirmatory affidavits by Mr and Ms Graham.
11 May 2015	The Bobroffs' serve a notice in terms of Rule 30(2)(b).
20 May 2015	Law Society advises attorney van Niekerk and the Bobroffs' attorneys that the disciplinary enquiry scheduled for 18 June 2015 and 19 June 2015 is being postponed due to the unavailability of the Bobroffs' counsel, Law Society requests attorney van Niekerk and the Bobroffs' attorneys to furnish alternative dates for the enquiry.

12. THE LAW SOCIETY'S DISCIPLINARY POWERS

- 12.1 The relevant facts concerning the Law Society's disciplinary duties and powers bear repeating.

- 12.2 Complaints submitted to the Law Society are referred to and dealt with by the Law Society's disciplinary department. The complaints are investigated by legal officials in the employ of the said disciplinary department.
- 12.3 If the legal official is of the view that a *prima facie* case of unprofessional conduct has been made out, the complaint will be referred to the attorney and he will be requested to furnish the Law Society with his comments thereon. The attorney's comments, if any, are then referred to the complainant who is afforded an opportunity to reply thereto.
- 12.4 It is expected of an attorney against whom a complaint had been lodged to reply to the complaint and he should do so properly and comprehensively. If an attorney fails to reply to the complaint or if he fails to address the pertinent aspects of the complaint, he does so at his own peril. An attorney's comments on a complaint need not be under oath and the Law Society cannot compel an attorney to place his version under oath.
- 12.5 The Law Society is not obliged to consider any further documentation or affidavits in addition to those referred to above. The Law Society does however have a discretion to do so. Where additional points are raised or additional facts

submitted, the Law Society will normally accept the additional documents or affidavits. In those circumstances it will refer the additional documents or affidavits to the attorney or the complainant for purposes of their comments.

12.6 If the attorney or the complainant requires an extension for purposes of submitting their comments to the Law Society, the request must be addressed to the Law Society in writing. Whether such request will be granted or not and the period of an extension falls within the discretion of the legal official dealing with the matter, alternatively the head of the Law Society's disciplinary department. If an attorney requires an extension, permission need not be sought from the complainant and *vice versa*. Neither a complainant nor an attorney will under any circumstances be denied a reasonable opportunity to reply.

12.7 The legal official entrusted with the matter will refer the contents of the complaint, the attorney's reply and the complainant's reply thereto to a B committee of the Council for consideration and a recommendation as to whether charges should be formulated and the attorney concerned be called upon to answer thereto before a disciplinary committee, alternatively whether a discussion of the complaint should be arranged.

- 12.8 A disciplinary committee consists of senior members of the Law Society. Such committee is not a standing committee.
- 12.9 The disciplinary committee makes a finding on the available facts and evidence. In the event of a finding of guilty the committee imposes an appropriate sanction. The committee may also refer the matter to the Council in terms of the provisions of Rule 101 of the Law Society's Rules for purposes of considering an application to have the attorney suspended or to have his name struck from the roll of attorneys.
- 12.10 An attorney may take the findings of a disciplinary committee on appeal to the High Court both in respect of the finding and the sanction. A complainant who is dissatisfied with a finding of a disciplinary committee may take the proceedings on review.
- 12.11 The B committee of the Council and a committee tasked with a discussion of the matter consist of practising members of the Law Society. The proceedings of these committee form part of the Law Society's investigation into the complaint.
- 12.12 At the conclusion of a committee's proceedings, the committee reports to the

disciplinary department and furnishes it with its recommendations.

12.13 In matters where an inspection of an attorney's accounting records and practice affairs has been conducted, a copy of the inspector's report is referred to the attorney for comment. Upon receipt of the attorney's comments they are referred to the inspector for comment, if required.

12.14 In circumstances where a disciplinary committee compiles a report in terms of the provisions of Rule 101 of the Law Society's Rules, the report is referred to the attorney for comment.

12.15 The Law Society's disciplinary department receives thousands of complaints annually. All these complaints are properly investigated. During the 2011-2012 period the Law Society received and investigated 8029 complaints. During the period 2012-2013 it received and investigated 6850 complaints and during the period 2013-2014, 7257 complaints.

12.16 During the first mentioned period the disciplinary department received 1 037 enquiries concerning its members, during the second period 1199 enquiries and during the third period 1849 enquiries. The Law Society received 751, 558 and

442 requests for legal assistance during the three respective periods.

12.17 During the three periods the Law Society received the following complaints:

Complaints	2011- 2012	2012- 2013	2013- 2014
Failure to give proper attention	1 212	1127	1049
Failure to account	168	116	156
Third party matters	833	580	396
Failure to comply with Rule 70	635	713	914
Overcharging	461	440	287
Fidelity fund certificates	8	16	7
Failure to pay accounts	336	279	251
Failure to reply to correspondence	314	287	227
Delay in payment of trust funds	267	237	260
Personal conduct	213	257	
Failure to pay subscription fees	422	258	351
Touting	18	12	31
Judges' complaints	62	39	24

Sequestration of attorneys' estates	11	6	6
Non payment of fines/costs	252	258	146
Holding out as attorneys	21	16	7
Ethical conduct	252	192	162

12.18 As at 30 June 2012 the Law Society had 167 pending striking or suspension applications. During the second period there were 115 applications and during the third period 162 applications pending. During the abovementioned three periods the names of 60, 52 and 41 members respectively were struck from the roll of attorneys, 45, 39 and 30 members respectively were suspended and 2, 2, 9 members respectively were interdicted from practising for their own account.

12.19 Each legal official in the employ of the disciplinary department receives approximately 4 complaints per day, 70-80 complaints per month and 900 complaints per year. At any given stage a legal official is handling between 400 and 500 files.

12.20 Approximately 230 disciplinary committee enquiries are held each year. Eight disciplinary committees sit each week and each committee consists of three members who are members of the Law Society. An agenda bundle normally

consists of approximately 300 pages. During the 2011-2012 period 203 disciplinary enquiries were held and 605 attorneys and 4 candidate attorneys appeared before disciplinary committees. During the 2012-2013 period 197 enquiries were held and 522 attorneys and 4 candidate attorneys appeared before committees. During the 2013-2014 period 178 disciplinary enquiries were held and 526 attorneys and 3 candidate attorneys appeared before the committees.

12.21 The Law Society is independent and unbiased and acts objectively and without fear or favour in its investigation of complaints and the conducting of disciplinary enquiries. The identity of a complainant and the attorney respectively or the attorney's seniority, social status and standing in the profession are irrelevant.

12.22 The Law Society has an excellent track record in respect of its investigations and its referral of matters to the High Court and the Supreme Court of Appeal. The Law Society has in the past not hesitated to act against senior members, members of its Council and former members of its Council where necessary.

12.23 The Law Society will not be dictated to by either a complainant or an attorney. Complaints are dealt with in the normal course and in terms of the Law

Society's Rules. The Law Society does not allow interference with its investigations and disciplinary enquiries.

12.24 The Law Society does not give one complaint preference to another and it does not tolerate pressure by a complainant to do so.

12.25 The Grahams' complaint against the Bobroffs was handled in accordance with these principles.

12.26 The Law Society has afforded both the Grahams and the Bobroffs a fair, reasonable and adequate opportunity to deal with the complaint and other reports and to submit their comments to the Law Society. They have at all times been treated correctly, fairly and reasonably.

12.27 The Law Society's Rules which are applicable to disciplinary proceedings can be found in Part XIII of the Law Society's Rules (Rules 93 to 103.2). Although all the Rules are relevant and important I only refer the Honourable Court to a few of these Rules:

12.27.1 Rule 94.3: A complaint shall be in writing in the form of an affidavit with

sufficient particulars of the conduct complained about and shall be lodged with the Secretary of the Law Society, provided that the head of the Law Society's disciplinary department may accept a complaint in any other form.

- 12.27.2 Rule 95.2.1: Where the Law Society is of the opinion that a *prima facie* case of unprofessional or dishonourable or unworthy conduct has been made out it may furnish the attorney with the particulars of the complaint and request him to furnish the Law Society with his explanation in answer to the complaint and the Law Society may require such explanation to be verified by affidavit.
- 12.27.3 Rule 96: During the course of the disciplinary enquiry the Law Society shall afford the attorney an opportunity of producing evidence relevant to the matter and of making such other relevant representations as he may wish.
- 12.27.4 Rule 97A.1: The disciplinary committee may at any stage prior to or during the course of the disciplinary enquiry summon any person as a witness and interrogate or reinterrogate him, provided that the witness

may be cross-examined by the attorney or his legal representative and that the attorney may only be examined if he has already testified in the enquiry or if a statement deposed to by him has been accepted as evidence.

- 12.27.5 Rule 97A.4: Evidence by way of affidavit of other document is admissible but the disciplinary committee is entitled to adjudicate the evidential value thereof by taking into consideration the fact that the evidence contained therein has not been tested in cross-examination.
- 12.27.6 Rule 100: Subject to the provisions of the Rules the person presiding at the disciplinary enquiry shall determine the procedure according to which the enquiry shall be conducted.
- 12.27.7 Rule 101: Where a disciplinary committee finds the attorney guilty of unprofessional, dishonourable or unworthy conduct the committee may, if it is of the view that the conduct of the attorney is such as to warrant an application by the Law Society for either the attorney's suspension or the striking of his name from the roll of attorneys, submit a written report on its findings to the Council of the Law Society with recommendations

regarding the suspension from practice or the striking from the roll of attorneys. A copy of the report containing the committee's findings and recommendations will be furnished to the attorney and he will be requested to furnish the Council with his written representations. On receipt of the report and recommendations of the committee and the written representations of the attorney the Council will decide whether or not to proceed with an application for suspension or striking. The attorney may also be invited to appear before the Council in order to address the Council and to show cause why an application for his suspension alternatively striking should not be brought.

12.28 The Law Society has at all times handled the matters concerning the Bobroffs properly, correctly and diligently. It is important for the Law Society to act objectively and in an unbiased manner in the execution of its duties and to be reasonable towards all parties involved. The Law Society furthermore acts in accordance with its statutory duty and the provisions of the Attorneys' Act and the Law Society's Rules.

13. NOTICE OF MOTION AND RELIEF SOUGHT

13.1 In fulfilling its duties and complying with the order of Court dated 15 April 2014 the Law Society brought the current application in order to facilitate the finalization of the further inspection and the conclusion of the disciplinary enquiry.

13.2 In order to achieve progress and finalization, it is required to:

13.2.1 finalise the further inspection of the Bobroffs' accounting records relating to matters other than the Graham and De la Guerre accounts; and

13.2.2 finalise the pending disciplinary enquiry.

13.3 The disciplinary enquiry can, for obvious reasons, not be finalized until the outcome of the further inspection is known. This appears to be common cause.

13.4 The further inspection has not been finalized due to no fault on the part of the Law Society. This aspect is dealt with in the founding affidavit to the Law Society's application.

- 13.5 The Law Society's application provides for adequate relief relating to the finalization of the further inspection and the conclusion of the pending disciplinary enquiry.
- 13.6 I submit that the correct approach for attorney van Niekerk and the Grahams would have been to support the Law Society's application.
- 13.7 The relief sought in the counter-application goes too far and appears not to have been properly considered. The relief is in several respects unrelated to the relief sought by the Law Society. It effectively represents a further frustration of the completion of the further inspection and the disciplinary enquiry.
- 13.8 The relief contained in the notice of motion has furthermore been shoddily and hopelessly formulated. I say so with the necessary respect.

Notice of motion

First paragraph

13.9 Attorney van Niekerk contends that the application should be dealt with on an urgent basis. The Law Society denies that the matter is urgent. No proper grounds for urgency have been provided. The substantial delay on the part of attorney van Niekerk to bring the counter-application remains unexplained.

Paragraph 2

13.10 I have already dealt with the request that the Bobroffs be suspended from practising as attorneys pending the finalization of the Law Society's further inspection. The applicants sought similar relief in the first application, namely the striking of the names of the Bobroffs from the roll of attorneys. The application was dismissed.

13.11 The application for suspension is pre-mature.

13.12 The purpose of an enquiry in an application for suspension or striking is whether the attorney concerned is a fit and proper person to practise.

13.13 Before the abovementioned enquiry can commence, all relevant facts must be unearthed. Our Courts have stressed that all facts concerning a practitioner must be adjudicated upon cumulatively.

13.14 The further inspection has not yet been completed and the disciplinary enquiry is pending. An enquiry as to whether the Bobroffs can be considered to be fit and proper persons, at this stage, will be pre-mature.

13.15 Neither attorney van Niekerk nor the Grahams have *locus standi* to apply for the Bobroffs' suspension.

Paragraph 3

13.16 In view of the fact that the application for the suspension of the Bobroff's stands to be dismissed, the request for the appointment of a curator for the firm should, likewise, be dismissed.

13.17 The relief provided for in paragraph 3 is hopelessly and inadequately framed.

13.18 Attorney van Niekerk does not make any suggestions as to who should be appointed as curator. The appointment of a curator for an attorney's practice requires detailed duties and powers. No duties and powers have been provided for or suggested by attorney van Niekerk. The curator to be appointed must be qualified and have the necessary expertise

13.19 Attorney van Niekerk has not joined the third director of the firm, attorney Bezuidenhout, as a party to the proceedings.

Paragraphs 4 and 5

13.20 The relief sought in these paragraphs overlap. The relief is framed against the Law Society's investigators. The investigators are not identified in the notice of motion and they have not been joined as parties to the proceedings.

13.21 The inspectors have already been instructed to conduct an inspection and they have partially completed their mandate. They have not yet been in a position to conduct a further inspection and to compile a further report for the reasons advanced in the founding affidavit to the Law Society's application. In respect of the remainder of their mandate, the Law Society brought an application for the

Honourable Court's assistance. The application is pending and it is being opposed by attorney van Niekerk and the Grahams.

13.22 The notice of motion in the Law Society's application adequately provides for relief which will enable the investigators to finalise their mandate.

13.23 Attorney van Niekerk however wishes the further inspection, yet to be conducted, to be extended to an inspection wider than the one ordered by the Honourable Court. He suggests that the matters of all former clients of the Bobroffs' practice be investigated. In accordance with the relief sought in this paragraph an inspection must but conducted in respect of matters handled by the Bobroffs from the inception of their practice. The practice was established in 1974. Attorney van Niekerk's request is with respect ludicrous.

13.24 The suggested wider inspection is over-broad and cannot in my view be justified or practically implemented.

13.25 A further important aspect is that neither attorney van Niekerk nor the Grahams have the necessary *locus standi* to seek the aforementioned relief.

13.26 The investigators have already compiled a first report regarding their findings concerning the Graham and De la Guerre accounts. The report has been made available to all the parties to the first application. They will proceed to compile a second report once the further inspection has been conducted. The Honourable Court has therefore already ordered the inspectors to compile a report.

13.27 It is uncertain why attorney van Niekerk applies for relief to the effect that a report in respect of a practice-wide inspection for the period 1974 to 2015 should be compiled and made available to all the parties to the first application. No explanation is provided.

Paragraph 6

13.28 The first report has already been made available to all the parties to the application. A second report does not yet exist and the relief sought in this regard is therefore pre-mature. Attorney van Niekerk and the Grahams do not have *locus standi* to seek an order to the effect that all reports relating to all former clients of the Bobroffs' practice be circulated and made available to the parties to the application. With reference to the second report which is yet to be

compiled, the Law Society seeks the Honourable Court's guidance. I will deal with the relevant aspects in more detail below.

Paragraph 7

13.29 No grounds for an order of costs against the Law Society can be found in the founding affidavit to the counter-application or the annexures thereto. The relief requested is without merit and stands to be dismissed.

14. ATTORNEY ANTHONY MILLAR OF NORMAN BERGER & PARTNERS INC

14.1 An affidavit by attorney Millar of Norman Berger & Partners Inc (Norman Berger) is attached to attorney van Niekerk's affidavit. Attorney Millar confirms certain allegations in the last mentioned affidavit and also refers to several of his clients whose matters are referred to by attorney van Niekerk in more detail.

14.2 All the clients referred to by attorney van Niekerk and attorney Millar are former clients of the Bobroffs.

- 14.3 Norman Berger also acted on behalf of Ms De la Guerre whose matter is dealt with by attorney van Niekerk in his affidavit.
- 14.4 I deduce that it was attorney Millar and/or Norman Berger who provided attorney van Niekerk with the relevant information concerning these clients. It does not appear from the affidavits that attorney Millar had instructions and authority to do so.
- 14.5 Attorney Millar and/or Norman Berger also act on behalf of Discovery.
- 14.6 All the clients whom attorney Millar and/or Norman Berger represented in actions and/or applications against the Bobroffs are members of Discovery.
- 14.7 Why all these former clients of the Bobroffs approached the same attorney, namely attorney Millar and/or Norman Berger, is not explained by attorney van Niekerk. I will offer an explanation below.
- 14.8 The Citizen reported on 21 February 2014 that attorney Millar had stated that:

- *It is clear that all Ronald Bobroff has done for the legal profession is to bring it into disrepute under the guise of a benevolent benefactor.*
- *Ronald Bobroff is to South African law, what Bernie Madoff was to the United States Securities Exchange Commission.*

A copy of the abovementioned article is attached hereto as annexure 199.

14.9 Moneyweb.co.za reported on 19 February 2015 that Norman Berger is acting on behalf of eight former clients of the Bobroffs, who have claimed an amount of R9 million from them (annexure 200).

14.10 The feud between attorney Millar and/or Norman Berger on the one hand and the Bobroffs on the other is well-known. Attorney Millar and/or Norman Berger have submitted several complaints against the Bobroffs to the Law Society. The Bobroffs in turn have submitted several complaints against attorney Millar and/or Norman Berger.

14.11 The general view of attorney van Niekerk and/or the Grahams and/or attorney Millar and/or Norman Berger is that the Law Society is not sufficiently aggressive as far as the Bobroffs are concerned and that it is protecting the Bobroffs. The Bobroffs on the other hand seemed to be of the view that the Law Society is too aggressive in its approach and that it is biased towards them. None of these contentions are correct.

14.12 The relationship between attorney van Niekerk and attorney Millar and/or Norman Berger appears to be a close one. Attorney van Niekerk also acts as the attorney for attorney Millar, Katz of Discovery and Mr T Beamish (Beamish). Attorney van Niekerk advised the Law Society accordingly on 9 April 2015.

14.13 Although Beamish does not appear to be a journalist, he on a regular basis writes articles on matters concerning the Bobroffs. Beamish has not been kind to the Law Society and his articles have consistently contained harsh and unfounded criticism aimed at the Law Society. The similarities between the allegations of attorney van Niekerk and the contents of Beamish' articles respectively are uncanny.

14.14 I attach as annexure 201 an extract from a Google search printout which reflects the extent of Beamish's reporting on the Bobroff matter. The mischievous headings to these articles include:

- *Judge to decide Bobroff and Law Society's fate.*
- *Law Society "ordered" to judge Bobroff.*
- *Law Society allowed Bobroff fee regime against advice.*

14.15 In the Citizen of 14 March 2014 (annexure 202) Beamish said the following:

The Law Society of the Northern Provinces (LSNP) has procrastinated for over two years on an enquiry ...

14.16 On CitizenAlertzablogspot (annexure 203) Beamish wrote:

The LSNP has proven that it has not been extremely efficient with investigations into the conduct of its members.

14.17 With reference to Beamish' abovementioned comments, nothing can be further from the truth.

14.18 Two affidavits have recently come to the attention of the Law Society and I am duty bound to refer the Honourable Court thereto.

14.19 The first affidavit (annexure 204) was deposed to by Mr C E Coleman (Coleman), a client of the Bobroffs. According to Coleman attorney Millar contacted him on 23 March 2015. He advised Coleman that the Bobroffs have misappropriated monies from the proceeds of his third party claim.

14.20 According to Coleman he is satisfied with the Bobroffs handling of his matter and the proceeds that he had received from the RAF. Attorney Millar allegedly attempted to manipulate him against the Bobroffs and to convince him to challenge the Bobroffs' fees.

14.21 The second affidavit (annexure 205) was deposed to by Ms M Kock (Kock), also a client of the Bobroffs. Kock was contacted by Beamish who initially pretended, unsuccessfully so, that he was working with the Bobroffs.

14.22 Beamish informed Kock that the Bobroffs have been stealing monies from their clients. He explained that he intended referring her to Norman Berger for assistance. Beamish allegedly also said the following:

14.22.1 it was the Bobroffs who requested him to refer her to Norman Berger;

14.22.2 the proceeds of her claim would be stolen;

14.22.3 the Bobroffs were in trouble due to theft of their clients' monies; and

14.22.4 if she did not follow his advice, she would never receive the proceeds of her claim.

14.23 I deduce from the abovementioned facts that attorney van Niekerk, attorney Millar, Norman Berger, Discovery and Beamish are working in close cooperation and that they may be actively soliciting complaints against the Bobroffs.

14.24 The disputes between the Bobroffs on the one hand and attorney van Niekerk and/or the Grahams and/or attorney Millar and/or Norman Berger on the other

and the nature and extent thereof have placed the Law Society in an untenable position. It is for this reason that the Law Society:

- 14.24.1 will act objectively, impartially and in an unbiased manner;
- 14.24.2 considers all complaints to be important;
- 14.24.3 handles all complaints equally;
- 14.24.4 acts reasonably and fairly towards all parties involved; and
- 14.24.4 deals with all complaints in accordance with the Law Society's Rules.

15. SECTION 71(4) OF THE ATTORNEYS' ACT

15.1 Section 71(4) of the Attorneys' Act provides:

A council conducting an enquiry in terms of this section may, if the conduct enquired into forms or is likely to form the subject of criminal or civil proceedings in a court of law, postpone the enquiry until such proceedings have been determined.

- 15.2 The rationale of this provision is obvious. Although each complaint and each enquiry is dealt with on its own merits and facts, the sensible approach in most instances is to await the finalization of litigation and the final adjudication of the disputes by the Court before the Law Society's disciplinary committee considers the matter and makes a finding. A disciplinary enquiry parallel to the adjudication by a Court in respect of the same disputes will be inappropriate.
- 15.3 The suggestion by attorney van Niekerk that disciplinary enquiries in respect of complaints submitted to the Law Society should in any event be conducted where litigation in respect thereof is pending, is without merit and ill-advised.

16. LITIGATION ON BEHALF OF COMPLAINANTS AND SOLICITATION OF COMPLAINTS

16.1 The counter-application reflects that attorney van Niekerk is of the view that the Law Society is expected to:

16.1.1 actively participate in litigation between complainants and their former attorneys;

16.1.2 institute legal proceedings on behalf of complainants against their former attorneys; and

16.1.3 actively solicit complaints against attorneys from members of the general public.

16.2 The fallaciousness of attorney van Niekerk's arguments in this regard and the inappropriateness of his suggestions are obvious. The Law Society is a statutory body and the *custos morum* of the attorneys' profession. It acts in accordance with its duties and powers provided for by the Attorneys' Act and the Rules. The Law Society acts independently and objectively in exercising its

duties. It should under no circumstances pre-judge complaints, become involved and participate in disputes between attorneys and their former clients in Courts of law and solicit complaints from members of the general public.

16.3 The nature and extent of attorney van Niekerk's unmeritorious views is evident from his following allegations:

- *The Law Society has of its own accord not taken any action on behalf of past clients of RBP....*

Paragraph 12 of attorney van Niekerk's affidavit

- *The Law Society...has looked to lay members...to institute legal proceedings against the Bobroffs in the courts...*

Paragraph 12 of attorney van Niekerk's affidavit

- *It cannot be correct that individual lay litigants and past clients should individually have to pursue cases of misconduct against the Bobroffs...*

Paragraph 162 of attorney van Niekerk's affidavit

16.4 Attorney van Niekerk's abovementioned and related suggestions and allegations are with respect ludicrous and rejected out of hand.

17. MATOJANE JUDGMENT

17.1 Attorney van Niekerk, purportedly acting on behalf of the Grahams, brought an application declaring the Bobroffs to be in contempt of paragraph 4 of the Honourable Court's order dated 14 April 2014. Judgment was handed down on 17 March 2015 and the Honourable Justice Matojane found the Bobroffs to be in contempt of Court. The judgment is currently on appeal.

17.2 The Law Society was not a party to the proceedings and was advised of the judgment on 18 March 2015.

17.3 Attorney van Niekerk vehemently criticizes the Law Society for not having brought the said contempt application, alternatively for not having actively participated therein. His criticism in this instance is, likewise, unfounded and ill-advised.

17.4 Attorney van Niekerk's unmeritorious allegations in this regard include the following:

- *...the Law Society has not sought any urgent contempt or appropriate declaratory and directory relief against the Bobroffs...*

Paragraph 8 of attorney van Niekerk's affidavit

- *I pause to mention that the Law Society did not bring this application – it was left to the Grahams to do so.*

Paragraph 155 of attorney van Niekerk's affidavit

- *The Law Society has curiously been unmoved by the Bobroffs having been declared to be in contempt of an order of this Court.*

Paragraph 160 of attorney van Niekerk's affidavit

- *...the Law Society has not itself brought contempt proceedings against the Bobroffs...*

Paragraph 226 of attorney van Niekerk's affidavit

- *Rather than taking action against the Bobroffs...or by bringing independent contempt proceedings or joining as a supporting party...*

Paragraph 253 of attorney van Niekerk's affidavit

- *...the Law Society elected not to resolve the dispute immediately either by contempt or declaratory relief.*

Paragraph 279 of attorney van Niekerk's affidavit

17.5 Attorney van Niekerk's abovementioned criticism to the effect that the Law Society should have instituted contempt proceedings and participated in the Grahams' application is unfounded and rejected out of hand.

17.6 The Law Society is not in the habit of instituting contempt proceedings against attorneys. Such application will only be brought as a last resort. The Law Society was furthermore not the applicant in the first application in whose favour the relevant relief against the Bobroffs was granted. The Law Society's

experience is that a contempt order is ineffectual. A contempt application may furthermore result in protracted litigation and further delays. Attorney van Niekerk's contempt application is a case in point. The order obtained by attorney van Niekerk is currently the subject of an appeal and it is unlikely that the matter will be finally adjudicated upon in the near future.

17.7 The Law Society will furthermore respect the pending appeal process and the fact that the order obtained by attorney van Niekerk is currently suspended as a result of the appeal. The Law Society will consider the final judgment once it is available and take the appropriate steps.

18. INSPECTORS' REPORT/S

18.1 Attorney van Niekerk criticizes the Law Society for having resolved to instruct the inspectors to compile two reports, one dealing with the Graham and De la Guerre accounts and another with other matters. He alleges that the so-called *bifurcated reporting process* is in breach of the Court's order. I deny this allegation.

18.2 Attorney van Niekerk's arguments in this regard are in any event self-destructing. Had the Law Society not instructed the inspectors to prepare two reports, the existing report dealing with the Graham and De la Guerre accounts which is referred to in the Law Society's application and which have been made available to the parties to this matter, would not have been available.

18.3 Attorney van Niekerk further criticizes the Law Society, unjustifiably so, for not having attached the inspectors' report relating to the Graham and De la Guerre accounts to its application. It was not necessary to do so. The Law Society's application and attorney van Niekerk's counter-application do not constitute a disciplinary enquiry. The contents of the report and the inspectors' findings will be dealt with during the Law Society's pending disciplinary enquiry.

18.4 Attorney van Niekerk then criticizes the Law Society for having referred the Inspectors' report to the Bobroffs for comment. He says:

- *...in my experience as a former councilor and Vice President of the Cape Law Society, it is highly unusual that an attorney is furnished with a copy of an inspector's report in draft for comment before it is considered by the Council or Disciplinary Committee of a Law Society.*

Paragraph 88 of attorney van Niekerk's affidavit

- *The Law Society appears to have applied a different set of Rules for the Bobroffs....*

Paragraph 88 of attorney van Niekerk's affidavit

- *...It appears that the Law Society has deviated from its ordinary practice by allowing the Bobroffs an opportunity to comment upon the inspectors' report.*

Paragraph 292 of attorney van Niekerk's affidavit

- *In my experience, an inspector's report is not shared with the attorney concerned prior to its finalization.*

Paragraph 293 of attorney van Niekerk's affidavit

18.5 In reply to attorney van Niekerk's abovementioned unwarranted allegations I wish to refer the Honourable Court to the following:

18.5.1 I have no interest in attorney van Niekerk's experience and it is irrelevant. Attorney van Niekerk is not practising in the Northern Provinces;

18.5.2 It is not unusual to refer an inspector's report to an attorney for comment and it is the Law Society's practice to do so. In addition, the Law Society will refer the attorney's comments to the inspector, if appropriate;

18.5.3 the Law Society did not deviate from its practice;

18.5.4 the Law Society consequently did not follow a different set of Rules as far as the Bobroffs are concerned, as alleged;

18.5.5 I am not aware as to whether attorney van Niekerk was indeed a councillor of the Cape Law Society or what the practice of the Cape Law Society is. If it is correct that the practice of the Cape Law Society is not to disclose an inspector's report to an attorney, I submit with respect that it should be the practice. The Law Society of the Northern Provinces is with respect the leading Law Society in South Africa and its practice to refer reports to attorneys and its longstanding policy to treat

complainants and attorneys alike in a fair and reasonable manner is commendable.

18.6 Attorney van Niekerk furthermore criticizes the Law Society for its view that the Inspectors' second report, dealing with matters other than the Graham and De la Guerre accounts should possibly not be made available to all the parties to the application. I submit with respect that it could not have been the intention of the Honourable Court that a report dealing with the accounts of clients of the Bobroffs, other than the Grahams and De la Guerre, be made available to all the parties to the first application. The information of clients contained in the Bobroffs' accounts, files and records is, needless to say, confidential and privileged. Whether such privilege can be breached by an order of Court is debatable. The Law Society does however respect the Court's order and has no intention of not complying thereof. The aspects of confidentiality and privilege were not however debated in legal argument during the hearing of the first application.

18.7 The Honourable Court would have noted that the Law Society also seeks further and/or alternative relief in its notice of motion. The Law Society with respect requires guidance from the Honourable Court as to whether the second report

should indeed be made available to all the parties to the application and whether this was the Court's intention considering the nature of the information which will be contained therein. The matter will be further dealt with in legal argument and the Law Society intends complying with the Court's directives.

19. I now reply to attorney van Niekerk's affidavit in more detail.

AD PARAGRAPH 2 THEREOF

19.1 I deny that the allegations contained in attorney van Niekerk's affidavit are true and correct in all respects. I have already alluded to some of attorney van Niekerk's incorrect and unfounded allegations and the contradictions and inconsistencies in his version. The affidavit is further replete with attorney van Niekerk's unfounded, personal views and conjecture.

AD PARAGRAPH 5 THEREOF

19.2 The relief provided for in the notice of motion stands to be dismissed with costs on the attorney and own client scale, alternatively costs *de bonis propriis*.

19.3 I dispute the alleged urgency of the application for the reasons already advanced. I wish to add the following. The fact that the application is not urgent is in fact evident from attorney van Niekerk's own version of events. The Honourable Court will note that there have been substantial delays on the part of attorney van Niekerk in bringing the counter-application, for which no explanations have been provided. Although attorney van Niekerk expects the Law Society to deal with all matters concerning the Bobroffs on an urgent basis, he himself appears to move at a glacial pace.

19.4 It appears from the client matters referred to by attorney van Niekerk and which are being handled by attorney Millar and/or Norman Berger on behalf of former clients of the Bobroffs, that the majority of the clients have obtained redress from the Courts and/or are currently involved in litigation. Whether further matters or complaints involving the Bobroffs will arise, remains to be seen. If so, the former clients of the Bobroffs are entitled to exercise their remedies and to submit complaints to the Law Society. The Law Society's disciplinary powers are those provided for in the Attorneys' Act and the Law Society's Rules and the Law Society will act in accordance with those provisions.

19.6 With reference to the suggestion that an inspection should be conducted in respect of all matters previously handled by the Bobroffs, during the period 1974 to 2015, I once again submit that the suggestion is ludicrous. The Law Society does not have the necessary infrastructure and manpower to conduct an inspection of such magnitude and it will not be practically implementable.

AD PARAGRAPH 6 THEREOF

19.7 I deny the allegation that insufficient action has been taken by the Law Society in respect of the matters referred to by attorney van Niekerk in this paragraph. The Law Society has from the outset and consistently been frustrated in fulfilling its duties, especially by attorney van Niekerk. It bears repeating that attorney van Niekerk on two occasions requested postponements of the Law Society's disciplinary enquiry, interfered with the fulfillment of the Law Society's duties, brought unnecessary, costly, and protracted litigation against the Law Society and inundated the Law Society with a barrage of long-winded correspondence.

19.8 The relief provided for in the notice of motion to the counter-application is over broad and goes too far. The relief is furthermore in several respects unrelated to the relief sought by the Law Society.

19.9 I deny that the relief sought by attorney van Niekerk is in the interests of the administration of justice, the legal profession and the general public. The contrary is true. The counter-application constitutes an abuse of the Court process.

19.10 The Law Society's disciplinary enquiry is pending. Further complaints received by the Law Society are dealt with strictly in accordance with the Law Society's Rules and in the interests of all concerned including the administration of justice.

19.11 An enquiry as to whether the Bobroffs can be considered to be fit and proper persons to practise as attorneys at this stage will be premature.

AD PARAGRAPH 7 THEREOF

19.12 The relief sought in the Law Society's application is sufficient to address the situation dealt with in the Law Society's founding affidavit. No further mediating and remedial powers need to be exercised by the Honourable Court. I say so with the necessary respect.

19.13 Attorney van Niekerk admits that the Law Society has been prevented from proceeding with and finalising the Law Society's disciplinary enquiry. This admission can in fact be found like a golden thread throughout his affidavit. He blames everybody but himself for the state of affairs the parties currently found themselves in.

19.14 It is incorrect that the Bobroffs have always failed to co-operate with the Law Society. With few exceptions the Bobroffs have always furnished the Law Society with their comments on complaints, replied to the Law Society's correspondence and attended the proceedings of disciplinary committees. It is in fact the Bobroffs who have consistently insisted that the disciplinary enquiry be proceed with and finalized.

AD PARAGRAPH 8 THEREOF

19.15 It is correct that the Law Society has not brought an urgent contempt application against the Bobroffs. It was not necessary to do so and such application would have been inappropriate for the reasons already advanced. The Law Society has however brought its current application which was necessary, reasonable and appropriate in the circumstances.

19.17 The Law Society does not support the relief sought by attorney van Niekerk. This application is not a disciplinary enquiry.

AD PARAGRAPH 9 THEREOF

19.18 I deny that the Grahams and/or attorney van Niekerk has standing/*locus standi* to bring the counter-application. The Grahams' *locus standi* will be limited to those matters concerning their complaint.

19.19 What the Grahams' interest in the remaining relief provided for in the notice of motion, *inter alia*, the Bobroffs' suspension is, remains a mystery. The

Grahams have in all likelihood become pawns in the hands of attorney van Niekerk and Discovery.

AD PARAGRAPH 11 THEREOF

19.21 I deny that the Grahams and/or attorney van Niekerk approaches the Honourable Court in the "public interest".

19.22 I deny that this application does not involve ordinary litigants. The application indeed involves ordinary litigants. It is not a disciplinary enquiry.

19.23 Any contraventions on the part of the Bobroffs will be dealt with by the Law Society's disciplinary committee.

19.24 I deny that the Law Society has failed to discharge its statutory obligations to vindicate the administration of justice and to protect the reputation of the legal profession. Attorney van Niekerk's allegations are unfounded and purely vexatious.

AD PARAGRAPH 12 THEREOF

19.25 I deny the allegation that the Law Society is required to act on behalf of members of the general public and to do so on an urgent basis.

19.26 The Law Society does not solicit complaints and does not bring applications and institute actions on behalf of members of the general public. The Law Society's powers and duties are defined by the Attorneys' Act. Such applications and actions will be highly inappropriate from a statutory body such as the Law Society. I need to emphasize that the Law Society has not received serious complaints against the Bobroffs' firm up until the time that the disputes between the Bobroffs and Discovery arose. I deny that the action taken by the Law Society thus far is insufficient.

19.27 I deny that this matter has a *special dimension*.

19.28 The allegation that there are potentially thousands of past clients of the Bobroffs who have been overreached, is conjecture and inappropriate.

19.29 I deny that the Law Society and the Court are facing a *plethora* of cases against the Bobroffs. The only cases and complaints known to the Law Society are those referred to by attorney van Niekerk in his founding affidavit. The majority of the matters referred to and handled by attorney Millar have not previously been brought to the attention of the Law Society, prior to the launch of the counter-application.

19.30 The Law Society agrees that the finalisation of the inspection ordered by the Court should be ensured. That is why the Law Society has brought its application.

AD PARAGRAPH 13 THEREOF

19.31 I deny the allegation that the Law Society should act against the Bobroffs on behalf of individual clients.

19.32 The disciplinary enquiry against the Bobroffs, which is pending, does not require the Court's intervention and oversight. I requires attorney van Niekerk to stop interfering.

19.33 An inspection wider than the inspection already ordered by the Honourable Court is not required and it is not practically implementable.

AD PARAGRAPH 14 THEREOF

19.35 I deny the allegation that the Law Society's application does not provide a complete picture and that the relief sought by the Law Society does not go far enough. Attorney van Niekerk's counter-application goes too far. The Honourable Court has furthermore been overburdened with unnecessary information and documentation.

19.37 I deny that the Law Society is unable or unwilling to take decisive action that is appropriate in the circumstances. The allegation is unsubstantiated and I take exception to attorney van Niekerk's allegations in this regard.

AD PARAGRAPH 15 THEREOF

19.38 It is correct that past clients of the Bobroffs must lodge complaints and/or pursue claims in the Courts, if necessary. Any suggestion to the contrary is denied.

19.39 The Law Society has never solicited complaints from members of the general public and it never will. //

19.40 I deny that complaints submitted to the Law Society are not treated with the urgency and attention required. All complaints are treated properly and in accordance with the Law Society's Rules. The Law Society will not give complaints against the Bobroffs precedence over others.

19.41 I deny that:

19.41.1 a *multitude* of complaints have been received against the Bobroffs;

19.41.2 no immediate remedial action is taken by the Law Society;

19.41.3 undue indulgences are being granted to the Bobroffs.; and

19.41.4 the Law Society's current application constitutes a further indulgence to the Bobroffs.

19.42 It is correct that the Law Society does not assist past clients of the Bobroffs in their approach to the Honourable Court. Such assistance would be inappropriate and inconsistent with the Law Society's role, powers and objects.

19.43 I reiterate that the delays in the disciplinary action against the Bobroffs are mainly attributable to attorney van Niekerk.

19.44 Contingency fee agreements which are submitted to the Law Society are perused and considered by the Law Society. If no such agreements are submitted, they do not fall within the Law Society's knowledge. There exists no control mechanism to ensure that attorneys submit all contingency fee agreements to the Law Society.

19.45 I deny that the Law Society's application fails to register or mention materially important facts concerning the Bobroffs.

19.46 I deny that inappropriately weak relief is being sought by the Law Society in its application. Attorney van Niekerk is entitled to his opinion, but it is everything but convincing.

19.47 Attorney van Niekerk's counter-application will no doubt delay the Law Society's disciplinary enquiry even further. The appropriate response to the Law Society's application would have been for attorney van Niekerk and the Grahams to support the relief sought. It would then have been possible for the Law Society to enroll the application on the unopposed motion roll. The Law Society also requests further and/or alternative relief in its notice of motion. The Honourable Court would have been in a position to In the near future make an appropriate order in the circumstances.

AD PARAGRAPH 16 THEREOF

19.48 Attorney van Niekerk refers to nine occasions on which the Bobroffs had allegedly overreached their clients. Elsewhere in his affidavit he refers to a *plethora* of cases. I do not accept that nine complaints or matters represent a *plethora* of complaints and matters.

19.49 It bears repeating that the Law Society was not aware of all nine the matters referred to by attorney van Niekerk. The matters that did come to the Law Society's attention were referred to the Law Society's inspectors (Reddy and Swart) for purposes of their inspection. Reddy requested the relevant files

from the Bobroffs. This aspect is dealt with in the founding affidavit to the Law Society's application. The Law Society referred relevant matters which came to its attention to the inspectors, without having received formal complaints.

19.50 The Law Society is not prepared to participate in a witch hunt and cannot be seen to do so.

19.51 I accordingly deny that the Law Society has not of its own violation taken any action in response to complaints against the Bobroffs.

19.53 The complaints received by the Law Society are being investigated and they will be dealt with in accordance with the Law Society's Rules.

19.54 Attorney van Niekerk is well aware of the reasons as to why the disciplinary enquiry regarding the Grahams' complaint has not yet been completed.

19.55 Although attorney van Niekerk states that it appears that the Bobroffs are continuing to charge common law contingency fees, no facts in order to substantiate this allegation are provided. The only recent complaint received by the Law Society relates to the Motara matter. The Law Society has

referred the Motara complaint to the Bobroffs for comment. Litigation is however pending in the Motara matter. The Law Society also referred the Motara matter to the inspectors for purposes of their further inspection.

AD PARAGRAPH 17 THEREOF

19.56 I deny that the Law Society's so-called *stance* is inappropriate and ineffectual. The contrary is true. The stance adopted by attorney van Niekerk and the Grahams however has contributed and is still contributing to substantial delays in the finalisation of the disciplinary enquiry.

19.57 I deny that the relief provided for in the counter-application represents the only just and equitable relief. The appropriate relief is provided for in the Law Society's notice of motion.

AD PARAGRAPH 18 THEREOF

19.58 I do not know whether the Bobroffs have engaged in a systematic and pervasive *modus operandi* of impropriety and overreaching. No facts in order to substantiate such conclusion have been provided.

AD PARAGRAPH 19 THEREOF

19.59 I deny the allegations contained in this paragraph.

AD PARAGRAPH 23 THEREOF

19.60 I have already referred to the Law Society's 2002 Ruling regarding common law contingency fee agreements and I do not repeat my comments. I deny attorney van Niekerk's reference to so-called *past wrongs* and the allegation that the Law Society needs to *makes amends*.

AD PARAGRAPH 25 THEREOF

19.61 The Ruling made by the Law Society on 21 June 2002 did not represent a blanket ruling in terms of which attorneys were allowed to act as they deemed fit.

19.62 I deny that Ronald Bobroff was a *highly influential force* in the Law Society's decisions. The Council of the Law Society consists of twenty four senior practising attorneys.

PARAGRAPH 28 THEREOF

19.63 It is correct that Advocate Labuschagne SC advised the Law Society that common law contingency fee agreements should not exceed the 25% cap referred to in the Contingency Fees Act. This was communicated to the Law Society's members.

AD PARAGRAPH 31 THEREOF

19.64 I deny the contemptuous allegation that the Law Society was *undeterred* by Advocate Marcus SC's opinion and that it wished to *find a way around* the opinion. Attorney van Niekerk clearly suggests that the Council acted *mala fide*. Such suggestion is unfounded and rejected out of hand. It is further inappropriate for attorney van Niekerk to speculate concerning the Council's deliberations and decisions.

19.65 The Law Society was fully entitled to obtain an opinion from Advocate Trengove SC. This opinion was, likewise, properly considered and debated.

AD PARAGRAPH 32 THEREOF

19.66 I deny the allegation that the Law Society has a protective attitude towards the Bobroffs. The allegation is unfounded and rejected out of hand. I, likewise, deny that the Law Society was partial and not independent in its oversight of its members. It is clear that attorney van Niekerk does not wish the Law Society to be impartial and independent, but to act in his or Discovery's interests and in a biased manner towards the Bobroffs. Such approach cannot be countenanced.

19.67 I deny that the Law Society at any stage acted irresponsibly and that its Ruling constituted a dereliction of its duty to protect the general public. Attorney van Niekerk again suggests that the Law Society acted *mala fide*. The suggestion is not only without merit, but reprehensible and rejected out of hand.

19.68 The validity of common law contingency fee agreements was a controversial issue and different and diverse views existed. This is also attorney van Niekerk's view. He applied for a postponement of the disciplinary enquiry, *inter alia*, on the ground that the De la Guerre matter had to be finalized first. He

also referred to the said uncertainty and confusion in his article referred to above.

AD PARAGRAPH 35 THEREOF

19.69 I deny that the Law Society deliberately ignored any of the advice and opinions obtained and considered by it. Attorney van Niekerk's suggestion of *mala fides* on the part of the Law Society is strongly denied and it is not appreciated.

AD PARAGRAPH 42 THEREOF

19.70 The Law Society has indeed taken note of the judgment in the De la Guerre matter and it respects the Court's decision. The Law Society alerted its members to the said judgment on more than one occasion.

AD PARAGRAPH 44 THEREOF

19.71 I deny attorney van Niekerk's suggestion that the Law Society has ignored the opinions obtained and considered by it. He accuses the Law Society of having acted *mala fides*. His accusation is entirely unfounded and rejected.

19.72 It is uncertain on which grounds attorney van Niekerk suggests that the Law Society acted *mala fides*. It is, likewise, uncertain on which basis attorney van Niekerk considers himself to be entitled and in a position to comment on the deliberations and resolutions of the Council. He simply has no knowledge thereof. He nevertheless makes unfounded and contemptuous allegations concerning the Council's deliberations. This provides evidence that attorney van Niekerk is biased in his dealings with the Law Society and is not acting in good faith.

AD PARAGRAPH 48 THEREOF

19.73 The judgment in De la Guerre is accepted unreservedly by the Law Society and it is respected. The Law Society's members have been advised of the findings in the De la Guerre matter and alerted to act strictly in accordance with the provisions of the Contingency Fees Act.

Ad PARAGRAPH 50 THEREOF

19.74 The Law Society participated in the De la Guerre matter in order to assist the Honourable Court and to furnish the Court with its views. De la Guerre was represented by Norman Berger and applied for a punitive cost order against the Law Society. Her application in this respect failed.

AD PARAGRAPHS 66 TO 72 THEREOF

19.75 Vivian did not submit a complaint against the Bobroffs to the Law Society.

19.75 The Law Society is however aware of the litigation involving Vivian and the Bobroffs.

19.76 Vivian did direct certain enquiries at the Law Society and the Law Society furnished him with the necessary information in order to consider his position and to instruct an attorney.

19.77 Vivian is being represented by attorney Millar and Norman Berger.

19.78 The Law Society referred the Vivian matter to the inspectors. The Vivian matter therefore forms part of the inspectors' mandate.

AD PARAGRAPHS 73 TO 79 THEREOF

19.79 The Law Society did not receive a complaint from Fourie. It did however receive a complaint from Judge Wiener relating to the matter. The Law Society referred the complaint to the Bobroffs for comment and their comments are still awaited. The complaint constitutes a relatively new complaint and it does not at present form part of the inspectors' mandate. The complaint has however been referred to the Law Society's Members Affairs Department for the purpose of an instruction to the inspectors.

19.80 Attorney van Niekerk's allegation that the Law Society has failed to investigate the matter is therefore incorrect.

AD PARAGRAPHS 80 TO 100

Ad paragraph 88 thereof

19.81 The Bobroffs were afforded an opportunity to reply to the Faris report. This was done in accordance with the Law Society's long standing practice. Attorney van Niekerk is incorrect in his allegation that it was unusual for the Law Society to refer the report to the Bobroffs for comment. Attorney van Niekerk is, likewise, incorrect in stating that a different set of rule were applied in respect of the Bobroffs.

19.82 I deny that the referral of the report to the Bobroffs for comment resulted in a delay. The referral of the report to the Bobroffs for comment was both correct and reasonable. It is uncertain why attorney van Niekerk did not wish the Bobroffs to have sight of the report.

AD PARAGRAPH 89

19.83 I deny that the Grahams were *forced* to approach this Honourable Court for relief.

19.84 I deny that the Grahams approached the Court due to the Law Society's *inaction*. There was no inaction on the part of the Law Society and the Graham complaint was handled properly and in accordance with the

provisions of the Attorneys' Act and the Law Society's Rules. The Honourable Court has found that there was no inaction on the part of the Law Society and no failure to comply with its duties. The fact that attorney van Niekerk makes this factually incorrect allegation under oath whilst being fully aware of the correct facts is, understandably, worrying.

19.85 The Grahams' application against the Law Society was dismissed.

AD PARAGRAPH 90 THEREOF

19.86 I deny that the Law Society's disciplinary proceedings were scheduled for 28 and 29 November 2012 as a result of the Grahams' application. It is uncertain on what grounds attorney van Niekerk makes this allegation.

19.87 It is correct that the disciplinary enquiry was postponed pending the finalisation of the first application. The first application resulted in a substantial delay. Was it not for the protracted and costly litigation bought by the Grahams and attorney van Niekerk, the disciplinary enquiry would most probably have been finalised.

AD PARAGRAPH 92 THEREOF

19.89. It is correct that the Honourable Court found that the Law Society did not fail to discharge any of its duties. It is not correct however that the Court found that the application was merely *premature* and not that it lacked merit. As far as the relief previously sought against the Law Society is concerned the Court found that it had no merit and that the criticism levelled at the Law Society by the Grahams and attorney van Niekerk was unjustified.

AD PARAGRAPH 94 THEREOF

19.90 The allegations contained in this paragraph appear to be nonsensical in certain respects. The judgment in the first application obviously dealt with the facts relevant to that application.

19.92 Attorney van Niekerk seems to suggest that, although the Court found that the Law Society did not fail to comply with its duties, it subsequent to the judgment did fail to comply with its duties. Such suggestion is factually incorrect and rejected.

AD PARAGRAPH 96 THEREOF

19.93 It is correct that the Law Society was ordered to convene the disciplinary enquiry within sixty days of the order. Although a disciplinary meeting was scheduled, the enquiry could not proceed for several reasons. First it was required for purposes of the disciplinary enquiry that the Inspection of the accounting records and practice affairs of the Bobroffs, in accordance with the Court's order, be completed. The inspectors' report containing their findings was required for purposes of formulating the relevant charges. The inspection and the disciplinary enquiry was therefore interlinked.

19.94 Further difficulties that were experienced by the Law Society is that one of its members, Mr Klynsmith, withdrew as a member of the committee. The chairman of the committee Mr Pauw subsequently also withdrew from the committee. In addition to the unavailability of the said two members the third member of the committee, Mr van Rooyen, also indicated that he would not be available on 10 December 2014.

19.95 Subsequent to the dismissal of the Bobroff's appeal to the Constitutional Court, the Law Society enrolled the disciplinary enquiry for 10 December

2014. It could not be proceeded with on 10 December 2014 due to the abovementioned difficulties. Even in the event that all the committee members were available on 10 December 2014, the enquiry would not have been capable of being completed due to the unavailability of the inspectors' further report.

19.96 Attorney van Niekerk was advised on the difficulties experienced by the Law Society. He agreed to an extension in respect of the disciplinary enquiry. He initially insisted that the disciplinary enquiry be re-enrolled for hearing on a date prior to the end of February 2015. By February 2015 the Bobroffs had not granted the inspectors access to their accounting records and the further investigation had not been completed.

19.97 Although attorney van Niekerk initially indicated that the disciplinary enquiry should take place before the end of February 2015, he subsequently recorded that the disciplinary enquiry could not be proceeded with pending the finalisation of the Law Society's further inspection. He was therefore in favour of the postponement of the enquiry until such time as the further inspection had been conducted.

AD PARAGRAPH 97 THEREOF

19.98 It is clear from the extract from the Court's judgment in the application for leave to appeal that the Court required the Law Society's inspection to be conducted prior to the disciplinary enquiry.

AD PARAGRAPHS 101 TO 103 THEREOF

19.99 No complaint by Harris has been submitted to the Law Society. The Law Society was unaware of the Harris matter up until the service of the counter-application.

AD PARAGRAPHS 104 TO 107 THEREOF

19.100 The Law Society has referred Harris' matter to the inspectors. Harris' file is one of the files that Reddy had requested from the Bobroffs. The Harris matter therefore forms part of the inspectors' mandate.

19.101 The Law Society has not received a complaint from Maree.

AD PARAGRAPHS 108 TO 110 THEREOF

19.102 The Motara matter is currently the subject of litigation which has not yet been finalised. The Law Society is aware of the matter and referred it to the Law Society's inspectors. The Motara matter therefore forms part of the inspectors' mandate.

AD PARAGRAPH 111 TO 114 THEREOF

19.103 All these matters are currently the subject of litigation which has not been finalised. It appears that the Court proceedings in these matters have very recently been instituted. The Law Society has requested attorney Millar, who acts on behalf of all these former clients of the Bobroffs, to keep the Law Society advised on the progress in the litigation.

19.104 The Law Society has received a complaint from the Bobroffs to the effect that attorney Millar touted their former clients. The Law Society referred the complaint to attorney Millar, but no comment has been received to date.

AD PARAGRAPHS 115 TO 117 THEREOF

19.105 Alves is also represented by attorney Millar. The matter is the subject of litigation which has not yet been finalised. Alves' application against the Bobroffs came to the attention of the Law Society on 10 April 2015. The Law Society has requested attorney Millar to keep it advised on the progress in the litigation.

AD PARAGRAPHS 118 TO 122 THEREOF

19.106 The Wong matter is the subject of litigation which has not yet been finalised. The matter was brought to the attention of the Law Society by attorney Millar on 10 April 2015. The Law Society requested attorney Millar to keep it advised on the progress in the litigation.

AD PARAGRAPH 123 THEREOF

19.107 I do not consider the litigation against the Bobroffs to be *unprecedented*.

19.108 In several of the matters referred to by attorney van Niekerk where applications have been brought, alternatively action instituted against the Bobroffs, no formal complaints were submitted to the Law Society.

19.109 In matters where applications have been brought and actions instituted, the Law Society normally awaits the outcome of the litigation before taking disciplinary steps. This approach is correct and appropriate.

19.110 The Law Society does not litigate against attorneys on behalf of former clients of the said attorneys.

19.111 Attorney van Niekerk's criticism to the effect that the Law Society did not independently take up cases against the Bobroffs in the matters referred to is therefore unfounded and rejected.

19.112 It will, likewise, be inappropriate for the Law Society to apply to be joined as a party in applications or actions against the Bobroffs, which have been brought by former clients.

19.113 The Law Society's so-called *silence* in the matters should therefore not be of concern to attorney van Niekerk.

19.114 Attorney van Niekerk's suggestion that the Law Society should become involved in litigation between the Bobroffs and their former clients is without merit. He seems to suggest that the Law Society should not act in accordance with its powers and objects provided for by the Attorneys' Act and the Law Society's Rules.

AD PARAGRAPH 124 THEREOF

19.115 I deny that the Law Society should have applied for the Bobroffs' suspension pending the finalization of the further inspection. Such application cannot be properly considered prior to the acquisition of all the relevant facts. It will be irresponsible of the Law Society to launch such application in the circumstances.

19.116 I do not know what *flood of litigation* attorney van Niekerk refers to.

19.117 I do not know whether there are other clients who have been overreached by the Bobroffs. Attorney van Niekerk provides no facts in order to substantiate this allegation. The purpose of the Law Society's further inspection is in fact to establish whether there were other contraventions on the part of the Bobroffs. Without the inspection having been finalised neither attorney van Niekerk nor the Law Society can conclude that other past clients have been overreached by the Bobroffs.

19.118 Attorney van Niekerk's allegation that the Law Society is determined to treat each instance of misconduct as an "isolated instance" is ill-advised.

19.119 Each complaint received by the Law Society is treated and investigated in accordance with the Rules. Each complaint is considered on its own merits. It is only once the investigation, the further inspection and the disciplinary enquiry have been completed that the conduct of the Bobroffs can be considered cumulatively by the Council.

19.120 I deny that members of the public are *forced* to institute costly proceedings as a result of the Law Society's procedures. Former clients of the Bobroffs are entitled to submit complaints to the Law Society which complaints will be

properly investigated in terms of the Rules. They are furthermore entitled to exercise their remedies in Courts of law.

19.121 The Law Society plays a leading role in all matters concerning the attorneys' profession. The Law Society is in the process of uncovering the true facts concerning the Bobroffs' alleged misconduct. Complaints are being investigated and a disciplinary enquiry is pending. An inspection in respect of the Graham and De la Guerre accounts has been completed and a further inspection is pending.

19.122 The Law Society's current investigations are therefore not *business as usual* as alleged by attorney van Niekerk.

19.123 The Law Society will however in its investigation follow the Law Society's Rules. It will deal fairly and reasonably with all concerned.

AD PARAGRAPH 125 THEREOF

19.124 The Law Society does not participate in litigation between the Bobroffs and their former clients for the reasons advanced. The Law Society has

furthermore not been cited as a party in the majority of the applications brought and actions instituted against the Bobroffs. In those matters where the Law Society has been cited as a party it was clear from the papers that no action was required from the Law Society and that no relief was sought against the Law Society.

19.125 It is of paramount importance that the Law Society remains neutral, objective and independent.

19.126 Attorney van Niekerk's criticism is unfounded and rejected.

AD PARAGRAPH 126 THEREOF

19.127 I deny that the Law Society has failed to discharge its duties as custodian of the legal profession and guardian of the public. Attorney van Niekerk's allegations in this regard seem to be vexatious.

19.128 I also deny that the Law Society has delegated the task of protecting the public to the public themselves. I have already referred to the appropriate procedures and applicable principles.

19.129 The Law Society will not litigate on behalf of members of the general public against attorneys.

19.130 Attorney van Niekerk is incorrect in stating that only members of the public with means can approach the Court. Members of the general public can participate in the Law Society's *pro bono* scheme. They can further approach the Legal Aid Board alternatively the Registrar of the Honourable Court to bring proceedings *in forma pauperis*.

19.131 The attempt by attorney van Niekerk to show that members of the general public are being abandoned by the Law Society is without merit and rejected.

19.132 Attorney van Niekerk's view that the Bobroffs, with the exception of the matters referred to in the counter-application, have also acted improperly in respect of other former clients and that they are continuing with improper conduct, is speculative. No facts in this respect have been provided by attorney van Niekerk.

19.133 It in any event appears that the former clients of the Bobroffs referred to in the counter-application have been approached and induced to institute legal proceedings against the Bobroffs and to submit complaints to the Law Society. Such matters should therefore be handled carefully and with the necessary circumspection.

AD PARAGRAPH 129 THEREOF

19.134 Attorney van Niekerk deals with the proceedings of an investigating committee of the Council. He elsewhere also refers to the various investigations and proceedings of committees of the Law Society. Attorney van Niekerk's own allegations belie his accusation concerning the Law Society's so-called *inaction*.

AD PARAGRAPH 134 THEREOF

19.135 I fail to comprehend what attorney van Niekerk refers to with reference to the so-called *genuineness* of the Law Society's endorsement of common law contingency fee agreement. He does not explain his allegation.

19.136 Attorney van Niekerk yet again suggests *mala fides* on the part of the Law Society by stating that the Council's resolution to allow common law contingency fee agreements was motivated by *self-interest*. I take strong exception to this suggestion. Attorney van Niekerk's allegation is unsubstantiated and appears to be vexatious.

AD PARAGRAPH 138 THEREOF

19.137 Attorney van Niekerk's reference to a "commission" should be to a "committee".

19.138 Attorney van Niekerk does not represent the complainant in the matter. He therefore does not have knowledge of the procedures followed by the Law Society regarding the matter.

19.139 The Law Society has resolved to charge the Bobroffs and the disciplinary committee will be convened in due course.

AD PARAGRAPH 155 THEREOF

19.140 It is correct that the Law Society did not bring contempt proceedings against the Bobroffs for the reasons already advanced.

19.141 Attorney van Niekerk's allegation that the Law Society was cited as an interested party in the proceedings and that it chose to abide the Court's decision is factually incorrect. The Law Society was not cited as a party to the application.

AD PARAGRAPH 159 THEREOF

19.142 The Matojane judgment is currently on appeal and the matter has therefore not yet been finally adjudicated upon. I submit that the Bobroffs, like any other litigants, are fully entitled to appeal the said judgment. It is inappropriate for attorney van Niekerk to prejudge the merits of the appeal.

AD PARAGRAPH 160 THEREOF

19.143 Attorney van Niekerk is incorrect when stating that the Law Society is *unmoved* by the judgment in the contempt application. The Law Society has noted the judgment and the fact that it is currently on appeal. The judgment

was only recently, on 17 March 2015, brought to the attention of the Law Society.

19.144 The fact that the Matojane judgment is not referred to in the Law Society's application is not a *failure* and it is not *startling*. The relief sought by the Law Society is reflected in its notice of motion and supported by the facts contained in the Law Society's founding affidavit. The Matojane judgment is not relevant to the relief sought. There is therefore no reason on the part of attorney van Niekerk to be *concerned*.

AD PARAGRAPH 162 THEREOF

19.145 I deny the allegations contained in this paragraph. The Law Society has never solicited complaints from clients of attorneys and it will never do so.

AD PARAGRAPH 163 THEREOF

19.146 On 16 May 2014, when attorney van Niekerk addressed the said letter to the Law Society, the Bobroffs' appeal was already pending. The provisions of Section 71(4) of the Attorneys' Act again have reference.

AD PARAGRAPH 164 THEREOF

19.147 Attorney van Niekerk acknowledges that the Law Society's disciplinary enquiry was scheduled to take place on 10 December 2014.

AD PARAGRAPH 170 THEREOF

19.148 The Bobroffs granted the Law Society access to their accounting records in respect of the Graham and De la Guerre accounts. The inspectors concluded their inspection and compiled a report. Due to the fact that the Bobroffs did not provide the Law Society with access to their accounting records in respect of matters other than the Graham and De la Guerre accounts, the further inspection could not be conducted.

AD PARAGRAPH 175 THEREOF

19.149 The Court ordered that a copy of the inspectors' report be made available to the parties to the first application. De la Guerre is not a party to the first application. Attorney van Niekerk requested the Law Society to furnish attorney Millar with a copy of the report and the Law Society, correctly so in

my view, refused the request. Attorney van Niekerk fails to disclose whether he subsequently furnished a copy of the report to De la Guerre and/or attorney Millar.

AD PARAGRAPH 176 THEREOF

19.150 By 16 January 2015 the further inspection had not yet taken place for the reasons dealt with in the Law Society's founding affidavit.

19.151 The Law Society does not report to attorney van Niekerk, but to the Honourable Court.

AD PARAGRAPH 177 THEREOF

19.152 I deny that the Law Society was in breach of this Honourable Court's order. The Law Society was unable to finalise the further inspection not due to any conduct of its own, but due to the reasons dealt with in the Law Society's founding affidavit.

AD PARAGRAPH 178.3 THEREOF

19.153 The disciplinary committee had to be reconstituted for the reasons already advanced.

AD PARAGRAPH 178.6 THEREOF

19.154 Attorney van Niekerk's allegations are inappropriate. Members of the Law Society's disciplinary committees are not simply *found* amongst its thousands of members. The Law Society has a panel of members who serve on disciplinary committees and who are prepared to do so. The members of the disciplinary committees are appointed from the said panel.

19.155 I accordingly reject attorney an Niekerk's contemptuous and vexatious allegation that the Law Society has abdicated its role as the guardian of the legal profession by not immediately reconstituting the disciplinary committee.

AD PARAGRAPH 178.7 THEREOF

19.156 I deny the allegatfons contained in this paragraph.

AD PARAGRAPH 178.9 THEREOF

19.157 I deny the allegations contained in this paragraph. These allegations are, likewise, unfounded, contemptuous and vexatious.

AD PARAGRAPH 178.10 THEREOF

19.158 Attorney van Niekerk's view as reflected in his correspondence addressed to the Law Society is that the disciplinary enquiry should take place upon the finalisation of the further inspection and only once the second report is available.

AD PARAGRAPH 178.11 THEREOF

19.159 I deny the allegations contained in this paragraph. The allegations are unfounded, contemptuous and vexatious.

AD PARAGRAPH 181 THEREOF

19.160 The Law Society does not report to attorney van Niekerk and he should take cognizance of the fact that the Law Society will not be dictated to by him or any other attorney. Attorney van Niekerk is not the exception to the Rule in court proceedings.

19.161 There was no reason for the Law Society to explain to attorney van Niekerk what its application entailed. Attorney van Niekerk had to await the application and respond thereto in the appropriate forum and in the appropriate manner.

19.162 The Law Society's application was finalised as soon as possible and after it had been properly considered.

19.163 As far as the further report is concerned it was not necessary for the Law Society to report to attorney van Niekerk. It was in any event not known when the second report would be finalised. It was accordingly not possible for the Law Society to give an indication as to when it would be available.

19.164 The Law Society's founding affidavit in its current application deals with the relevant facts.

AD PARAGRAPHS 184 TO 218 THEREOF – DEFAMATION

19.165 Attorney van Niekerk's allegations concerning the defamatory remarks by the Bobroffs are clothed in irony if regard is had to the media statements issued by him and the defamatory, contemptuous, scandalous and vexatious allegations contained in his founding affidavit and the correspondence attached thereto.

19.166 Before replying to attorney van Niekerk's allegations in more detail I furnish the Honourable Court with the following facts.

19.167 Darren Bobroff was notified to appear before an investigating committee of the Law Society regarding his alleged defamatory statements. Attorney Millar and Katz of Discovery also attended the proceedings. Darren Bobroff requested more information as he was entitled to do and the investigating committee therefore postponed the proceedings. The Law Society furnished Darren Bobroff with the necessary information, although he did not reply thereto. The Law Society then referred the matter to a B-Committee of the Council for purposes of its recommendations. The committee recommended that Darren Bobroff be called upon to appear before a disciplinary committee.

The proceedings were scheduled to take place on 25 August 2014. Darren Bobroff appeared before the committee on the last mentioned date. He then gave an undertaking that he would immediately cease making defamatory statements. The committee found that, if the undertaking was not honoured, the matter would be referred back to the committee. Ronald Bobroff however requested that the record of proceedings not be made available to the media and that, should this be done, Darren Bobroff would not be bound by his undertaking.

19.168 The record of the disciplinary proceedings was subsequently leaked to the media. Ronald Bobroff then submitted a complaint against attorney Millar for having provided the media with a copy of the record of proceedings. During October 2014 attorney Millar again lodged a complaint against Darren Bobroff. This was followed by a complaint by attorney van Niekerk against Ronald Bobroff pertaining to a letter prepared by Ronald Bobroff which dealt with the alleged misconduct on the part of Discovery. The Law Society referred the complaint to Ronald Bobroff for comment. Ronald Bobroff requested additional time to furnish the Law Society with his comments. The extension was granted and he was advised that no further extensions would be granted.

19.169 The last mentioned matter served before a B-Committee of the Council on 21 April 2015. Ronald Bobroff furnished the Law Society with his comments on the complaint on 20 April 2015, one day prior to the proceedings of the committee.

19.170 The committee recommended that appropriate charges be formulated against Ronald Bobroff.

19.171 The proceedings involving Darren Bobroff on 28 April 2015 were postponed due to his request for further particulars until 22 June 2015 and 23 June 2015. The Law Society's B-Committee recommended that the charges concerning Ronald Bobroff be joined to the proceedings of 22 and 23 June 2015. The Law Society is currently in the process of preparing the relevant charge sheet.

AD PARAGRAPH 184 THEREOF

19.172 I deny any inactivity and failure on the part of the Law Society. The allegation is unfounded and rejected.

AD PARAGRAPH 191 THEREOF

19.173 The relevant charges will be dealt with during the Law Society's disciplinary enquiry. I deny that the Law Society did not take action, alternatively appropriate action in this regard.

AD PARAGRAPH 192 THEREOF

19.174 The allegations concerning defamation will be dealt with during the disciplinary enquiry scheduled for June 2015.

19.175 The Law Society is not prepared to become embroiled in the bitter dispute between the Bobroffs on the one hand and Discovery, attorney van Niekerk, attorney Millar and Beamish on the other. The Law Society will deal with this matter objectively and in accordance with its Rules. The relevant parties to the dispute must exercise their legal remedies, as they are entitled to do.

AD PARAGRAPH 193.3 THEREOF

19.176 I do not accept ENSafrica's alleged concern referred to in this paragraph.

The concern appears to be that of Discovery on whose behalf attorney van Niekerk and ENSafrica act. The Law Society is not only concerned about the conduct of all recalcitrant attorneys in its jurisdiction, but also about the conduct of attorney van Niekerk.

AD PARAGRAPH 194 THEREOF

19.177 I deny the allegation that the Law Society avoided any issues.

AD PARAGRAPH 195 THEREOF

19.178 I deny that attorney van Niekerk was *forced* to write to the Law Society. I have already referred the Court to the fact that attorney van Niekerk inundates the Law Society with correspondence. This is apparent from the Law Society's chronology and attorney van Niekerk's affidavit. The Law Society's disciplinary department deals with thousands of complaints and not only the matters concerning the Bobroffs. The matters involving the Bobroffs do not receive precedence over others.

AD PARAGRAPH 196 THEREOF

19.179 The contents of this paragraph demonstrate the vexatious nature of attorney van Niekerk's dealings with the Law Society. He addressed a letter to the Law Society on 21 January 2015 to which the Law Society replied on 28 January 2015. Attorney van Niekerk, unjustifiably so, considers this to be a delay on the part of the Law Society in replying to his correspondence. No such delay occurred.

19.180 I deny any *passivity* on the part of the Law Society.

19.181 In dealing with the relevant matter the Law Society acted in accordance with its Rules and procedures.

19.182 Attorney van Niekerk also blames the Law Society for not offering any explanation as to why an indulgence was offered to the Bobroffs to reply to the complaint. The Law Society does not report to attorney van Niekerk, does not owe him any explanation and does not require his consent.

AD PARAGRAPHS 197.1 TO 197.5 THEREOF

19.183 Attorney van Niekerk's allegations contained in his letter are without any merit and they are rejected.

AD PARAGRAPH 198 THEREOF

19.184 I deny that the Law Society failed to properly reply to attorney van Niekerk's letter. The Law Society did not owe attorney van Niekerk an explanation for granting the Bobroffs an indulgence to reply to the complaint. The indulgence was not unwarranted as alleged. The Law Society will always act reasonably towards all involved.

AD PARAGRAPH 199 THEREOF

19.185 I do not know what attorney van Niekerk means by referring to *absolutely no reaction* from the Law Society. No basis for this allegation is provided and I therefore have to deny the allegation.

AD PARAGRAPH 200 THEREOF

19.186 I deny any *inactivity* on the part of the Law Society.

19.187 I do not know what period attorney van Niekerk refers to.

19.188 I deny the remaining allegations contained in this paragraph. It is unclear what attorney van Niekerk expected of the Law Society. It appears that he may have expected the Law Society to, for example, bring an interdict in order to prevent the Bobroffs' conduct as far as the alleged defamation is concerned. There is no merit in such suggestion. Attorney van Niekerk does not explain what advice he gave his clients and what instructions he received. It does not appear that attorney van Niekerk or his clients took any action. Attorney van Niekerk instead blames the Law Society.

AD PARAGRAPH 216 THEREOF

19.189 I deny any *inactivity* on the part of the Law Society or any harm caused by the Law Society's actions.

AD PARAGRAPH 220 THEREOF

19.190 I deny that:

19.190.1 the Law Society failed to take meaningful action against the Bobroffs;

19.190.2 the Law Society failed to exercise its powers alternatively to exercise it correctly and properly; and

19.190.3 the Law Society has abdicated its responsibility as the custodian of the legal profession.

19.191 The Law Society has exercised its powers and fulfilled its duties properly and in accordance with the Attorneys' Act and the Law Society's Rules. A reading of attorney van Niekerk's affidavit in fact confirms this. It appears that attorney van Niekerk expected the Law Society to act in a biased manner, to prejudge matters and to act unfairly and unreasonably towards the Bobroffs.

19.192 One of the steps taken by the Law Society was to bring the current application, which is now being opposed by attorney van Niekerk.

AD PARAGRAPH 222 THEREOF

19.193 The first inspection has already been conducted and a second inspection is pending.

AD PARAGRAPH 226 THEREOF

19.194 I deny any *apathy* on the part of the Law Society. I also deny that the Law Society acts in violation of its duties as the custodian of the attorneys' profession.

19.195 Attorney van Niekerk's allegations are unfounded and vexatious.

19.196 Attorney van Niekerk's allegations concerning contempt proceedings are furthermore repetitious.

AD PARAGRAPH 227 THEREOF

19.197 I deny that the Law Society has ignored attorney van Niekerk.

19.198 I submit that attorney van Niekerk did not address his letter dated 26 March 2015 on behalf of ENSafrica, but in his personal capacity and/or on behalf of Discovery.

19.199 Attorney van Niekerk's admission that he set a deadline to the Law Society demonstrates his arrogance in his dealings with the Law Society and his attempts to dictate to the Law Society. It also demonstrates his attempts to move the Law Society to act according to his wishes and directions and not in terms of the Law Society's Rules. With reference to the specific enquiries directed by attorney van Niekerk to the Law Society, I have noted that he has no involvement in several of these matters and does not act on behalf of the complainants or former clients of the Bobroffs. Attorney van Niekerk appears to be under the misconception that he is entitled to usurp the powers of the Law Society.

19.200 I deny that attorney van Niekerk or his firm or the Grahams act in the public interest or in the interests of the administration of justice.

AD PARAGRAPH 228 THEREOF

19.201 Attorney van Niekerk yet again threatened the Law Society with legal proceedings. He also stated that the proceedings would not be limited to the Grahams and that all interested parties would be joined. The alleged interested parties have however not been joined to the counter-application. Non-joinder is fatal for attorney van Niekerk's application, in addition to the other grounds for dismissal already referred to.

AD PARAGRAPH 229 THEREOF

19.202 I deny that Fourie of the Law Society was unhelpful.

AD PARAGRAPH 230 THEREOF

19.203 It was not necessary for the Law Society to furnish attorney van Niekerk with information that he was not entitled to.

AD PARAGRAPH 232 THEREOF

19.204 I deny the allegations contained in this paragraph. Attorney van Niekerk's allegations are not supported by fact. I deny that the Law Society's approach in the matter is inappropriate.

AD PARAGRAPH 234 THEREOF

19.206 I deny the allegations contained in this paragraph. The charge sheet is in the process of being prepared and attorney van Niekerk will receive a copy thereof in due course.

19.207 I deny that the Law Society has failed to comply with this Court's order.

AD PARAGRAPH 235 THEREOF

19.208 I deny the allegations contained in this paragraph. Attorney van Niekerk's allegations referred to and contained in his letter addressed to the Law Society provide another example of his unfounded and vexatious allegations concerning the Law Society.

AD PARAGRAPH 236 THEREOF

19.209 This paragraph demonstrates that attorney van Niekerk is biased in his dealings with the Law Society and acting in bad faith. He addressed a letter to the Law Society on 2 April 2015 and complains that the Law Society replied thereto on 7 April 2015. He wishes this Court to believe that the Law Society delayed a reply to his letter in circumstances where no such delay occurred.

AD PARAGRAPH 237 THEREOF

19.210 I deny the allegations contained in this paragraph. Attorney van Niekerk again attempts to elevate suspicion to fact.

AD PARAGRAPH 250.1 THEREOF

19.211 At present a report in respect of the Graham and De la Guerre accounts are available and it has been furnished to all the parties to the proceedings. The report in respect of the other matters is not available as the inspection has not yet been conducted for the reasons advanced in the Law Society's

founding affidavit. The instruction to the inspectors to, upon completion of their first inspection, compile a report, was sensible for many reasons, one of which is that, should they not have done so, no report would have been available at present.

19.212 Attorney van Niekerk's approach is over technical and inappropriate.

AD PARAGRAPH 250.2 THEREOF

19.213 I deny that the Law Society is in breach of this Court's order.

AD PARAGRAPH 250.3 THEREOF

19.214 I deny that the Law Society intends to treat the allegations of misconduct on the part of the Bobroffs' as *isolated instances*.

19.215 I deny that the Law Society insists on recasting the Court's order.

19.216 The further report is not yet available. Attorney van Niekerk's dealing with the relevant aspect and the relief sought in this regard is pre-mature.

AD PARAGRAPH 250.4 THEREOF

19.217 I deny that the Law Society's interpretation of the Honourable Court's order is incorrect. The Law Society will however appreciate guidance from the Honourable Court. I do however submit that the Honourable Court probably did not intend to distribute a report dealing with matters other than the Graham and De la Guerre accounts to all the parties to the proceedings. I have already referred to the matter of privilege. The information contained in the Bobroffs' accounting records, files and documentation relating to clients other than the Grahams and De la Guerre is, needless to say, privileged. This is a privilege which the Law Society does not wish or intend to breach. The manner in dealing with the said privilege of former clients of the Bobroffs was not debated and dealt with during the hearing of the first application. The said clients have to the best of my knowledge not waived their privilege.

AD PARAGRAPH 250.8 THEREOF

19.218 I deny that the Law Society is a party to the Bobroffs' alleged self-serving attempts to recast the order of Judge Mothle.

19.219 I deny that the Law Society is disregarding judgments of the Court.

AD PARAGRAPH 251 THEREOF

19.220 The Law Society will abide the decision of the Honourable Court and the Law Society will comply therewith.

AD PARAGRAPH 252 THEREOF

19.221 I strongly deny that the Law Society condones obstructiveness on the part of the Bobroffs. Attorney van Niekerk's allegations are unsubstantiated and not supported by facts. The allegations are furthermore contemptuous and scandalous.

19.222 If the Law Society condoned the obstructiveness on the part of the Bobroffs as alleged, it would not have brought its current application.

AD PARAGRAPH 253 THEREOF

19.223 The Law Society has indeed taken action in respect of the Bobroffs' un-cooperativeness. The Law Society brought the application which is currently before Court.

19.224 I deny that the Law Society has allowed the Bobroffs too much space and time.

AD PARAGRAPH 254 THEREOF

19.225 In this application the Bobroffs are in fact ordinary litigants. Although they are officers of the Court, these proceedings do not constitute a disciplinary enquiry.

19.226 Attorney van Niekerk's allegation that the Law Society should have invoked its statutory powers evidences a lack of insight on his part. The Law Society's statutory powers are not invoked by way of a magic wand. The Law Society did approach the Court for the appropriate relief as it should have done in the circumstances.

AD PARAGRAPH 262 THEREOF

19.227 I deny the allegations contained in this paragraph. The relief provided for in the Law Society's notice of motion represents the appropriate relief.

AD PARAGRAPH 264 THEREOF

19.228 I submit that the Law Society's application and the counter-application should be heard in the normal course.

AD PARAGRAPH 265 THEREOF

19.229 The relief provided for in paragraphs 1 and 5 of the Law Society's notice of motion is not peculiar. The relief sought by the Law Society is appropriate and sufficient.

AD PARAGRAPH 266 THEREOF

19.330 I have already commented on these allegations and I do not repeat my submissions.

AD PARAGRAPH 267 THEREOF

19.331 The relief provided for in the Law Society's notice of motion is adequate, sufficient and appropriate.

AD PARAGRAPH 268 THEREOF

19.332 The application brought by attorney van Niekerk stands to be dismissed with costs on the attorney and own client scale alternatively costs *de bonis propriis* for the reasons already advanced.

PARAGRAPH 273 THEREOF

19.333 I deny that the Law Society has accepted any so-called *impasse* and that the Law Society has allowed itself to be subservient to the directions of attorney Scholtz and the Bobroffs. I have already explained why the Law Society did not bring an application for contempt of Court.

19.336 Attorney van Niekerk did bring such an application on behalf of the Grahams. It has still not been finalised.

AD PARAGRAPH 274 THEREOF

19.337 The Law Society was not cited as a respondent in the contempt application and attorney van Niekerk's allegation in this regard is incorrect.

19.338 The contempt application was not the appropriate matter in the appropriate forum to refer to the Bobroffs' failure to cooperate with the Law Society. The application for contempt did not constitute a disciplinary enquiry.

AD PARAGRAPH 275 THEREOF

19.338 The fact that the first report is not attached to the Law Society's founding affidavit in its application is not curious. It was not necessary to do so in order to sustain the relief sought in the notice of motion.

19.339 I deny attorney van Niekerk's remaining allegations concerning the Law Society.

AD PARAGRAPH 279 THEREOF

19.340 I deny the allegations contained in this paragraph. The dispute was not one that was capable of being resolved immediately. The Law Society brought its application and it is currently pending.

19.341 I deny that the enquiries directed at the Bobroffs were *meaningless*. The Law Society attempted to obtain the Bobroffs' cooperation without resorting to legal proceedings.

AD PARAGRAPH 279.1 THEREOF

19.342 Attorney van Niekerk wishes the Court to believe that there was a delay on the part of Reddy in executing his duties. He does so in circumstances where, on his own version, no substantial delay occurred. Attorney van Niekerk specifically refers to the period 4 December to 12 December 2014. The Bobroff inspection is not the only inspection being conducted by Reddy. Reddy conducts many inspections and he has a heavy workload. Reddy's attempt to obtain the Bobroffs' cooperation is in my view commendable.

AD PARAGRAPH 280 THEREOF

19,343 I deny the allegations contained in this paragraph. The Bobroffs' practice was closed during the period middle December 2014 to late January 2015. The Law Society would have attempted to resolve the matter during this period, if it was possible to do so.

AD PARAGRAPH 281 THEREOF

19,344 I deny the allegations contained in this paragraph. The Law Society during January 2015 considered the matter further and debated the appropriate steps forward.

AD PARAGRAPH 282 THEREOF

19,345 I deny the allegations contained in this paragraph. The letter dated 11 February 2015 was addressed to the Bobroffs' attorneys on instructions of the Law Society. The enquiry was addressed at attorney Scholtz in the hope that the Bobroffs' may have reconsidered their position and decided to

cooperate with the Law Society in the second inspection. The enquiry was therefore not *hopeless* as suggested by attorney van Niekerk..

AD PARAGRAPH 283 THEREOF

19.346 It was not necessary for the Law Society to request an urgent response. It was necessary to allow the Bobroffs a reasonable opportunity to consider their position and to respond. Attorney van Niekerk's suggestions as to what should have been contained in the letter and what not is inappropriate and uncalled for.

AD PARAGRAPH 284 THEREOF

19.347 I deny that the Law Society has proceeded at a *perambulatory* pace.

AD PARAGRAPH 285 THEREOF

19.348 I deny that the Law Society arrived at *belated conclusions*.

19.359 I do not accept that attorney van Niekerk merely acts in the interests of his clients, the administration of justice and the integrity of the attorneys' profession. Attorney van Niekerk in conjunction with attorney Millar are acting in the interests of Discovery in its ongoing feud with the Bobroffs.

AD PARAGRAPH 297 THEREOF

19.360 The Law Society acted as it should have and brought its current application in order to resolve the matter.

AD PARAGRAPH 298 THEREOF

19.361 The relevant issue is not only one of confidentiality, but also of privilege.

AD PARAGRAPH 300 THEREOF

19.362 The Law Society kept attorney van Niekerk advised on the Law Society's pending disciplinary enquiry. He is well aware why the enquiry has not been proceeded with. He has also accepted that it cannot be proceeded with in the absence of the Inspectors' further report. Attorney van Niekerk's

interference with the fulfillment of the Law Society's duties is one of the reasons why the enquiry has not progressed. The fact that the Law Society has been unable to proceed and to finalise the disciplinary enquiry cannot simply be laid at the door of the Bobroffs.

AD PARAGRAPH 302 THEREOF

19.363 The allegations contained in this paragraph reconfirm that attorney van Niekerk has no insight into the unacceptability of his conduct and that he shows no remorse. He refers to the Law Society's comments on his conduct as a so-called *sideshow*. His conduct is not a *side-show* and has tainted the entire counter-application.

19.364 The fact that attorney van Niekerk's conduct is unbecoming an officer of the Court is self-evident.

AD PARAGRAPH 304 THEREOF

19.365 Attorney van Niekerk's denial is without merit and rejected. The relief sought by the Law Society goes far enough and is adequate and appropriate.

AD PARAGRAPH 305 THEREOF

19.366 I deny the allegations contained in this paragraph dealing with the relief sought by the Law Society.

AD PARAGRAPH 307 THEREOF

19.367 I deny the allegations contained in this paragraph for the reasons already advanced.

AD PARAGRAPH 308 THEREOF

19.368 Attorney van Niekerk's allegations contained in this paragraph are with respect disingenuous. This is another attempt by attorney van Niekerk to influence and intimidate the Law Society in order to agree with his views and to support his contentions. I find his allegation that, if the Law Society resists his application, it must be accepted that it is not committed to protect the administration of justice and the integrity of the attorneys' profession and to acquiesce the Bobroffs' efforts to delay the inspection, to be reprehensible and distasteful.

AD PARAGRAPH 309 TO 313

19.369 I have already dealt with the relief sought by attorney van Niekerk and the Grahams and I do not repeat my submissions.

AD PARAGRAPH 314.1 THEREOF

19.370 I do not understand what is meant by attorney van Niekerk's allegation that the suspension sought is *narrowly tailored*.

AD PARAGRAPH 314.2 THEREOF

19.371 The purpose of the appointment of a curator is not explained and I do not understand what the purpose is.

AD PARAGRAPH 314.3 THEREOF

19.372 Attorney van Niekerk's suggestion appears to be that attorney Bezuidenhout should be practising under curatorship. I reject this suggestion.

AD PARAGRAPH 314.5 THEREOF

19.373 Attorney van Niekerk himself raises the question of privilege. Privilege is a valid consideration and attorney van Niekerk must therefore concede that, in the preparation of the report by the inspectors after having conducted the further investigation, the relevant principles should be considered.

AD PARAGRAPH 315 THEREOF

19.374 An *interim* order, even if ordered for a limited period, will have final effect.

AD PARAGRAPH 316 THEREOF

19.375 The allegations contained in this paragraph contradict the relief sought in the notice of motion. According to the notice of motion attorney van Niekerk seeks an order that the application be dealt with on an urgent basis. In this paragraph he refers to the hearing of the application on an expedited basis.

19.376 It is uncertain why the matter should be case managed. With the facts to my disposal I cannot agree that case management is appropriate in the circumstances.

AD PARAGRAPH 317 THEREOF

19.377 I deny any alleged inactivity on the part of the Law Society.

AD PARAGRAPH 320 THEREOF

19.378 The fact that the Law Society did not bring its application on an urgent or expedited basis is not curious. The time frames referred to in the Court's order are dealt with in the Law Society's application. The matter is not urgent and stands to be adjudicated upon in the normal manner and in accordance with the Uniform Rules of Court and the Court's Practice Directives.

AD PARAGRAPH 321 THEREOF

19.379 I deny the allegation that the Law Society has been inactive and unassertive. These allegations are belied by the allegations found elsewhere in attorney van Niekerk's affidavit.

19.380 I deny that the Law Society has failed to take meaningful and effective action regarding any aspect.

19.381 I deny that the Honourable Court's oversight is required.

AD PARAGRAPH 322 THEREOF

19.382 It is correct that the Law Society has taken disciplinary steps.

19.383 Attorney van Niekerk's reference to the disciplinary steps taken by the Law Society as *preliminary* is incorrect.

19.384 The Law Society's founding affidavit in its current application deals adequately with the conduct of the Bobroffs and the importance of the matter. Attorney van Niekerk's allegations in this regard are denied.

19.385 I deny that only limited preliminary disciplinary steps have been taken by the Law Society.

AD PARAGRAPH 324 THEREOF

19.386 I submit that the counter-application stands to be dismissed with costs on the attorney and own client scale alternatively costs *de bonis propriis*.

19.387 No facts in order to warrant a cost order against the Law Society let alone a punitive cost order have been provided. Such facts cannot be found in either the founding affidavit or the annexures thereto.

19.388 I have comprehensively referred to attorney van Niekerk's conduct in the matter, his fuelling of litigation and his contemptuous attitude towards the Law Society. His conduct has resulted in acute acrimony, substantial delays and a frustration of the fulfillment of the Law Society's duties.

19.389 Due to attorney van Niekerk's conduct, the nature and extent of his personal involvement and his role as attorney for Discovery I submit that a costs *de bonis propriis* will not be inappropriate.

13.390 I respectfully request the Honourable Court to grant the Law Society's application with costs and to dismiss the counter-application with costs on the attorney and own client scale alternatively costs *de bonis propriis*.

SOLOMON STRIKE MADIBA

I certify that this affidavit was signed and sworn to before me in my capacity as commissioner of oaths at Pretoria on this the _____ day of May 2015 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 :