

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / ~~NO~~.

(2) OF INTEREST TO OTHER JUDGES: YES / ~~NO~~.

(3) REVISED.

15/4/2014
DATE

SIGNATURE

CASE NO: 61790/2012

In the matter between:

DATE: 15/4/2014

JENNIFER GRAHAM

First Applicant

MATTHEW GRAHAM

Second Applicant

ROAD ACCIDENT FUND

Third Applicant(Intervening)

and

THE LAW SOCIETY OF THE NORTHERN
PROVINCES

First Respondent

RONALD BOBROFF AND PARTNERS INC

Second Respondent

RONALD BOBROFF

Third Respondent

DARREN BOBROFF

Fourth Respondent

Date of Hearing: 27 and 28 January 2014.

Date of Judgment: 15 April 2012.

JUDGMENT

MOTHLE J

INTRODUCTION

- [1] In June 2011, Jennifer Graham and Matthew Graham, wife and husband ("*the Grahams*"), lodged a complaint of overcharging with the Law Society of the Northern Provinces ("*the Law Society*") against their erstwhile attorneys, Ronald Bobroff and Partners Inc, Ronald Bobroff and Darren Bobroff ("*the Bobroffs*").
- [2] The Grahams, dissatisfied with the manner in which they allege the Law Society dealt with their complaint against the Bobroffs, brought this application to Court seeking relief, amongst others that this Court should take over the Law Society's Disciplinary Enquiry or allow it to continue under the Court's supervision. This Disciplinary Enquiry instituted by the Law Society into the conduct of the Bobroffs, has been postponed indefinitely, pending the outcome of this application.

THE APPLICATIONS AND RELIEF SOUGHT

- [3] In these Court proceedings there are three applications, namely, the main application, a counter application and leave to intervene in the proceedings.
- [4] In essence the relief sought in the main application is two-fold. First as against the Law Society, the Grahams pray for a declaratory order, compelling the Law Society to perform its duties in terms of the law, in dealing with the Grahams' complaint against the Bobroffs. In the alternative, and the Court finding that the Law Society is unable to perform such duties, relief is sought for issuing of directives and placing the Disciplinary Enquiry concerning the Bobroffs under supervision or further in the alternative, directing that the Disciplinary Enquiry be conducted by this Court.
- [5] The Grahams also seek relief directing the Bobroffs to make available certain outstanding information. In the alternative, and in the event the Court placing the Disciplinary Enquiry under its supervision *alternatively* conducting the Disciplinary Enquiry in this Court, that the Grahams be suspended pending the conclusion of such proceedings.

- [6] In the counter application, the Bobroffs seek relief that the Grahams be interdicted from interfering with the Disciplinary Enquiry of the Law Society and that the adjourned Enquiry be allowed to resume.
- [7] At the commencement of these proceedings, the Road Accident Fund (*the RAF*), brought an application for leave to intervene in the proceedings. The Court ruled that the RAF be granted leave to enter the proceedings. The reasons for the ruling were reserved to be dealt with in this judgment.

BACKGROUND

- [8] The following are the background facts to this application:
- 8.1 On 4 September 2006 Matthew Graham, a plumber and member of the Discovery Health Medical Scheme (*Discovery Health*), was involved in a motor vehicle accident in which he sustained serious bodily injuries. Following the accident, Jennifer Graham, lodged a claim with the RAF, assisted by Darren Bobroff of the attorney's firm Ronald Bobroff and Partners Inc.
- 8.2 Darren on behalf of the Grahams, lodged the claim against the RAF in the amount of R2 000 000, 00. The Grahams and the RAF agreed to settle the claim in the amount of R1 979 952, 69 all-inclusive plus costs. Darren deducted R858 689, 05 for fees

and party/party litigation costs and paid out R1 187 971, 61 to the Grahams;

8.3 The Discovery Health which had paid for Matthew Graham's medical expenses, claimed payment for these expenses from the Grahams. The Grahams are represented by the Discovery Health attorneys;

8.4 On 3 June 2011 the Grahams, filed a complaint of overreaching with the Law Society against the law firm of the Bobroffs and against Darren Bobroff.

8.5 On 7 October 2011 the Grahams demanded from the Bobroffs' former attorneys Brügmans Inc., that the Bobroffs make available certain information and items related to the complaint. These items are copies of the law firm's billing system and account transactions relating to the RAF payment on the Graham's trust ledger account. The Grahams later requested the Law Society to assist them to obtain the information and the items to enable them to reply to the Bobroffs' answer concerning the complaint.

8.6 On 9 November 2011 the Grahams filed a supplementary complaint to include Ronald Bobroff as a Third Respondent in the complaint.

8.7 On 28 February 2012 the Law Society's Investigating Committee comprising senior attorneys, convened and held a hearing. The Bobroffs walked out of the hearing which then proceeded in their absence. The Investigating Committee recommended to the Council of the Law Society its finding that there is a *prima facie* case of unprofessional or dishonourable or unworthy conduct that has been made against the Bobroffs and that the Law Society's monitoring unit should conduct an inspection at Bobroffs' offices;

8.8 On 7 June 2012 the Law Society issued charges to the Bobroffs and formally notified them of the hearing of the Law Society's Disciplinary Enquiry scheduled for the 25 and 26 July 2012.

On 25 July 2012 at the commencement of the Disciplinary Enquiry, the Bobroffs requested the recusal of all members of the Disciplinary Committee of the Enquiry because they had prior sight of the evidence before the scheduled hearing. The Bobroffs applied for and obtained a High Court order that evening, interdicting the Law Society from proceeding with the hearing pending the finalisation of a review of the refusal by the

members of the Disciplinary Enquiry to recuse themselves. As a result of the interdict, the Disciplinary Enquiry was postponed indefinitely;

8.9 The Law Society and the Bobroffs settled their dispute concerning the composition of the Disciplinary Committee. The Law Society agreed to appoint a new Disciplinary Committee and the Bobroffs abandoned the review;

8.10 On 27 August 2012, the Grahams sent the Law Society a draft report by Mr Vincent Faris ("*Faris*"), an accountant, which report is based on an extract from the Bobroffs' accounting records. In the report Faris recommended that further inspection of the Bobroffs' trust accounts be conducted.

8.11 The Law Society convened a Disciplinary Enquiry for 28 and 29 November 2012. Before the sitting of the Disciplinary Enquiry scheduled for 28 and 29 November 2012, the Grahams launched this application in this Court on 25 October 2012.

8.12 On 30 October 2012 the Law Society formally notified the Bobroffs of the hearing of the Disciplinary Enquiry on 28 and 29 November 2012 .

8.13 On 19 November 2012 the Grahams' attorney asked that the Disciplinary Committee meeting of 28 November 2012 be postponed on a number of grounds including that he will not be available as he has already committed to be in Washington DC, United States of America on the dates of 28 and 29 November 2012.

8.14 On 28 November 2012 the disciplinary hearing was postponed. On 30 November 2012 the Council of the Law Society (*"the Council"*) resolved to refer the Faris report and the Bobroffs' answer thereto to its Disciplinary Department to be dealt with in the normal course of the pending Disciplinary Enquiry;

8.15 On 26 March 2013 the Law Society convened the Disciplinary Enquiry for 13 June 2013. On 13 June 2013, the Grahams again sought and obtained a postponement of the hearing pending the determination of this application.

[9] This then brings us to the present application before Court.

[10] As already stated, the hearing of the main application and that of the counter application were preceded by the RAF's application to intervene in the proceedings. Only the Bobroffs opposed the intervening application.

- [11] After hearing arguments on that application this Court made an order that the RAF be granted leave to participate in the main application. The following are the reasons for the order.

APPLICATION TO INTERVENE IN THE PROCEEDINGS:

- [12] The RAF, in its application to intervene, contended that it has a direct and substantial interest in the proceedings before this Court in regard to, firstly the issue of the common law contingency fee agreements and secondly the Law Society's exercise of disciplinary powers over errant attorneys, whose fee agreements are non-compliant with the law in the payment of RAF's compensation to victims of motor vehicle accidents.
- [13] The application for leave to intervene was opposed by the Bobroffs who argued that they saw no justification for the participation of the RAF in these proceedings.
- [14] The test in an application to intervene in pending proceedings is whether the party seeking the intervention has a direct and substantial interest in the subject-matter of the pending proceedings.¹ The Constitutional Court in **Minister for Justice & Constitutional**

¹ *Transvaal Agricultural Union v Minister of Agriculture and Land Affairs and Others* 2005 (4) SA 212 (SCA) at paragraphs 64 to 66.

Development v Nyathi² at paragraph 6 of the judgment stated the principle thus:

"The decisive criterion in determining whether or not to grant leave to intervene under rule 8 of this court's rules is whether it is in the interests of justice to do so. One aspect of this consideration is whether the applicant has a direct and substantial interest in the Litigation."

[15] RAF is an organ of state established by statute³ with the primary objective of providing compensation to persons who sustained bodily and other injuries from motor vehicle accidents⁴. If the RAF accepts liability for payment of compensation in relation to such injuries or death *alternatively* is ordered by the Court to compensate such victims, it has to do so from funds allocated to it by Parliament.

[16] It appears that at the heart of the dispute between the Grahams and the Bobroffs is the manner in which the amount received from the RAF was dealt with concerning legal fees payable by the Grahams to the Bobroffs. The RAF submits that it has a direct interest in the role the Law Society has to play in prosecuting the Grahams' complaint, having

² 2010 (4) SA 567 (CC).

³ Section 2 of the Road Accident Fund Act 56 of 1996.

⁴ Section 3 of the Road Accident Fund Act 56 of 1996. **See also Engelbrecht v Road Accident Fund and Another 2007 (6) SA 96 (CC) at para 23.**

regard to the position the Law Society took in the debate concerning the common law contingency fee agreements.

[17] It is a matter of record that both Ronald Bobroff and the Council of the Law Society held the view that notwithstanding the promulgation of the Contingency Fees Act,⁵ attorneys have the right to conclude the so-called common law contingency fee agreements with their clients. This is evidenced by the position the Law Society took when the debate concerning this issue came to a head in the De La Guerre-matter before the Full Court of this Division⁶. The issue dealt with in that case related to the lawfulness or otherwise of the so-called common law contingency fee agreements. It is now a matter of record that the Full Court of this Division and also the Constitutional Court⁷ on appeal, have found that the common law contingency fee agreement is illegal and invalid.

[18] The issue of the lawfulness or otherwise of the common law contingency agreements is now settled. This contingency fee issue is therefore not before this Court either for debate or for adjudication. This Court is mainly concerned with the allegations concerning the conduct

⁵ Act 66 of 1997

⁶ *De La Guerre v Ronald Bobroff and Partners Inc. and Others* (22645/2011) [2013] ZAGPPHC 33 (13 February 2013).

⁷ *Ronald Bobroff & Partners Inc. v De La Guerre; South African Association of Personal Injury Lawyers v Minister of Justice and Constitutional Development* (CCT 122/13, CCT 123/13 [2014] ZACC 2 (20 February 2014), judgment delivered after the hearing of this application.

of the Law Society in dealing with the Grahams' complaint as well as the alleged evasive conduct of the Bobroffs in the Disciplinary Enquiry against them.

[19] I agree with the Bobroffs' contention that this issue of the common law contingency fee agreements cannot be a ground for intervention in this application, at least not at this stage. It will no doubt feature in the Disciplinary Enquiry conducted either by the Law Society or if this application is successful, by this Court. The question there will be whether the Bobroffs have complied with the provisions of the Contingency Fees Act. This contingency fee issue as it relates to the complaint against the Bobroff is premature for the purposes this application and cannot thus be a proper ground to intervene.

[20] The second ground pleaded in support of the intervention application is that RAF has an interest in the disciplinary processes of the Law Society in so far as they affect errant attorneys who overreached clients on RAF payments. The reason to intervene in this instance is within the context of the Law Society allegedly failing in its duties to mete out disciplinary processes as required by law. The RAF submits, with reference to various cases heard by the High Court⁸, that even after the promulgation of the Contingency Fees Act, some individual

⁸ **Mofokeng v RAF; Makhuvele v RAF; Mokatse v RAF and Komme v RAF [2012] ZAGPJHC 150 (22 August 2012) at para 41; Tjatji and Others v Road Accident Fund 2013 (2) SA 632 (GSJ) and Mnisi v Road Accident Fund [2010] JOL 25857 (GNP).**

attorneys still maintained that they are entitled to enter into the common law contingency fee agreements with their clients. In some instances this led to a departure from and non-compliance with the provisions of the Contingency Fees Act, resulting in the attorneys overreaching their clients. The complaint lodged with the Law Society by the Grahams against the Bobroffs is based on these allegations.

[21] Counsel for the Bobroffs argued that the RAF does not have an interest in the proceedings in that these proceedings have to do with the investigation of a complaint laid by the Grahams with the Law Society. It is further argued for the Bobroffs that the origin of the complaint relates to the issues of contract between itself and its clients, the Grahams and consequently the RAF has no part to play in this regard. I disagree.

[22] The RAF has a legitimate interest in the discipline of errant attorneys who overreach their clients from the RAF payments. This interest flows directly from the RAF's statutory objects and obligations. Consequently, where there is an application before a court, in which relief is sought against the Law Society for failing to discharge its disciplinary duties in regard to errant attorneys overreaching clients from RAF payments, it should be a matter of concern and interest to the RAF.

[23] In this application, the Grahams seek as relief an intervention by the Court to take over or supervise the Disciplinary Enquiry of the Law Society in relation to their complaint of overreaching against the Bobroffs in a RAF payment. The allegation being that the Law Society has displayed a supine attitude in discharging its duties in relation to the disciplinary processes against the Bobroffs. Since the RAF has an interest in the discipline of errant attorneys overreaching their clients from RAF payments, this interest extends to the adjudication and outcome of this application.

[24] In an application by RAF to intervene in pending litigation, A Full Court of this Division⁹ held that RAF has a "*clear interest in ensuring that road accident victims receive payment of fair and reasonable compensation as contemplated by the RAF Act*" and the RAF has a "*clear and substantial interest in the outcome of (the) application.*"

[25] I am thus of the opinion that the RAF has a legitimate and justifiable reason to enter these proceedings. The conduct and outcome of the Disciplinary Enquiry by the Law Society over attorneys dealing with RAF payments is and should be a matter of interest to the RAF. It is therefore my ruling that this application to intervene has merit in that it is in the interest of justice that the RAF should participate in this

⁹ **South African Association of Personal Injury Lawyers v Minister of Justice and Constitutional Development 2013 (2) SA 583 (GNP); [2013 2 All SA 96 (GNP).**

application. The RAF is now joined as the Third Applicant in these proceedings.

RELIEF SOUGHT IN THE MAIN APPLICATION:

[26] In the main application, the Grahams seek relief against the Law Society on the one hand and against the Bobroffs on the other. As against the Law Society, the relief sought is stated in prayers 3, 5, 8, 11 and 13 of the notice of motion. Orders sought against the Bobroffs are in prayers 1, 2, 4, 6, 7, 9, 10, 11 and 13. I will first deal with the relief sought against the Law Society and thereafter that against the Bobroffs.

The Grahams' case against the Law Society:

[27] The Grahams contend that the Law Society has "*demonstrated an unwillingness, unbefitting its statutory position, to expeditiously and diligently comply with its duty to investigate*"¹⁰ the complaint against the Bobroffs. In this regard the following allegations are made:

27.1 That in its decision of 26 September 2012, the Law Society did not "*immediately institute an investigation in accordance with the recommendations by Mr Vincent Faris in his report, including but*

¹⁰ Grahams Heads of Argument.

not limited to an inspection in terms of Section 70 of the Attorneys Act, 53 of 1979.”;¹¹

27.2 That the Law Society has failed to demand from the Bobroffs production of material information referred to in the complaint documents (including their electronic billing sheet records);

27.3 The Law Society has to date not taken steps of its own either to procure the originals of apparent forged documents or otherwise separately investigate the issue;

27.4 The Grahams’ attorneys on various occasions wrote to the Law Society requesting the Law Society to take action in respect of the Bobroffs’ failure to comply with its duty. The duty relates to failure to make available documents as requested by the Grahams. The Grahams were then compelled to file their reply to the Bobroffs’ answer without those documents;

27.5 That the Law Society failed to compel the Bobroffs to put their version under oath notwithstanding the provisions of Rule 95.2.1 which states, *inter alia* that the Council of the Law Society may call for an explanation in answer to a complaint and “*may require such explanation to be verified by affidavit*”;

¹¹ Heads of Argument.

27.6 That the Law Society failed to implement the recommendations of its Investigating Committee that the Monitoring Unit of the Law Society be instructed to conduct certain further investigations at the offices of the Bobroffs; and

27.7 That *"to compound (and/or explain) the supine attitude of the LSNP ('Law Society'). The LSNP far from being an impassive and neutral arbiter of the complaint lodged by the Grahams against the Bobroffs, has demonstrated a commitment to siding with the Bobroffs in their attempt to uphold the lawfulness of contingency fee agreements – the very agreements, it will be recalled, which the Grahams complained they were led to enter by the Bobroffs."*¹²

[28] The Grahams contend that the Law Society is conflicted on this question of the common law contingency fee agreements. They submit that the Law Society entered the debate in the De La Guerre-matter¹³ in defence of the common law contingency fee agreements, in support of the Bobroffs as its prime mover. This according to the Grahams casts a shadow on the role of the Law Society as a neutral arbiter, in the conduct of the Disciplinary Enquiry concerning the Bobroffs.

¹² A summary of the grounds of dissatisfaction with the Law Society's conduct as pleaded in the Founding Affidavit and stated in the Heads of Argument.

¹³ Supra footnote 6.

[29] In defence to these charges, the Law Society contends that:

29.1 The Grahams' application is premature;

29.2 The exercise of the Law Society's disciplinary powers are only subject to review on the grounds listed in Section 6 of the Promotion of Administrative Justice Act,¹⁴ ("PAJA") and the Grahams have not sought to establish any of those grounds;

29.3 That the Court as a matter of policy would not entertain an application by an aggrieved complainant for an attorney to be suspended or struck from the roll before the Law Society's investigation and prosecution of the complaint has run to its finality; and

29.4 There are various flaws on which the application of the Grahams is based.

[30] In order to put the matter in context it is necessary to make reference to the law that governs the duties of the Law Society in the disciplinary enquiries and procedures against attorneys.

¹⁴ Act 3 of 2000.

Disciplinary procedures of attorneys

- [31] The Law Society is established in terms of the Attorneys Act,¹⁵ (*"the Act"*). Its members are practising attorneys and candidate attorneys. It functions through an elected Council (*"the Council"*) and Committees comprising members of the attorney's profession. The objects of the Law Society are outlined in Section 58 of the Act.
- [32] Section 67 of the Act empowers the Council to appoint one or more committees to assist it in the carrying out of its duties or performance of its functions or exercise of its powers. Such committee shall consist of members of the Council and/or of members of such Society. A committee may be assigned such powers as the Council may deem fit, provided that the Council shall not divest itself of any power which it may have assigned to such committee and may amend or withdraw any decision of such committee. However, there is a *proviso* that in the case of a committee assigned the power to enquire into any case of alleged unprofessional or dishonourable or unworthy conduct and to impose any punishment in respect thereof in accordance with Section 72, the Council shall not amend or withdraw any decision arrived at or anything done by such committee in terms of the powers assigned.¹⁶

¹⁵ 53 OF 1979

¹⁶ Section 67 (2) of the Act.

- [33] Section 69 of the Act provides that a Council of a Law Society may prescribe the procedure to be followed in connection with any enquiry referred to in Section 71 of the Act. In terms of Section 71, the Council may in the prescribed manner, inquire into cases of alleged unprofessional or dishonourable or unworthy conduct on the part of any attorney, notary public, Conveyancer or candidate attorneys serving articles of clerkship. In doing so, the Council is empowered to summons any person who in the opinion of the Council may be able to give material information concerning the subject matter of the enquiry or who has in his possession and under his control any book, document, record or thing which has a bearing on the subject matter of enquiry, to appear before it at the time and place specified in the summons.
- [34] Section 70 empowers the Council to direct any practitioner to produce for inspection any book, document, record or thing which is in the possession or custody or under the control of such practitioner, in order for the Council to decide whether or not the Inquiry under Section 71 should be held.
- [35] The Law Society has also promulgated its rules which every member is expected to familiarise himself with. In particular Part XIII thereof deals with the Disciplinary Enquiry. Rule 93 up to and including Rule 103.2 deals with the procedures regarding the discipline of attorneys. For the

purposes of this judgment it becomes necessary to refer to the salient features thereof, being:

- 35.1 That the Law Society can appoint a committee to conduct such disciplinary enquiry. The decision of the committee conducting the enquiry shall be binding on the Council of the Law Society but not on a Court;
- 35.2 Such Disciplinary Committee may be assigned such powers of the Council as the Council may deem fit. This includes the powers to summon witnesses or request material including books, documents or records which may be in the possession or custody of such person;
- 35.3 May administer such oath or affirmation as is necessary;
- 35.4 The law relating to privilege as applicable to a witness summoned to give evidence or produce a book, document or record of things in a civil trial before a Court of law shall apply;
- 35.5 Such Disciplinary Committee may require an explanation in writing in answer to the complaint to be verified by affidavit;

35.6 The Disciplinary Committee may prescribe a procedure to be followed in connection with any enquiry referred to in Section 71; and

35.7 Such Disciplinary Committee shall consist of members of the Council or of the Society concerned as stated in Section 67 of the Act.

Has the Law Society failed to perform its duties in accordance with the Act and its Rules?

[36] The essence of the Grahams' case against the Law Society is documented in numerous letters that were exchanged between the Grahams and the Law Society. This correspondence was initiated by the Grahams, in the main, raising a litany of objections in regard to how the complaint lodged against the Bobroffs was being handled. The objections include a demand by the Grahams that the Law Society should appoint a retired Judge to conduct the enquiry and appoint an advocate to prosecute, so as to ensure equality of arms since the Bobroffs had the benefit of Senior Counsel defending them.

[37] There were further complaints that the Law Society is failing to act expeditiously and shows unwillingness to act on information supplied and/or to assist the Grahams to secure certain specified information

from the Bobroffs in order to deal with the complaint effectively. The Grahams contend that all these matters to which they objected were not satisfactorily dealt with and consequently an application had to be brought to Court for the relief as stated in the Notice of Motion.

[38] The correspondence between the Grahams, represented by their attorney, Mr G M Van Niekerk ("*Van Niekerk*") and the Law Society represented by Messrs Grobler ("*Grobler*") and Fourie ("*Fourie*"), is too voluminous for the content thereof to be repeated or dealt with in detail in this judgment. However I will refer to some of the letters pertinent to the issues raised in this application.

[39] In a letter dated 9 June 2011, six days after lodging the complaint, Van Niekerk sought information from the Law Society as to what procedure it proposed to follow. After failing to get an immediate response, he followed up with a letter dated 29 June 2011 wherein he pointed out that if there was any unreasonable delay in the Bobroffs' response to the complaint, "*Our client's rights in respect of any further action are reserved.*". The following is some of the correspondence which ensued:

39.1 On 1 July 2011 the Law Society responded to Van Niekerk's letter and pointed out to him the prescribed procedure in the rules and the fact that the complaint will be referred to the Bobroffs for their answer;

- 39.2 On 10 August 2011 Van Niekerk wrote again to the Law Society pointing out, amongst others, that the Law Society is not serious in dealing with their complaint, more so that Ronald Bobroff is a member of the Council
- 39.3 Van Niekerk then wrote to the Law Society again on 2 December 2011 wherein he demanded that the Law Society confirm by no later than close of business on Friday, 9 December 2011 that the Law Society shall appoint neutral senior attorneys or advocates to hear the complaint, failing which the Grahams will approach the court;
- 39.4 On 15 December 2011 the Director of the Law Society, Grobler responded to Van Niekerk's letter and assured Van Niekerk that the complaint is being dealt with properly in terms of the disciplinary procedures of the Law Society. He further, in the letter, pointed out that the complaint was voluminous, of substance and that it has raised new matters in the supplementary complaint which has to be referred to the Bobroffs for an opportunity to answer, before being considered by any disciplinary hearing. He further stated that arrangements have been made to bring the matter before a Disciplinary Committee in February 2012.

39.5 On 16 January 2012 Van Niekerk wrote again to the Law Society pointing out that the latter had not addressed the Grahams' specific concerns raised in the letter of 2 December 2011. In the same letter he demanded that the undertaking sought from the Law Society be provided as a matter of urgency failing which the perception that the complaint was not being properly attended to will remain and the Grahams will be justified in approaching the North Gauteng High Court directly;

39.6 On 24 January 2012 the pro forma prosecutor, Fourie wrote to Van Niekerk informing him that the Investigating Committee, comprising senior attorneys would hold a hearing on 28 February 2012. Van Niekerk was assured in the same letter that he and his clients would have ample opportunity to convey their views to the Committee. This letter was responded to on 21 January 2012. In his response, Van Niekerk raised a number of complaints against the Law Society. This then caused the Director, Grobler to address a detailed response to Van Niekerk on 8 February 2012. In that letter Grobler dealt with a detailed explanation of the Law Society's investigation and disciplinary procedures and further that they take issue with the Grahams' attorney attempting to dictate his own process to the Law Society.

- 39.7 On 7 June 2012 Fourie issued the charges to the Bobroffs and formally notified them of the hearing of the Disciplinary Committee on 25 and 26 June 2012. The very following day on 8 June 2012 Van Niekerk made extensive comments on the draft charges in a letter to the Law Society. In that letter he asked that the Bobroffs be called upon by the Law Society to file affidavits including those of Ms Karuso, Ms Tognocchi and Mr Joubert and also to reply to the Grahams' request for further information as raised with the Investigating Committee during the hearing on 28 February 2012;
- 39.8 On 3 July 2012 Fourie amended the charges against the Bobroffs to incorporate all Van Niekerk's proposals. On the same day he responded to Van Niekerk's demands. He pointed out that the Grahams were at liberty to apply to the Disciplinary Committee to compel the Bobroffs to give the information requested. He further declined to summons Ms Karuso, Ms Tognocchi and Mr Joubert to give evidence because in his opinion they would not give evidence incriminating the Bobroffs;
- 39.9 On 21 August 2012 and after the disciplinary hearing was postponed, Van Niekerk enquired about further conduct of the matter and requested that a panel of retired Judges be convened to hear and determine the charges against the Bobroffs;

39.10 On 27 August 2012 Van Niekerk sent the Law Society the Faris report. Van Niekerk requested the Law Society to launch an investigation as recommended by Faris and inspect the Bobroffs' records in terms of Section 70 of the Attorneys Act "*failing which our instructions are to approach the High Court for appropriate relief including an order to compel the Council to open an investigation.*";

39.11 On 11 September 2012 Van Niekerk complained to the Law Society that they had not responded to the Faris report. That was two weeks after the report was made available to the Law Society. The Law Society responded to Van Niekerk through two letters, the one from Grobler dated 13 September 2012 and the other by Fourie on 17 September 2012. Grobler informed Van Niekerk that the Law Society's Disciplinary Department had resolved to deal with the Faris report in the normal course of the disciplinary process of the Law Society and further to recommend to the Law Society's monitoring unit to do an inspection of the Bobroffs' accounting records. He further mentioned that the Council would consider the request in the next meeting of 26 September 2012. Fourie on the other hand informed Bobroff of the appointment of a new Disciplinary Committee and the fact that the Disciplinary Committee would

now hold a hearing on 28 and 29 November 2012. In the same letter he further dealt with the reasons why Van Niekerk's demands that the panel of retired Judges be convened to deal with the complaint cannot be acceded to;

Evaluation of the Relief Sought Against the Law Society:

[40] It is against the background of what transpired from the time the complaint was lodged, that the question whether the Law Society has performed its duties, should be considered.

[41] The supine attitude of which the Grahams accuse the Law Society of seems to be based mainly on four grounds of dissatisfaction which are; failure to deal with the Faris report; the Law Society's position on common law contingency fee agreements; the electronic billing system and allowing the Bobroffs to play possum and delays in dealing with the complaint.

The Faris Report

[42] On 27 August 2012, Van Niekerk submitted the draft Faris Report to the Law Society. A final version of the report was submitted at a later stage. The report recommends an inspection of the Bobroffs' trust

accounts. The request for inspection of the Bobroffs' trust accounts was first raised with the Investigating Committee on 28 February 2012. However on 5 April 2012 Van Niekerk informed the Law Society that *"We are no longer of the view that such an inspection is required."*

[43] When this request was renewed on the basis of the Faris Report on 27 August 2012, the Law Society referred it to the Bobroffs for their response. According to the Law Society, when this application was launched on the 25 October 2012, it had not yet received the Bobroffs' response to the Faris Report. This response was received on the 19 November 2012. The Council then considered the Bobroffs' response to the Faris report at their meeting of 30 November 2012 and resolved not to initiate a new investigation but to refer the Faris report and the Bobroffs' response to the Law Society Disciplinary Department to be dealt with in the normal course of the pending Disciplinary Enquiry. As far as the Law Society is concerned, the Faris report remains under consideration by the Law Society's Disciplinary Department.

[44] The Grahams have raised this matter in this application, wherein they seek an order that the Law Society undertake an inspection of the Bobroffs' trust accounts *"in terms of Section 70(1) of the Attorneys Act."*

¹⁷ The Law Society opposes this relief on the grounds that it is

¹⁷ Heads of Argument.

unfounded. The following are the reasons advanced is opposing this form of relief:

44.1 An attorney's trust account is kept in accordance with the requirements of Section 78 (1) to (4) of the Act. Any inspection based on non-compliance with these requirements would be conducted in terms of Section 78 (5) and not Section 70 (1) as contended by the Grahams. The latter section only permits an inspection for the purposes of an enquiry under Section 71 or in order to enable the Council to decide whether or not such an enquiry should be held;

44.2 There is no evidence which suggests that the Law Society has refused to investigate Bobroffs' accounts as recommended in the Faris report.

[45] The Faris report came more than a year after the complaint was lodged with the Law Society. The submission of this report found the investigation on the complaint already a year under-way and the Council referred it to that investigation.

[46] Part XIII, item 95.2 of the Rules of the Law Society on Disciplinary Enquiry prescribes that after a complaint is received, it has to be referred to the attorney concerned for an explanation in answer to that

complaint. On receipt of the Faris report, the Council referred it to the Bobroffs for their comment, in compliance with the procedure.

[47] It seems to me that the Grahams were rather impatient with the procedures followed by the Council. This impatience on the part of the Grahams is demonstrated by the fact that by the time the Council received the Bobroffs' comments on the Faris report on 19 November 2012, the Grahams had already lodged this application in Court in October 2012, seeking relief that the Bobroffs' Trust accounts be inspected.

[48] According to the Law Society, the present status of the report is that it has been referred to the Disciplinary Department to be dealt with "*in the normal course of the pending Disciplinary Enquiry.*"¹⁸ I am thus unable to find that the Law Society has failed to discharge their duties in regard to the Faris report

[49] The Faris report raises serious allegations concerning the management of the trust accounts of the Bobroffs. The report recommends further inspection of these accounts. The Council has had the opportunity to refer the report to the Bobroffs and an answer has been provided. The Council did not reject the report but sent it to the Disciplinary Department to be dealt with in the normal course of the pending

¹⁸ Law Society's supplementary answer p1355 para 9.1

Enquiry. Considering the seriousness of the findings in the Faris report, I am of the view that the Disciplinary Department must inspect the Bobroffs' books of account as recommended by Faris, in terms of Section 78 (5) of the Act, before the next sitting of the Disciplinary Enquiry.

The common law contingency fee agreement:

[50] It is a matter of record that the Bobroffs, in particular Ronald Bobroff, supported the view that the common law contingency fee agreement was valid notwithstanding the provisions of the Contingency Fee Act. This matter came to a head in the De Laguerre case¹⁹. The Grahams accuse the Law Society of taking the side of Ronald Bobroff in those proceedings by supporting the validity of the common law contingency fee agreements. The submission is further that by taking that position, the Law Society is conflicted in dealing with this issue in the context of the Disciplinary Enquiry concerning the Bobroffs.

[51] In defence of this allegation, the Law Society alleges that in 2004 and 2005 they requested three opinions on the matter and accepted the opinion which indicated that the common law contingency fee

¹⁹ De La Guerre v Ronald Bobroff & Partners Inc. and Others (22645/2011) [2013] ZAGPPHC 33 (13 February 2013)

agreements were valid²⁰. In participating in the De Laguerre case, the Law Society avers that it expressly disavowed any allegiance with Ronald Bobroff and stated that his views, whatever they may be, are not those of the Law Society. It is further submitted that the Council also resolved that Ronald Bobroff should not participate in deliberations or decisions to be made by the Council in relation to the contingency fee issue.

[52] However, Ronald Bobroff had already written an email²¹ to the Council advocating support for the validity of the common law contingency fee agreements. It remains to be seen to what extent Ronald Bobroff's communication with the Councillors succeeded in exerting influence on the Council, such that it would be conflicted in discharging its disciplinary duties in relation to the Bobroffs.

[53] It is now a matter of record that the Full Court of this Division²² ruled that the common law contingency fee arrangements were unlawful. This ruling has since been confirmed by the Constitutional Court²³ in a judgment delivered after this matter was argued before me.

²⁰ The two opinions by Adv W Trengove SC and Adv G Marcus SC expressed a contrary view that the common law contingency fee agreements were invalid.

²¹ E-mail dated 9 September 2011.

²² The De La Guerre matter.

²³ See footnote 7.

- [54] What remains therefore is to determine on the evidence whether the Law Society is now conflicted in handling the current Disciplinary Enquiry as a result of the position it took in the De La Guerre matter.
- [55] It is not disputed that Fourie, as *pro forma* prosecutor has charged the Bobroffs with contravention of the Contingency Fee Act,²⁴ These charges were brought as early as 7 June 2012, after the ruling by the Full Court on the De Laguerre matter. It seems to me that the Law Society has accepted the Court's ruling and there is no evidence to the contrary.
- [56] The suspicion held by the Grahams and supported by the RAF that the Law Society will be conflicted is not supported by other evidence, apart from the position of the Law Society in the De La Guerre matter and Ronald Bobroff's communication with the Council members. I am unable to find any evidence that suggests that the Law Society is or would be conflicted in charging the Bobroffs with the contravention of the Contingency Fee Act.
- [57] It seems to me that it is premature to elevate that suspicion to a fact and make an adverse finding that the Law Society is or would be conflicted, before the conclusion of the Disciplinary Enquiry. I am of the view that should there be any evidence of impartiality, bias or

²⁴ Act 66 of 1997

reluctance on the part of the Law Society to proceed against the Bobroffs for whatever reason in the Disciplinary Enquiry, then the Grahams would be entitled to take the Disciplinary Enquiry and the outcome thereof on review. I therefore agree with the Law Society's contention that there is no evidence, at least at this stage that the Law Society is or would be conflicted in the Disciplinary Enquiry against the Bobroffs.

Failure to secure documents:

[58] The Grahams allege that the complaint they lodged with the Law Society arises out of overcharging that was effected on an electronic billing system. They attempted to obtain documents and items of this billing system from the Bobroffs, without success. They then turned to the Law Society to assist with the securing of these documents. The complaint against the Law Society in this context relate to what the Grahams describe as their failure to assist in compelling the Bobroffs to make available such information.

[59] The Law Society is empowered by statute²⁵ to demand production of books, documents, record or thing, which is in possession or custody or under the control of the practitioner and which relates to his or her

²⁵ Section 70 of the Act.

practice.²⁶ The Grahams requested these documents right at the beginning of the investigation after lodging the complaint. They needed these documents to reply to the Bobroffs' answer to the complaint.

[60] These documents and an inspection of electronic items are listed in the formal Request for Outstanding Information notice that was directed by the Grahams to the Bobroffs. I will revert in detail at a later stage in this judgment on these documents. For now, I agree that the Grahams were correct in expecting and demanding from the Law Society to assist them to secure the information.

[61] Counsel for the Law Society submits that the request for documents is a power in terms of Section 70 which the Council may exercise "*for the purposes of an enquiry under Section 71 or in order to enable it to decide whether or not such an enquiry should be held.*"²⁷ He goes on to submit that the Council may not exercise this power before it reaches the stage when it has to decide whether or not to hold an enquiry in terms of Section 71. In terms of Rules 95.2.1 and 95.5 it may only decide whether to hold an enquiry after affording the attorney an opportunity to file an answer to the complaint against him and if he does, after it has considered his/her answer.

²⁶ Section 71 (2) of the Act.

²⁷ Heads of Argument for the Law Society.

[62] It is not in dispute that the Law Society has already taken a decision to hold a Disciplinary Enquiry. By 2012 the Council had received the answer from the Bobroffs on the complaint and had forwarded the answer to the Grahams for reply. As early as 7 June 2012 the charges against the Bobroffs had been drawn. Ordinarily, the Law Society should then have assisted the Grahams to obtain the required information. However, Van Niekerk indicated on 5 April 2012, in relation to the information requested that the Grahams were "*no longer of the view that such inspection is required.*"²⁸

[63] In this letter of 5 April 2012 the Grahams effectively withdrew their request for assistance by the Law Society to obtain the information from the Bobroffs. I cannot therefore find any basis to hold that the Law Society failed in its duties on this ground.

Statements made under oath

[64] In reply to the request by the Grahams that the Bobroffs should state their case under oath, the Law Society refers to a standing practice where members are not required to confirm their responses to the charges against them on oath. Rule 95.2.1 provides that the Law

²⁸ Letter of 5 April 2012.

Society *may* require the practitioner's explanation to be verified by affidavit. It is contended for the Law Society that at the beginning stages of the investigation, explanations provided by members need not be under oath as they do not constitute evidence before the disciplinary tribunal.

- [65] Rule 97A.4 permits evidence by way of affidavit or other document. Such evidence will be evaluated together with the rest of the evidence. It is therefore up to the attorney concerned whether he/she chooses to place its defence under oath. Failure to do so during the Disciplinary Enquiry, would clearly have an effect on the value of the attorney's evidence. I thus do not consider it a dereliction of duty on the part of the Law Society for allowing the Bobroffs to submit unsworn statements in response to the complaint against them.

Possum

- [66] The Grahams accuse the Law Society of allowing the Bobroffs to play possum or feign ignorance to the issues raised in the complaint. The implication of this attack is that when providing their explanation in answers to the complaint, the Bobroffs do not respond specifically to every charge that has been raised but rather chose to plead

parsimoniously. Relying on the De La Guerre²⁹ judgment and other authorities³⁰, the Grahams contend that the Full Court found that Ronald Bobroff, by filing no answering affidavit was applying evasive and delaying tactics.

[67] I am however of the view that the position of the Bobroffs in this application is distinguishable from the authorities referred to. The Bobroffs have filed an answering affidavit in this application. In the affidavit, they do not plead as yet to the charges formulated by the Law Society. These charges are not as yet the subject to adjudication by this Court in this application.

[68] This application is thus not the Disciplinary Enquiry. The Court has to consider the question whether it is appropriate to intervene and either take over the Disciplinary Enquiry involving the Bobroffs from the Law Society or allow such inquiry to continue under the Court's supervision. It is therefore not expected of the Bobroffs at this stage to plead to the charges formulated by the Law Society. In the event this Court concludes that the conduct of the Law Society warrants a complete take-over of the Enquiry as prayed, then all parties involved, including the Bobroffs, will be granted leave to prepare and file whatever

²⁹ See footnote 19.

³⁰ **The Law Society of the Northern Provinces v Masesela Ramashala case 8106/2012 (GNP) judgment delivered on 23 November 2012; Democratic Alliance and Others v Acting National Director of Public Prosecutions and Others 2012 (3) SA 486 (SCA).**

documents necessary to support their case. This is also evident from prayer 6 of the Notice of Motion in the main application. It is therefore premature to conclude under these circumstances that by refraining from disclosing their defence to the charge in this application as it now stands, the Bobroffs are playing possum.

[69] The Bobroffs have also made it clear in the papers before this Court that in the event the Court decides to take over the disciplinary processes from the Law Society, they must then be given an opportunity to file their defence properly to the complaint against them.

[70] The allegation that the Law Society allows the Bobroffs to play possum has no merit. There is no provision in the Act which empowers or obligates the Law Society to prescribe to an attorney facing a Disciplinary Enquiry as to how he/she must plead his/her case. As with the other complaints, this attack is premature. The Bobroffs have pleaded not guilty to the charges in the Enquiry³¹ and they have indicated their preparedness to state their case should the proceedings be conducted in this Court. Such Enquiry could not proceed mainly because the Grahams themselves twice requested that the Disciplinary Enquiry be postponed.

³¹ On 13 June 2013.

Alleged undue delay in the consideration of the complaint

- [71] One of the grounds of dissatisfaction on the part of the Grahams which is apparent in its correspondence with the Law Society is that the Law Society was delaying in considering their complaint. In response to the charge, the Law Society listed statistics of the burden which rests on it in terms of executing the disciplinary functions. The Law Society states, amongst others, that it receives about 8 000 complaints per year and there are on average 230 disciplinary committee enquiries held per annum. As at 30 June 2012, the Law Society had 167 pending applications for attorneys to be struck off the roll or suspended from practice.
- [72] The Law Society further submits that under the Act and rules, some of the key decisions relating to the investigation and prosecution of disciplinary charges are taken by the Council which meets only once per month. All these factors, it is submitted, contribute to the delay in the normal course of executing its disciplinary functions.
- [73] It is evident from Van Niekerk's letters that he has been subjecting the Law Society to numerous requests for progress and explanations for what he perceives as delays. Van Niekerk was exerting a lot of pressure on the Law Society to a point of elevating the Graham's complaint for consideration above others. The suggestion for example

that the complaint must be adjudicated by a Judge and an advocate be appointed to prosecute was clearly inconsistent with the provision of the Attorneys Act³² and the Rules. Only practicing attorneys, who, by statute are members of the Law Society, are authorised to conduct such enquiries. Van Niekerk, as an attorney, should have been aware of the provisions of the Act in this regard.

DECLARATORY ORDER

[74] The Grahams seek a declaratory order against the Law Society to do all that is in its power to ensure that the public is protected from serious misconduct. There are a number of Court decisions where the role of the Law Society as *custos morum of the profession* in dealing with matters of discipline of its members came under consideration.³³ In almost all these matters, the courts have emphasised the importance of this duty as well as the role of the Law Society in regard to applications to suspend or strike off an attorney from the roll of attorneys where the situation demands. The powers, functions and duties of the Law Society are stated in the Act. It is not a matter of law but of fact, whether in this instance the Law Society failed to discharge its duties.

³² Section 67 (1) (b) of the Act, which restricts membership of the committees appointed by the Council of the Law Society to Council members or members of the society who are all attorneys.

³³ These include *Solomon v The Law Society of the Cape of Good Hope* 1934 AD 401; *Hassim v Incorporated Law Society of Natal* 1977 (2) SA 757 (A); *Cirota and Another v Law Society Transvaal* 1979 (1) SA 172 (A); *Law Society of the Transvaal v Matthews* 1989 (4) SA 389 (T); *Prokureursorde van Transvaal v Kleynhans* 1995 (1) SA 839 (T).

- [75] The Attorneys Act prescribes that applications to strike out or suspend an attorney can only be brought to Court by the Law Society³⁴. In this regard, I refer to the matter of **Hurter v Hough**³⁵. Mr Hough, a private citizen, brought an application for Mr Hurter's name, an attorney, to be struck off the roll without first lodging a complaint with the Law Society. The Court dismissed this application because complaints of misconduct should be investigated by the Law Society.
- [76] The Grahams seem to have a misapprehension or suspicion that the Law Society would not act *bona fide* and objectively against the Bobroffs. This view is supported by Van Niekerk's sustained attack on the Law Society, starting within six weeks after the complaint was lodged, and repeatedly threatening the Law Society that the Grahams will approach this Court, should their demands not be met. This is clear in the letters written by Van Niekerk to the Law Society.
- [77] Considering the evidence placed before this Court at this stage of the proceedings, I am unable to conclude that the Law Society has failed to discharge their duties. Accordingly, there is no basis at this stage for this Court to grant the declaratory orders or censure the Law Society as prayed for in the Notice of Motion

³⁴Section 22 of the Act.

³⁵ 1987 (1) SA 380 (C).

ENQUIRY BY COURT OR UNDER COURT SUPERVISION

[78] It is indeed trite that a Court would ordinarily not interfere with the Law Society's disciplinary process until after it is finalised. See in this regard **Law Society of the Transvaal v Meyer**³⁶; **Incorporated Law Society v Taute**³⁷ as well as **Kaplan v Incorporated Law Society, Transvaal**³⁸.

[79] Counsel for the Law Society concedes that there may be those instances where the Court may have to intervene and take over a disciplinary process conducted by the Law Society *alternatively* supervise such disciplinary process. It seems to me that such instances would only arise where failure to intervene would lead to irreparable harm to one or more of the parties who have an interest in that process.

[80] Where the Law Society takes disciplinary steps against a legal practitioner, it does so as an Organ of State³⁹ in the exercise of a public power and in the performance of a public function in terms of the Act.

³⁶ 1983 (2) SA 505 (T) at p508

³⁷ 1931 TPD 12 at 17.

³⁸ 1981 (2) SA 762 (T) at 778E-F.

³⁹ Section 239 of the Constitution of the Republic of South Africa 1996; **The Law Society of the Northern Provinces (Incorporated as the Law Society of the Transvaal) v Maseka and Another** 2005 (6) SA 372 (BHC).

The decision to institute a Disciplinary Enquiry on a practitioner constitutes an administrative action as defined in section 1 of PAJA⁴⁰.

[81] It seems to me that where the Law Society fails to exercise its duties or its functions in terms of the Act and the Rules of the profession, such may give rise to a review of its conduct, decision or failure to take a decision, at the instance of an aggrieved complainant in terms of Section 6 of PAJA. The Law Society is empowered by statute to Enquire into cases of unprofessional or dishonourable or unworthy conduct against errant members of the attorney's profession.⁴¹ The courts are the final arbiter in these matters and should not routinely take over the powers of the Law Society in performing these functions.

[82] I am thus of the view that where a court is asked to intervene in the Law Society's Disciplinary Enquiry midway, such intervention should be limited only to instances where there is sufficient evidence to justify such intervention. This would be in the instance where such Disciplinary Enquiry is so unlawful, unreasonable and/or procedurally unfair to the extent that the aggrieved party may not receive relief in due course, should the disciplinary process by the Law Society be allowed to continue.

⁴⁰ Act 3 of 2000

⁴¹ Section 71 of the Act.

[83] On the evidence before this Court, I am of the view that this is not one of the instances where an intervention or even supervisory relief would be appropriate. The Law Society is being assailed for failing to accede to the demands of the Grahams' attorney. There may be merit in some of the concerns raised by the Grahams against the Law Society but most of these are premature.

The Grahams' case against the Bobroffs:

Statements under oath

[84] In support of the contention by the Grahams that the Bobroffs should be compelled to state their case in the affidavits under oath including confirmatory affidavits, the Grahams made reference to the fact that even in the present application before Court, the Bobroffs did not respond to the substantive case against them. The basis of this argument is that an attorney is enjoined by the rules and regulations of the profession as well as being an officer of the court, to co-operate fully in matters of any enquiry into how he conducts his practice.

[85] Section 71 of the Act provides that the Disciplinary Enquiry has the power to summon persons to testify if necessary under oath or affirmation during the course of the conduct of the hearing. It is therefore premature to conclude that the Law Society has failed to

subject the version of the Bobroffs under oath and that the confirmatory affidavits or oral evidence from the witnesses identified by the Grahams would not be accepted.

- [86] The Disciplinary Enquiry still has to exercise its powers in terms of section 71 of the Act and the Rules of the Law Society. There is no evidence that the Disciplinary Enquiry has decided not to invoke these powers at all in the Enquiry. This request by the Grahams that the statements of the Bobroffs should be made under oath is thus premature.

Request for Outstanding Information

- [87] The Grahams have by notice requested certain information and items from the Bobroffs as early as the time when they were expected to reply to the Bobroffs' answer to the complaint. The outstanding information requested includes all Graham-related transactions in the law firm's electronic fee-billing system, the firm's books and record of accounts, receipts and disbursement and original letters and certificates of Mr Jerry Joubert.

- [88] The information and items were sought first from the Bobroffs' erstwhile attorneys.⁴² The request was repeated when the current attorneys⁴³ of the Bobroffs came on record. The Law Society was requested to assist when the Grahams were preparing their reply to the Bobroffs' answer concerning the complaint.
- [89] Counsel for the Bobroffs submits that the relief claimed in this regard is not supported by an independent cause of action, but an extension of the allegation that the Law Society failed to assist the Grahams. Apart from this contention, there appears to be no cogent reason or reasons why the outstanding information and items requested should not be disclosed.
- [90] The request for this outstanding information and items is part of the relief sought against the Bobroffs in the Notice of Motion. The Bobroffs failed to respond to this part of the application. I am not persuaded by the argument submitted on behalf of the Bobroffs on this issue. The request was raised with the Bobroffs long before the Grahams lodged this application.
- [91] I have considered the list of the outstanding information and items as it appears in the notice titled Request for Outstanding Information and I

⁴² Brugmans Inc.

⁴³ Webber Wentzel.

am of the view that the information and Items required are relevant to the complaint and should have been delivered. The Law Society defers to the Disciplinary Enquiry to deal with the requested information and items. I am not aware of any reason why the required information and items should not be made available to the Grahams as requested, before the next sitting of the Enquiry.

THE BOBROFFS' COUNTER APPLICATION:

[92] In their counterclaim, the Bobroffs essentially seek as relief the dismissal of the Grahams' main application and pray for the resumption of the Disciplinary Enquiry, subject to the Grahams being restrained from interfering with the Enquiry and exerting pressure on the Law Society. In the alternative, and in the event the Court being prepared to take over the Enquiry, the application be referred to trial, alternatively that the Bobroffs be granted leave to answer to the merits of the complaint.

[93] This counter application is predicated on the outcome of the main application. If the Court dismisses the main application, that is the end of the matter. If, however, the Court rules that the relief sought in the main application is granted, in particular that this Court be seized with the Disciplinary Enquiry as prayed for by the Grahams, then the Bobroffs request a chance to file their answer to the substantive

matters raised in the main application concerning the charges of misconduct or dishonourable or unworthy conduct.

[94] In view of the findings I have already made and the order I intend to make, it is not necessary to deal with the merits of this counter application.

[95] The conspectus of the evidence indicate that the Disciplinary Enquiry as appointed by the Council of the Law Society has not had the chance to deal with the complaint. Initially it was attacked by the Bobroffs and had to be re-constituted after a Court order. Thereafter the re-constituted panel had to face request for postponement, on two occasions, by the Grahams. The Disciplinary Enquiry must be allowed to complete its duties.

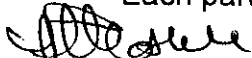
COSTS

[96] The parties before Court have all succeeded in part and failed in part in respect of their cases as against the others. I am thus of the view that each party should pay its own cost.

In the premises I make the following order:

1. The application for a declaratory order against the Law Society as well as the relief sought to have this Court take over the Disciplinary Enquiry of the Law Society, alternatively place such Inquiry under supervision by this Court is dismissed;
2. The Disciplinary Enquiry appointed by the Council of the Law Society to Enquire into the complaint against the Bobroffs is ordered to convene a sitting of this Enquiry to take place within sixty (60) calendar days from the date of this order.
3. The Disciplinary Department of the Law Society is ordered to conduct an inspection of the books of account including the trust accounts of Ronald Bobroffs & Partners inc, as recommended by Mr Vincent Faris, thereafter compile a report and serve the report to all the parties in this application, within thirty (30) calendar days from the date of this order.
4. Ronald Bobroff and Partners Inc, Darren Bobroff and Ronald Bobroff are ordered to deliver to the Law Society and the attorneys representing Jennifer and Matthew Graham, the information and items listed in the notice of Request For Outstanding Information, within fifteen (15) calendar days from date of this order.

5. Each party is to pay its own costs.


15/4/2014

JUDGE SP MOTHLE
GAUTENG DIVISION, PRETORIA
HIGH COURT OF SOUTH AFRICA

For the First and Second Applicants

D Untenhalter SC
M Du Plessis

Instructed by **Edward Nathan Sonnenbergs Inc.**

For the Third Applicant (Intervening)

G J Marcus SC
F Hobden

Instructed by **Routledge Modise Inc.**

For the First Respondent

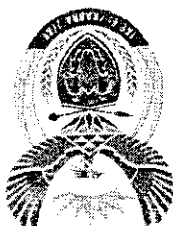
W Trengove SC
B Makola

Instructed by **Rooth and Wessels Inc.**

For the Second, Third and Fourth Respondents

M Hellens SC
D Vetten
A Lamey

Instructed by **Webber Wentzel.**



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES / NO:
(2) OF INTEREST TO OTHER JUDGES: YES / NO:
(3) REVISED.
DATE 15/4/2014
SIGNATURE <i>[Signature]</i>

CASE NO: 61790/2012
is / 4 / 2014

In the matter between:

First Applicant

JENNIFER GRAHAM

Second Applicant

MATTHEW GRAHAM

Third Applicant (Intervening)

ROAD ACCIDENT FUND

and

First Respondent

THE LAW SOCIETY OF THE NORTHERN
PROVINCES

Second Respondent

RONALD BOBROFF AND PARTNERS INC

Third Respondent

RONALD BOBROFF

Fourth Respondent

DARREN BOBROFF

Date of Hearing: 27 and 28 January 2014.

Date of Judgment: 15 April 2012.