IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 20066/2016

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHERS JUDGES: YES/NO
(3) REVISED

....

DATE SIGNATURE

In the matter between:

THE LAW SOCIETY OF THE NORTHERN PROVINCES **APPLICANT**

and

RONALD BOBROFF	**FIRST RESPONDENT**
DARREN RODNEY BOBROFF	**SECOND RESPONDENT**
STEPHEN DEREK BEZUIDENHOUT	**THIRD RESPONDENT**
RONALD BOBROFF & PARTNERS INC	**FOURTH RESPONDENT**
JENNIFER GRAHAM	**FIFTH RESPONDENT**
MATTHEW GRAHAM	**SIXTH RESPONDENT**

JUDGMENT

RANCHOD J:

Introduction

[1] This matter essentially concerns applications for the striking off from the roll of attorneys of Mr Ronald Bobroff, Mr Darren Bobroff and Mr Stephen

Derek Bezuidenhout (Mr Bezuidenhout) who at all relevant times were directors of Ronald Bobroff and Partners Incorporated (the firm). (Where I refer to Mr Ronald Bobroff and Mr Darren Bobroff jointly I will refer to them as 'the Bobroffs').

[2] On 7 December 2016 this court made the following orders:

2.1 In respect of Mr Ronald Bobroff and Mr Darren Bobroff (referred to in the order as the first and second respondents respectively):

'1. That the first and second respondents are struck from the roll of attorneys of this Court.

2. That the relief granted in paragraphs 2 to 9 of the order of this Court granted under case number 24456/2016 on 24 March 2016 will remain in force.

3. That the curator shall be entitled to publish this order or an abridged version thereof in any newspaper he considers appropriate.

4. That the first and second respondents are ordered to pay the costs of this application on the scale as between attorney and client, jointly and severally, such costs to be taxed separately from the costs in relation to the third respondent.'

2.2 In respect of Mr Bezuidenhout:

'1. The third respondent is suspended from the roll of attorneys for a period of one year.

2. The order in paragraph 1 above is suspended for a period of three years from the date of this order on condition that:

2.1 he is not found guilty of any form of professional misconduct committed during the period of suspension;

2.2 if the third respondent takes up practice as an attorney for his own account during the period of suspension he is required to:

2.2.1 attend a practice management course offered by the applicant; and

2.2.2 to deliver to the applicant, prior to 30th April, 31st July, 31st October and 31st January of every year, a certificate form a chartered secretary or auditor or accountant that such person has examined the third respondent's books and that he has complied with all the Attorneys Act, 53 of 1979 for the preceding quarter; and

2.2.3 to pay the costs of the inspection of his books within six weeks of an account therefore being rendered to him.

2.3 The Law Society is entitled to set this matter down for hearing on the same papers should the third respondent fail to comply with any one of the conditions.

3. That the condition contained in paragraph 2.2 above will not apply the third respondent's current directorship of the fourth respondent under curatorship.

4. That the relief granted in paragraphs 2 to 9 of the order of this Court granted under case number 24456/2016 on 24 March 2016 will remain in force.

5. That the third respondent is ordered to pay the costs insofar as it relates to his opposition only of this application on the scale as between attorney and client, such costs to be either agreed or taxed separately from the costs of the application in relation to the first and second respondents.'

[3] The reference to case number 24456/2016 in both orders is the case in which the Law Society of the Northern Provinces (the Law Society) had sought on an *ex parte* and urgent basis, an order appointing its Head: Members' Affairs, as *curator bonis* to administer and control the accounts of the firm. The relief sought by the Law Society was granted by this Court (per Mabuse J) on 24 March 2016. It is a detailed order, making provision for the appointment of a curator vested with extensive powers associated with such appointment.

[4] The Law Society launched this application under case number 20066/2016 for the striking of the names of the Bobroffs and Bezuidenhout from the roll of attorneys. The matter was argued before Makgoka and Ismail JJ and judgment (per Makgoka J) was delivered on 26 April 2016 when it was ordered, inter alia, that the Bobroffs be suspended from practise as attorneys and conveyancers of this court pending the determination of two applications, the current one by the Law Society and an earlier one by Mrs Jennifer Graham and her husband Mr Matthew Graham (the Grahams) to strike the names of the Bobroffs from the roll of attorneys. (The judgment heading incorrectly refers to it being case no. 61790 which is in fact the case number for the Grahams application.) The reason for the suspension rather than the striking of the Bobroffs was to afford them an opportunity to respond to the amended application by the Grahams wherein they now sought the striking off of the Bobroffs whereas previously (in April 2015) their suspension from practice had been sought.

[5] The applications by the Law Society and the Grahams were heard together by this Court on 7 December 2016 when the orders referred to in paragraph [2] above were granted with reasons for the orders to follow later.

[6] These, then, are the reasons.

Background facts

[7] There have been several applications, counter-applications, interlocutory applications including applications for postponement and for a declaratory order, by the various parties.

[8] Mr Ronald Bobroff was admitted as an attorney of this court on 16 April 1973 and, having practised for a period in excess of 40 years was, no doubt, a seasoned practitioner. He is also a past President of the Law Society.

[9] Mr Darren Bobroff, the son of Ronald Bobroff, was admitted as an attorney on 29 August 2005 and joined his father in the firm known as Ronald

Bobroff & Partners Inc. At the time of the hearing of this application, Mr Darren Bobroff was practising for at least 11 years.

[10] The Bobroffs dealt mainly with claims against the Road Accident Fund (RAF) for damages sustained by claimants as a result of motor vehicle accidents.

[11] Mr Matthew Graham was a client of the firm in a damages claim, following the injuries he had sustained in a motor vehicle collision on 4 September 2006. Subsequent to the finalisation of the claim, Mr & Mrs Graham lodged a complaint of overcharging against the Bobroffs with the Law Society in June 2011. The Grahams alleged that the Bobroffs claimed inflated fees and as a result grossly overreached them. The complaint contained detailed information regarding the alleged improprieties perpetrated by the Bobroffs.

[12] The Law Society instituted a disciplinary enquiry against the Bobroffs but the Grahams became dissatisfied with the perceived tardiness of the Law Society in dealing with their complaint against the Bobroffs. They brought an application (under case no. 61790/2012) to this Court seeking, *inter alia*, that this Court should take over the Law Society's disciplinary enquiry or allow it to continue under the Court's supervision. As a result, the Law Society adjourned its disciplinary enquiry indefinitely, pending the determination of the application brought by the Grahams. The Bobroffs made a counter-application, seeking an order that the Grahams be interdicted from interfering with the Law Society's disciplinary process and that the adjourned disciplinary enquiry be allowed to proceed.

[13] Pursuant to the Graham's application and the Bobroff's counter-application, this Court (per Mothle J) on 15 April 2014 ordered that the Law Society resume the disciplinary hearing against the Bobroffs within sixty days of the order[1]. The Law Society was also ordered to inspect the books of

[1] Graham v Law Society, NP 2014(4) SA 229 (GP)

account of the firm and compile a report for the Court within thirty days of the order. The order reads as follows:

> ‘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 Re quest for Outstanding Information, within fifteen (fifteen) calendar days from date of this order.
>
> 5. Each party is to pay its own costs.’

[14] The Bobroffs however, refused access to the books of account, except for the matters of a De La Guerre and Mr Matthew Graham. Consequently, the Law Society prepared a report dated 12 December 2014 dealing with those two matters only.

[15] The Bobroffs, in the interim applied for leave to appeal against paragraphs 3 and 5 of the order of Mothle J. The learned Judge dismissed the application and made the following remarks in his judgment dated 15 July 2014:

> '23. It seems to me that the Grahams are correct in their submission that the Bobroffs' application for leave to appeal is intended to delay an inspection of their books of account and for no other purpose. In my view the numerous grounds of the application for leave to appeal as stated in the application are contrived and based on a self-serving misinterpretation of paragraphs 3 and 5 of the [court order].'

[16] Notwithstanding the remarks of Mothle J the Bobroffs petitioned the Supreme Court of Appeal for leave to appeal but it was refused on 19 September 2014.

[17] Undaunted by the further refusal, on 3 November 2014, they approached the Constitutional Court, which also refused the application for leave to appeal finally, and paragraphs 3 and 5 of Mothle J's order came into effect.

[18] As it was unable to fully comply with the deadlines set out in the order of Mothle J the Law Society brought an interlocutory application on 9 April 2015 in case 61790/12 seeking an extension of those deadlines. The Grahams thereupon launched a counter-application dated 23 April 2015 seeking the suspension of the Bobroffs from practising as attorneys pending the completion of the Law Society's investigation and compiling of a report, together with certain ancillary relief. I will deal with the circumstances leading to the application by the Law Society for extension of the deadlines when determining the liability for costs of the Graham's striking off application under case No 61790/2012.

[19] On 11 February 2016 the Law Society filed a supplementary affidavit in which it reported to this Court that the ordered inspection had been completed and attached two reports compiled by its inspectors. The inspectors had found that the Bobroffs had contravened various provisions of the Law Society's rules relating, *inter alia*, to the keeping of proper accounting records and that they had also overreached their clients. I will deal with the factual findings made by the inspectors presently.

[20] On 23 February 2016 the Grahams filed an affidavit by their attorney seeking, among others, an amendment to the prayers sought in their counter-application for the suspension of the Bobroffs to the effect that a *rule nisi* be issued calling upon the Bobroffs to show cause why their names should not be struck off the roll of attorneys.

[21] Some five years after the Grahams first complained to the Law Society about the Bobroffs its Council adopted a resolution on 3 March 2016 to apply to this Court for an order striking the names of the Bobroffs and of Mr Bezuidenhout from the roll of attorneys. This decision was conveyed to this Court by the Law Society by way of an affidavit of its Vice-President dated 11 March 2016. In the affidavit it was also pointed out that as a result of the Law Society's resolution the amendment sought by the Grahams relating to the *rule nisi* was no longer necessary. However, it did not oppose the amendments sought by the Grahams relating to the suspension of the Bobroffs and the appointment of a curator pending the determination of its striking-off application.

[22] On 14 March 2016, when the matter was before Makgoka and Ismail JJ, it was brought to the learned Judges' attention that on the preceding Friday (11 March) the Bobroffs' attorneys at the time, Taitz and Skikne Attorneys had written to the Law Society's attorneys informing them that Taitz & Skikne had acquired the business of the firm Ronald Bobroff & Partners Incorporated. They said a sale agreement was finalised on that very same day, i.e. 11 March 2016. The Grahams promptly brought an application to interdict the implementation of the sale agreement. Subsequent to the hearing before Makgoka & Ismail JJ, Taitz & Skikne wrote to the learned Judges in which they undertook not to implement the sale agreement pending the determination of the Grahams' interdict application.

[23] During the hearing before Judges Makgoka and Ismail the Grahams contended for the summary striking of the names of the Bobroffs from the roll of attorneys and only in the alternative a suspension from practise. The Law Society opposed a summary striking off on the basis that the Bobroffs should

be allowed to respond to the Grahams' amendment of their papers wherein they now sought their striking off. Ultimately, the learned Judges ordered the suspension of the Bobroffs from practising as attorneys pending the final determination of the two applications for striking brought by the Law Society and the Grahams respectively and, among others, also interdicted the sale of the business of the firm to Taitz & Skikne Attorneys. Costs of the applications were reserved for determination in the applications for striking.

[24] After the hearing on 14 March 2016 before Judges Makgoka and Ismail and before judgment could be delivered (it was delivered on 26 April 2016) the Bobroffs left the country for Australia over the weekend of 19 and 20 March and have not returned since. It was alleged in media reports that the pair had fled in order to evade arrest by the Directorate for Priority Crime Investigation (the Hawks) in connection with alleged fraud involving the personal injury claims previously handled by them on behalf of their erstwhile clients against the Road Accident Fund. The Bobroffs apparently said they left because of threats to them by unknown persons.

[25] As a result of the Bobroffs leaving the country, the Law Society sought, on an urgent and *ex parte* basis, an order for the appointment of a *curator bonis* to administer and control the accounts of the firm. A detailed order to this effect together with extensive powers associated with the appointment of a curator, was made by Mabuse J on 24 March 2016.

[26] There have been several other judgments by Judges of this Division in relation to the Bobroffs which I will refer to, later on in this judgment.

[27] The position when the matter served before us on 6 and 7 December 2016 was as follows:

(a) An application by the Bobroffs for the striking from the roll, alternatively postponement, of the striking off applications by the Law Society and the Grahams;

(b) An application by the Bobroffs for a declaratory order that the Law Society had not complied with the Uniform Rules of Court,

alternatively, with the Practice Directives of this Court when it served the application papers on them; hence the application was not properly enrolled for hearing on 6 December 2016. And, further, that the directives by the Deputy Judge President dated 24 August 2016 that the two applications – of the Law Society and the Grahams respectively – are to be heard together were 'not competent.'

(c) There was also the Law Society's application for the names of the Bobroffs and Bezuidenhout to be struck off the roll of attorneys under case no. 20066/2016;

(d) An application by the Grahams in case 61790/12 for the names of the Bobroffs to be struck off the roll of attorneys;

(e) The Grahams, however, were content to let the striking off application proceed on the Law Society's papers but sought the costs of their application as against the Bobroffs and the Law Society jointly and severally on the attorney and client scale;

(f) The Bobroffs had not filed an answering affidavit in the Law Society's striking off application and

(g) The question of costs in case 61790/12 which had been previously reserved for determination by Makgoka and Ismail JJ.

[28] The applications referred to in paragraph [22] (a) and (b) were dismissed with costs by this Court after hearing arguments by the various parties, with reasons to follow later. (The reasons were subsequently provided in a judgment written by Janse van Nieuwenhuizen J in which I concurred and it was handed down on 7 February, 2017.) Mr Vetten, who appeared for the Bobroffs, thereupon withdrew as his instructions, he said, were to argue only the two applications. The matter then proceeded in respect of the remaining issues without legal representation for the Bobroffs.

The Law Society's striking off application

[29] The Law Society's striking off application relied in the first place on the failure by the Bobroffs and Bezuidenhout to cooperate with it in its investigation into the affairs of the firm. In the second place, it relied on the

contraventions of its Rules and overreaching of clients that were uncovered by the Law Society's inspectors as detailed in their reports, dated 12 December 2014 and 27 January 2016 respectively.

[30] The Law Society's inspectors attended at the firm on 13 November 2014. However, they were met by the Bobroffs and their attorney, Mr Scholtz of Webber Wentzel Attorneys, who advised them that the inspection had to be limited to the cases of Graham and De La Guerre only. In a letter to the Law Society, dated 17 November 2014, Mr Scholtz added that the Bobroffs would allow the inspectors to do a wider inspection, but on the basis that it fell beyond the scope of paragraph 3 of the order of Mothle J and that the report on the wider inspection could thus not be disclosed to the Grahams. The Bobroffs' resistance to an inspection of their records beyond those relating to the Graham and De La Guerre matters was based on their interpretation of paragraph 3 of Mothle J's order.

[31] On 18 November 2014, the Law Society replied by maintaining that the inspection would not be limited to Graham and De La Guerre. It suggested that the inspectors do the wider inspection but render two reports, one confined to the Graham and De La Guerre matters and the other dealing with the wider inspection. The Law Society was of the view that it was a practical solution that would allow the inspection to proceed and confine the dispute to the release of the second, wider, report.

[32] Mr Scholtz reiterated the firm's position on 19 November 2014 and added that, if the Law Society were to release the inspector's report on a wider investigation, 'this will be flagrant breach of the Law Society's duty of confidentiality to our clients and also a breach of the terms of the court order'.

[33] The inspectors proceeded with the investigation and in an email dated 1 December 2014 requested access to nine additional files from the Bobroffs.

[34] The Bobroffs refused to grant the inspectors access to the files and confirmed their position in a further letter from their attorneys, dated 2

December 2014. On 4 December 2014, the Law Society again informed the Bobroffs that it did not agree with their interpretation of the court order.

[35] As a result of the Bobroffs' refusal to make the rest of the records available, the inspectors produced a report dealing with the matters of De la Guerre and Graham only, on 12 December 2014.

[36] In the meantime, a dispute arose between the Grahams and the Bobroffs about the information the Bobroffs were obliged to give under paragraph 4 of Mothle J's order. The Grahams launched an application to compel the Bobroffs to comply with paragraph 4 of the order, and, on 17 March 2015, Matojane J held that the Bobroffs were in contempt of court. The Bobroffs applied for leave to appeal against the contempt order. The application was dismissed by the learned Judge and he commented, *inter alia* as follows:

> 'I am inclined to agree with the Graham's *(sic)* that the grounds of appeal are contrived and application for Leave to Appeal is intended for the sole purpose of delaying an inspection of the respondent's computer network.
>
> …
>
> It would seem that this is a deliberate strategy which is employed by the Bobroffs to delay for as long as they can the investigation of their financial affairs in the face of serious allegations of impropriety that are being made against them.
>
> The respondents are no ordinary litigants, they are senior officers of this court who are duty bound to ensure that court orders are complied with instead of abusing the leave to appeal processes in a transparent attempt to delay an inspection and investigation of their practice's financial affairs. Such conduct in my view calls for sanction in order to vindicate the legal profession and further this courts *(sic)* inherent disciplinary oversight over its officers.'

[37] On 9 April 2015, the Law Society launched an interlocutory application to file the report and to bring the Bobroffs' refusal to cooperate to the attention of the Court.

[38] The Law Society's interlocutory application prompted the Grahams to launch a counter-application to extend the scope of the investigation and to have the Bobroffs suspended pending finalisation of the investigation.

[39] Despite this, the Bobroffs remained defiant and refused to give unfettered access to their records. On 10 June 2015, they launched an interlocutory application of their own to have the counter-application of the Grahams set aside as an irregular step, on the basis that the Grahams did not have *locus standi* to ask for their suspension.

[40] Eventually, more than a year after the order of Mothle J the Council of the Law Society resolved on 26 June 2015 to undertake a wider investigation of the firm's books and records - this time in terms of s70(1) of the Attorneys Act 53 of 1979 regardless of the proper interpretation of paragraph 3 of Mothle J's order. The Bobroffs were advised of the resolution in a letter dated 7 July 2015. Why the Law Society did not act earlier in terms of the powers vested in it in terms of s70(1) is not understood.

[41] Having no further basis to refuse a comprehensive investigation, the Bobroffs, no doubt in a further attempt to delay the investigation, now asked for information pertaining to the scope of the investigation and the process to be followed.

[42] The interlocutory application of the Bobroffs to have the counter-application of the Grahams set aside as an irregular step was dismissed by Murphy J of this Court on 26 August 2015. In his judgment, the learned Judge made, *inter alia,* the following remarks:

> '47. I agree with counsel for the Grahams that on the probabilities this application was resorted to as a calculated decision by the [Bobroffs] to delay the disciplinary and investigative process. . . . As attorneys, they

> should be playing open cards with the court and the Law Society. It seems to me that the most prudent course for [the Bobroffs] at this point in time would be one of co-operation and transparency. [Their] billing system and practices must be subjected to objective and impartial analysis without delay. Now more than ever [the Bobroffs] are obliged to observe the highest standards of professional ethics. As a former president of the Law Society, [Mr Ronald Bobroff] need hardly be reminded that an obstructive approach by a senior officer of the court in a disciplinary matter will invite severe sanction. All the evidence suggests that [the Bobroffs] are acting tactically to avoid and frustrate scrutiny. This misdirected application is another example of that conduct.'

[43] The Bobroffs finally agreed to a wider inspection, on 7 September 2015. Mr Scholtz notified the Law Society as follows:

> 'Our clients respect the judgment of Murphy J. Accordingly our clients want to co-operate and be transparent. Our clients have no difficulty whatsoever with their billing system and practices being subjected to objective and impartial analysis. Accordingly, our clients tender for inspection all their accounting records at a time convenient to the agents of the Law Society.'

[44] The above tender on behalf of the Bobroffs was, however, limited to an inspection of their “accounting records”. The Council of the Law Society was therefore forced to adopt a second resolution on 30 September 2015, to make it clear that the inspection would not be so confined and commenced with a wider inspection of the firm's books and records during October 2015 which was completed in January 2016.

The Reports of the Law Society’s inspectors

[45] The inspectors appointed by the Law Society produced 2 reports, dated 12 December 2014 and 27 January 2016 respectively. The first report dealt with the matters of De La Guerre and Graham only, because, as I said,

the firm had refused the inspectors access to the rest of its records at the time. The second report dealt with other complaints received by the Law Society and inspection of a random selection of files.

[46] The inspectors identified contraventions of the Attorneys Act and the Law Society's rules that may be summarised as follows:

(a) Overreaching;
(b) The misappropriation of trust funds;
(c) The failure to record fees in the accounting records;
(d) The failure to keep proper books of account; and
(e) Probable evasion of VAT and income tax.

Overreaching

[47] The inspectors identified several matters where the firm overreached its clients through the use of unlawful contingency fee agreements (so-called ‘common law’ contingency fee agreements).

[48] The contingency fee agreements took different forms, as appears from the Hennings’ matter dealt with by Mr Bezuidenhout. The 'no win, no fee' agreement provided for a fee calculated at an hourly rate, but with no ceiling of 25% as required by the Contingency Fees Act 66 of 1997, while the percentage fee agreement provided for a percentage of moneys recovered, regardless of time spent on the matter. Both were contrary to the provisions of the Contingency Fees Act.

[49] The firm gained an unfair advantage over its clients by concluding multiple fee agreements, on the basis that it may elect which agreement should be applicable on finalisation of a claim. In smaller claims, a percentage may be less than the fee calculated on an hourly basis. In big claims, it may be considerably more.

[50] The firm failed to keep accurate records of time spent on matters. Mr Ronald Bobroff admitted as much, and the inspectors found confirmation of this fact in the Combrink, Setati, Bertrams, Knowles and McBride matters. The

files contained no records of time spent and the Bobroffs could not provide them upon request. There was thus potential for overreaching when the clients were eventually billed.

[51] As I said, the firm dealt mostly with personal injury claims for compensation in terms of the Road Accident Fund Act. It is remedial legislation intended to compensate victims of road accidents. Larger claims indicate more serious injuries where clients may be desperate for compensation.

[52] The matters of Vivian, De La Guerre and Motara, which were investigated and reported on by the Law Society's inspectors provide, in my view, clear examples of overreaching. In separate cases the percentage fee agreements in each matter were set aside by the courts and the firm was ordered to provide attorney and client bills of costs for work actually done. The percentage fees in each case can therefore be compared to the itemised bill of costs for work actually done.

De La Guerre

[53] Ms De La Guerre was involved in a motor vehicle collision on 27 November 2005. She instructed the firm to lodge a third party claim on her behalf and signed the following fee agreements presented to her by the firm:

(a) A percentage fee agreement for 30% of moneys recovered on her behalf, plus VAT;

(b) A mandate for services to be rendered at R1 500 per hour, escalating at 15% per year. Of importance is that clause 24 of the agreement provided as follows: 'Notwithstanding that I may have entered into one or more other fee agreements ... you shall be entitled to rely and enforce any of the agreements entered into, as you may in your sole discretion elect.'

(c) A fee mandate and special power of attorney for services to be rendered at twice the prescribed party and party tariff (e.g. consultations at R1 000 per hour), escalating at 18% per year. Clause 15 thereof provided as follows: 'You shall be entitled to

> charge me fees in accordance with this mandate in the event of the conditions set out in paragraphs 4, 5, 6 and 7 of the Percentage Contingency Agreement signed by me simultaneously with this agreement'.

[54] Her claim was successful and, on 30 April 2009, judgment was granted in her favour in the amount of R2 538 811.02.

[55] More than 2 years after the claim was finalised, she received a final payment from the firm in the amount of R184 325.11, together with a statement of account for a fee of R761 643.31 + 14% VAT = R868 273.37 (i.e. 30% of the capital award (which exceeds the maximum of 25% allowed in terms of the Contingency Fees Act) plus VAT.)

[56] On 13 February 2013, a full court of the High Court set the percentage fee agreement aside and ordered the firm to deliver an itemised bill of costs within 30 days[2]. The firm prepared an itemised bill in the amount of R555 289.58. It had still not been taxed when the inspectors' report was compiled, but the untaxed bill indicates that Ms De La Guerre was overreached by at least R206 353.73.

Vivian matter

[57] Mr GD Vivian was involved in a motor vehicle collision that occurred on 19 February 2005. He instructed the firm to lodge a third party claim on his behalf and signed the following fee agreements on 1 July 2005:

(a) A percentage fee agreement for 25% of moneys recovered on his behalf;

(b) A 'no win, no fee' mandate, which provided for a contingency fee to be calculated at R1 400 per hour. The agreement did not provide for a success fee in addition to the normal fee.

[2]Law Society's founding affidavit, at Vol 3 p 228 para 12.35.3; 1st report, at Vol 21 p 2039 para 6.2.3; De La Guerre judgement, dated 13 February 2013, at Vol 22 p 2124; De La Guerre v Ronald Bobroff & Partners Inc 2013 JDR 0213 (GNP); [2013] ZAGPPHC 33 (13 February 2013)

[58] The RAF conceded the merits of Mr Vivian's claim and the matter was set down for trial for determination of the quantum on 30 July 2012. Three days before the trial date, Mr Vivian was presented with a contingency fee agreement in terms of the Contingency Fees Act. It provided for normal fees to be charged at R3 200 per hour, which would be doubled to calculate the success fee under the Act.

[59] Mr Vivian's claim was settled and the RAF agreed to pay compensation of R4 400 000. According to the statement of account, the firm charged a fee of R1 100 000 (excluding VAT), being 25% of the capital award.

[60] Mr Vivian applied to have the contingency fee agreement set aside and the firm brought a counter-application for security for costs. In the end, the application for security was dismissed and the court declared both contingency fee agreements, i.e. the percentage fee agreement, dated 1 July 2005, and the contingency fee agreement, dated 27 July 2012, invalid. The court noted that the merits had already been conceded and the proceedings were at an advanced stage when the second agreement was concluded[3].

[61] An attorney and client bill of costs was drawn up and taxed in the amount of R345 843.36 (excluding VAT) which is R754 156.64 less than the percentage fee charged. On 28 January 2015, the firm refunded the client with R846 985.96, being the difference between the taxed attorney and client bill and the amount retained by it.

Motara matter

[62] On 28 March 2012, Ms Motara signed a contingency fee agreement in terms of the Contingency Fees Act. The agreement provided for a fee of R3 200 per hour escalating at 10% per year, and the firm would be entitled to a success fee of double the normal fee, or 25% of the capital, whichever was less.

[3]Ronald Bobroff & Partners Inc v Derek 2014 JDR 1947 (GJ); Copy of judgment, dated 30 June 2014 (annexure D2 to 2nd report), at Vol 8 p 768 paras 40-48

[63] The claim was settled in the amount of R6 571 079.00. According to the statement of account, the firm charged a fee of R1 642 769.75 + 14% VAT = R1 872 757.52, being 25% of the capital award plus VAT.

[64] A costs consultant, Ms Cora Van der Merwe, prepared an attorney and client bill of costs in the amount of R362 793.90. If doubled, the maximum amount claimable under the Contingency Fees Act would be R725 587.80. The percentage fee charged exceeded the success fee by R1 147 169.72 and the inspectors concluded that the firm had misappropriated the said amount.

[65] The inspectors discussed the matter with Mr Darren Bobroff who said the bill of costs prepared by Ms Van der Merwe was never approved. The firm had prepared a second attorney and client bill in the amount of R719 419.06. It is not clear on what basis the second bill was drawn up and by whom. There is no explanation why the second bill differed to such a great extent from the first bill. If the amount was doubled, the total amount, including drawing fees and VAT, would be R1 814 144.66. Even if it was assumed that the second bill of costs was correct, the firm still overreached its client by R58 612.86, being the difference between the maximum amount payable under the Act and the percentage fee of R1 872 757.52.

Various other matters

[66] Mr Anthony De Pontes was charged a fee of R1 843 747.2 + 14% VAT = R2 101 871.82, being 30% of the capital award plus VAT. On 25 April 2014, the High Court set the percentage fee agreement aside and ordered the firm to render an itemised bill of costs. In the judgment, the court made the following remarks[4]:

(a) The amount retained by the firm in respect of its fees constituted more than 25 times the taxed party and party costs in the sum of R83 169.47.

[4] Law Society's founding affidavit, at Vol 1 p 65 para 11.63; 2nd report, at Vol 3 p 295 para 5.2.11; Judgment in Gauteng Local Division, dated 25 April 2014 (annexure 21 to founding affidavit), at Vol 24 p 2333; Bitter, NO v Ronald Bobroff & Partners Inc and Another 2014 (6)SA 384 (GJ)

(b) There is no suggestion on the papers that the firm's attorney and client costs will be anywhere close to the amount already received by the firm on the basis of an unlawful contract.

(c) Ronald Bobroff, as the senior partner of the firm and as an experienced practitioner, must have been aware that the overwhelming view of several senior counsel and the Supreme Court of Appeal, was that any agreement for fees which did not comply with the Contingency Fees Act was invalid, and could in the proper context, also amount to unprofessional conduct.

[67] In Graham, the firm charged a fee of R738 044.67 + VAT R103 326.25 = R841 370.92. According to the statement of account, it was the 'nominal fee as discussed and agreed at the average charge out rate of R1 872.51 p/h iro no less than 394 hours of professional time'. However, the taxed party and party fees recovered from the RAF were only R64 328.48 (excluding VAT).

[68] Mr Bezuidenhout's response to the allegations of overreaching is that, except for Hennings and Alves, he was not involved in any of the matters investigated by the inspectors. In Hennings, Bezuidenhout says that the client wasn't overreached, because he charged the lesser of 25% or twice his normal fee. However, the 'no win, no fee' mandate did not provide for a success fee of double the normal fee with the result that he applied the agreement that was more advantageous to the firm.

Misappropriation of trust funds

Pombo matter

[69] On 16 July 2009, Ms De Beer, a former bookkeeper of the firm, compiled a report for the firm's auditor, Mr André Van der Merwe, in which she said the following:

(a) Mr Darren Bobroff presented her with a draft statement of account in the matter of Pombo. She verified the transactions and identified a surplus of R133 599.04 as belonging to the client.

(b) On 9 July 2009, Mr Darren Bobroff instructed her to issue a trust cheque for R18 000 and an uncrossed business cheque in favour of Mr Pombo for the balance of R115 599.04.

(c) The business cheque was presented for payment at the bank later that day, without being signed by any of the other directors. She asked Mr Darren Bobroff about it and he admitted to forging Mr Ronald Bobroff's signature. Upon making further enquiries, the bank informed her that the funds were not paid to Mr Pombo, but into Mr Darren Bobroff's personal bank account.

(d) She spoke to Mr Bezuidenhout, who said he would contact Mr Bobroff during lunchtime.

(e) Later that day Mr Ronald Bobroff phoned her and tried to explain what had happened. He said it was something that all three of them did from time to time, maybe once or twice a year for holiday money. He said they would increase the fee on the final account and state the correct amount that was paid to the client. It would be a fictitious entry, because the accounting records would show that the funds were paid to the client. He also said that he knew it was wrong and she should think of 'another way of doing it'. The conversation ended with him saying that they looked after their bookkeepers and rewarded them at the end of the year. He also said that he didn't know of anybody that says 'no' to a bit of cash.

[70] Mr Bezuidenhout says in his answering affidavit that De Beer asked him about the Pombo file, but he could not recall 'the detail of the question'.

[71] De Beer's report implicates both the Bobroffs directly in acts of dishonesty. It also implicates Bezuidenhout, to the extent that he was informed of a misappropriation of trust funds when it was discovered in July 2009, but he failed to act on it.

[72] The firm refunded Mr Pombo with an amount of R142 660.90 approximately 2 years later during November 2011.

[73] On 27 August 2013, the Law Society's disciplinary department asked the firm to reply to the allegations of De Beer with regard to the Pombo matter. The enquiry was made within 5 years from the date when the claim against the RAF was finalised, and the accounting and other records should still have been available. On 18 September 2013, the firm's attorney replied that the report formed part of the Graham application that was pending at the time, and it would be 'inappropriate and premature' for his clients to be required to deal with the allegations. However, the Bobroffs later informed the inspectors that the file had been destroyed. The ledger account was also not available for inspection. The inspectors concluded that the destruction of the records was a deliberate attempt to ensure that the information was no longer available for inspection.

[74] On 26 January 2016, Mr Ronald Bobroff told the inspectors that the matter was *sub judice* and they would not reply to their questions. This is confirmed by Mr Bezuidenhout, who was present at the meeting.

[75] The inspectors concluded that the payment into Darren Bobroff's account was made intentionally.

Payment to L Berman in De La Guerre

[76] As I said earlier, Ms De La Guerre signed 2 fee agreements with the firm, which provided for a percentage of 30% of the award, or an hourly tariff of R1 500. According to the statement of account that was later delivered to her, the firm charged a fee of R761 643.31 + 14% VAT = R868 273.37 (i.e. 30% of the capital award plus VAT).

[77] The inspectors compared the statement of account with a print-out of the accounting ledger, and discovered the following:

(a) On 15 June 2009, a debit entry was made in the business account of the client, which showed that an amount of R385 513.80 was paid to one L Berman as a 'referral fee'.

(b) On 29 July 2009, a fee was raised in the amount of R616 010.20 (including VAT).

[78] The combined total for the two entries, was R1 001 524.00. It therefore exceeded the percentage fee charged by the firm by an amount of R133 250.63 (i.e. the difference between R1 001 524 and R868 273.37).

[79] The inspectors questioned the transaction and Mr Ronald Bobroff explained that L Berman was Darren Bobroff's spouse. He said that the firm had instructed its bookkeeper to raise a fee, debit the client's account with the fee and thereafter to draw a cheque against Darren Bobroff's loan account, payable to his spouse. He said the bookkeeper misinterpreted the instruction and failed to raise a fee. The explanation accorded with a note found in the file, which instructed the bookkeeper to raise an interim fee in the amount of R410 310.68 including VAT. She was further instructed to arrange for cash in the amount of R24 796.88 and pay the balance to L Berman as a debit on 'DB Drawings'.

[80] The note does not explain why the payment to L Berman was described as a 'referral fee' in the ledger. It also does not explain why a business cheque drawn for R24 796.88 on 15 June 2009, was described as 'cash for client'. The amount was apparently included in the payment to an Advocate Khan, and is equal to the final payment of interest received from the RAF on 9 June 2009. Advocate Khan was told to write off the amount of R24 000 because the firm had not made a full recovery from the RAF, but he was eventually paid when the Sunday Times newspaper reported on the matter on 30 October 2011.

[81] The note also does not explain why fees were charged in excess of the percentage fee agreed with the client.

[82] The entries in the accounting records were reversed approximately 2 years later and, on 22 March 2011, Ronald Bobroff informed the client by email that she was entitled to an additional payment of R184 325.11.

[83] The inspectors questioned Ronald Bobroff about the payment and he explained that the client was initially billed at an hourly rate, as opposed to a

percentage of the award. When the error was discovered, the client was notified and a further payment was made. This explanation does not accord with the itemised bill of costs that was later drawn up in the amount of R555 289.58, presumably accounting for time spent on the matter.

[84] On the firm's own version it retained fees in excess of the amount due to it. The payment to L Berman resulted in a trust deficit that was only rectified approximately 2 years later.

[85] Bezuidenhout denied any knowledge of the payment to L Berman.

Fictitious disbursements

[86] On 19 October 2012, Ms Bernadine Van Wyk, a former bookkeeper of the firm, deposed to an affidavit in which she said that it was the general practice at the firm to deduct fictitious disbursements, typically in amounts of R15 000, on which no VAT was paid. The disbursements were purportedly in respect of postage and petties, but bore no relation to actual disbursements.

[87] During the investigation, the inspectors discovered various matters in which disbursements were charged for the production of bundles, in addition to copies that had already been charged for:

(a) In Vivian, an amount of R3 888.00 was charged for 'bundles', in addition to photocopies that were already included.

(b) In De Swardt, the statement of account reflected a disbursement in respect of 'bundles', in addition to 'copies as per bill of costs'. The client was overcharged in the amount of R15 136.95.

(c) In Wilkenson, the statement of account reflected a disbursement in the form of 'bundles', in addition to 'copies per bill of costs'. The client was overcharged in the amount of R7 236.00.

(d) In Hunter, the statement of account reflected a disbursement in the form of 'bundles', in addition to 'copies per bill of costs'. The client was overcharged in the amount of R9 030.00.

(e) In Motara, the statement of account reflected 'bundles' in addition to 'copies per bill of costs'. The inspectors calculated the amount that was overcharged, as R10 830.00.

(f) In Ajam, the statement of account reflected a duplication of 'bundles' which had already been included as 'copies per bill of costs'. The inspectors concluded that the client had been overcharged by R14 400.

(g) In De La Guerre, an amount of R18 125.78 was transferred from trust to business on 8 July 2010 as a 'disbursement recovery'. The control file did not contain any documents to support the transaction and it was not consistent with a schedule of sundry disbursements compiled in the matter. The inspectors concluded that it was a fictitious transaction to transfer the remaining credit balance on the trust account to the business bank account. The transaction was reversed on 15 February 2011, to effect a further payment to the client.

(h) In Graham, the disbursements in respect of copies/travel/telephone amounted to R2 275.80, which was more than the disbursements of R1 879.80 recovered from the RAF. On 30 March 2010, the firm raised an additional 'disbursement recovery' of R15 000.00.

[88] Bezuidenhout denies that he charged fictitious disbursements in the matters that were dealt with by him.

Payments to Valente

[89] The inspectors identified the following payments to Valente, that did not form part of fees or disbursements due to the firm:

(a) In Hunter, the ledger reflected payment to Valente totalling R15 000.

(b) In Maree, the ledger reflected business debits totalling R11 550.

(c) In Steenkamp, the ledger reflected business debits raised in favour of Valente to the value of R18 150.

[90] Bezuidenhout explained that Ms Valente was employed by the firm as a consultant at an hourly rate. Her remuneration was an expense of the firm and should not have been debited to the clients' accounts.

[91] The payments to Valente have all been reversed, but, at best, indicates a failure to administer and supervise the trust accounts properly.

Failure to record fees in the accounting records

[92] The failure to raise fees in the books of account was mentioned in the affidavit of Ms Van Wyk. She said that the firm did not raise fees or account for VAT once a matter had become finalised. Until March 2011, moneys received were held in the trust bank account and fees were seldom debited. The firm issued cash cheques for fictitious disbursements to enable the partners to take money from the practice. This no doubt amounts to tax evasion.

[93] The inspectors investigated the allegations and identified several instances where fees were incorrectly debited as disbursements. They include a payment to J Kingsbury in Pombo and a transfer to a Bidvest account in Graham. The inspectors also investigated and considered the improper use of trust ledger account no. 11521.

Payment to J Kingsbury in Pombo

[94] The inspectors gathered the following information from the documents annexed to De Beer's report:

(a) On 3 February 2005, Mr Pombo signed a percentage fee agreement for 30% of moneys recovered on his behalf, plus VAT.

(b) The RAF made 2 payments to the firm in the combined amount of R4 031 789.49.

(c) According to the contingency fee agreement, the firm would charge a fee of 30% of the capital award, being R1 209 536.85 + 14% VAT = R1 378 872.01.

(d) Mr Darren Bobroff presented a draft statement of account to De Beer for verification, showing a fee of R878 314.46 + 122 964.03 = R1 001 278.48. The statement accorded with the combined fees raised in the ledger, but it was less than the percentage fee by an amount of R377 593.52.

(e) The statement of account showed furthermore that an amount of R371 281.52 was paid to a J Kingsbury as a referral fee. The payment was also recorded in the ledger, on 29 August 2008, as 'J Kingsbury - referral fee'. A copy of the cheque, drawn in favour of J Kingsbury on 29 August 2008, was annexed to De Beer's report and appeared to have been signed by Mr Ronald Bobroff.

(f) The payment to J Kingsbury was not reflected in the list of disbursements prepared by Legal Billing Systems (the cost consultants who attended to the taxation of the party and party bill of costs).

[95] Mr Pombo said that Darren Bobroff approached his wife in the reception area of the hospital where he was admitted shortly after the accident. He didn't know anyone by the name of J Kingsbury or why an attorney would pay a referral fee.

[96] If the payment of R371 281.25 to 'J Kingsbury' was made in respect of fees due to the firm, the fee was not raised in the accounting records. The effect was that the income was understated with regard to tax and VAT liabilities.

[97] Bezuidenhout denies any knowledge of the payment to J Kingsbury. He says that he doesn't know whether referral fees were paid, but he would have objected because it amounts to touting.

<u>Transfer to Bidvest in Graham</u>

[98] During the investigation of the Graham matter, the firm provided the inspectors with an accounting summary that showed an interim fee was raised in the amount of R758 000 (including VAT), on 6 April 2010.

[99] The accounting summary was compared to a print-out of the ledger, and it was discovered that the amount of R758 000 was transferred from the trust account, on 6 April 2010, without raising a fee in the accounting records. The transaction was described in the ledger as 'Bidvest Bank - interim'.

[100] There was no allocation of VAT in the ledger because VAT was only calculated and paid during 2012, as a result of an audit performed by SARS. The VAT issue arose because the Grahams' attorney Mr Van Niekerk, asked for proof that VAT had actually been paid as indicated in the statement of account.

[101] Bezuidenhout denies any knowledge of the transaction.

Account number 11521

[102] The existence of trust account number 11521 was also disclosed by Van Wyk in her affidavit. She said the following:

(a) During March 2011, she was instructed by Mr Ronald Bobroff to open a trust ledger suspense account with the number 11521. All fees were to be channelled to that account, specifically from 4 matters that had been settled previously. That way, the old accounts could be squared off and deleted but the funds could still be accessed. The account always had a balance of between R15 million and R35 million.

(b) She enquired from Ronald Bobroff about the account and he told her he had no obligation to raise fees or to pay VAT.

(c) From time to time fees were debited to account 11521 and money was transferred from the trust bank account to the business bank account. Ronald Bobroff had explained to her that the idea behind the creation of the 11521 account was to stagger the debiting of fees over a number of years as he

> expected the income of the firm would taper off with the introduction of the Road Accident Fund Amendment Act. (The reference to the Amendment Act is presumably a reference to the intention of the legislature to introduce a system of 'no fault' liability.)

[103] The inspectors investigated the allegations and identified account number 11521 in the books of the firm, described as '00011521 - RBP Suspense Account'. According to the ledger, the account had an opening credit balance of R28 324 976.02, on 6 June 2011. Fees were transferred from various trust creditors by means of journal entries and later debited against the suspense account. The firm effected trust transfers from the suspense account and reduced the balance to nil from 10 June 2011 to 11 December 2012.

[104] The inspectors identified the following matters where fees were transferred to account 11521:

(a) In Fourie, the firm did not raise an invoice in respect of the fee, but transferred the amount to account number 11521.

(b) In Combrink, an amount of R535 800 was transferred to account number 11521;

(c) In McBride, an amount of R466 901.82 was transferred to account number 11521.

[105] The retention of fees in the trust account was a contravention of Rule 68.6.1 of the Law Society because trust moneys were not kept separate from other moneys. The inspectors concluded that the suspense account was created to avoid or unlawfully reduce income tax and VAT liabilities.

[106] Bezuidenhout denies any knowledge of account 11521. He says he did not agree to its creation, nor to any fees or other amounts being transferred to it. He, however, contradicts himself in this regard. On the one hand he says that he was not aware of the existence of the account prior to the production

of the inspectors' report, but then later that he learnt about account 11521 when he read Van Wyk's affidavit annexed to the Graham application.

Failure to keep proper books of account

[107] The inspectors identified various contraventions of the Attorneys Act and the Law Society's rules with regard to the keeping of proper books of account. They include the retention of funds belonging to the firm in the trust account and several other contraventions that I now briefly turn to.

The 'Zunelle' account

[108] Van Wyk reported the existence of an account named 'Zunelle' in the books of the firm, which purported to be a Section 78(2A) investment account. However, there was no trust creditor by that name who had ever been a client of the firm.

[109] Ronald Bobroff informed the Law Society's inspector Reddy that the firm's moneys were invested in the 'Zunelle' account to purchase an immovable property. According to him, the funds belonged to the company as a separate entity and had been subjected to taxation. He also said that the interest was declared to SARS. However, the investment of the firm's funds in a section 78(2A) trust account was a contravention of Rule 68.6.1, because trust funds were not kept separately from other funds.

[110] The inspectors said it was highly unusual that this account did not form part of the firm's trust accounting records and concluded that there was a deliberate attempt to conceal the existence of the 'Zunelle' account. The firm's trust banking account had lost its identity, and the only incentive for a firm to invest its moneys in its own trust bank account under a name that differs from the name of the firm, was to avoid being taxed on interest earned on the moneys invested.

[111] Bezuidenhout denied any knowledge of the Zunelle account. He said that he first learnt about it when the inspectors made enquiries about the account on 26 January 2016.

Other contraventions

[112] The Law Society's inspectors identified various other contraventions of the Attorneys Act and the Law Society's rules with regard to the keeping of proper books of account. In contravention of:

(a) Rule 68.6.1, the firm failed to ensure that trust money was kept separate from other money;

(b) Rule 68.6.2, the firm failed to ensure that when making a transfer from its trust banking account to its business banking account, the amount transferred is identifiable and does not exceed the amount due to it;

(c) Rule 68.8, the firm failed to pay amounts due to clients within a reasonable time;

(d) Rule 68.9, the firm failed to pay reasonable fees and disbursements of other practitioners, medical practitioners and other experts within a reasonable time;

(e) Rule 69.5, the firm failed to ensure that withdrawals from the trust bank account were made only in respect of payment to, for or on behalf of a trust creditor or as transfers to its business bank account in respect of fees or disbursement due to the firm;

(f) Rule 68.4, accounting records were not retained for a period of 5 years.

Nature of Proceedings for striking off an attorney

[113] The enquiry regarding the fitness of a practitioner to practise, is the preserve of the courts.

[114] When a Law Society approaches the court under s 22(1)(d) of the Act, it brings the attorney before the court by virtue of a statutory right, informs the court what the attorney has done and asks the court to exercise its disciplinary powers over him.

[115] An application of this nature involves a three-stage enquiry. First, the court must determine whether the offending conduct has been established on a preponderance of probabilities, which is a factual enquiry. The second enquiry is whether the person concerned is 'in the discretion of the court 'not a fit and proper person to continue to practise. It involves the weighing-up of the conduct complained of against the conduct expected of an attorney and, to this extent, is a value judgment. The third enquiry is whether in all the circumstances the person in question is to be removed from the roll of attorneys or whether an order suspending him from practice for a specific period will suffice.

[116] Whereas the first stage of the inquiry involves purely factual findings, the second and third stages involve the exercise of a discretion.

The offending conduct

[117] The Law Society's inspectors uncovered extensive and serious misconduct on the part of the Bobroffs in particular and which I have earlier set out in considerable detail.

[118] Bezuidenhout denied that he breached any of the provisions of the Attorneys Act or the Law Society's rules. The essence of his defence was that he left the administrative and financial management of the firm entirely in the hands of Ronald Bobroff. He argued that, if another attorney in the practice breaches the system and the rules, that breach cannot be placed at the feet of every other attorney in the practice.

[119] It appears that Bezuidenhout lost sight of his professional duty to ensure that proper books of account were kept by the firm of which he was a director. It has repeatedly been stated by the courts that the failure to keep proper accounting records is a serious contravention and that an attorney who

fails to comply with this requirement is liable to be struck off the roll or to be suspended[5].

[120] An attorney's duty with regard to the preservation of trust funds is a fundamental, positive and unqualified duty. Thus neither negligence nor wilfulness is an element of a breach of such duty[6].

[121] Where attorneys practise in partnership the obligation rests on all partners to comply with the provisions of the Act and it would not avail one partner to adopt the attitude that he was not the partner who was in charge of the finances of the firm and that he left it to the other partner to observe the provisions of the Act.

[122] A practising attorney cannot, under any circumstances, escape the consequences of a failure to comply with the provisions of the Act by an arrangement with his partner, under which the latter assumes the sole responsibility for the administration and control of trust monies received by the firm. There may be circumstances that reduce the degree of blameworthiness of the attorney concerned, but the mere arrangement under which one partner is concerned solely with the legal work while the other partner assumes control of the books of account and the administration of all trust monies received by the partnership, cannot, in the absence of other mitigating circumstances, by itself operate as extenuating circumstances[7].

[123] The above principles were recently restated in the unreported judgment of the Law Society of the Northern Provinces v Cowling[8]. In that matter the attorney had not been involved in the financial affairs or management of the partnership for 34 years, having left it to the other partner to deal with financial issues. The defence was rejected and this Court held that it amounted to the highest degree of imprudence and breach of his duties as an owner and

[5] Cirota and Another v Law Society, Transvaal 1979 (1) SA 172 (A) at 193; Law Society, Transvaal v Matthews 1989 (4) SA 389 (T) at 395D-F.
[6] Law Society, Transvaal v Matthews 1989 (4) SA 389 (T) at 394
[7] Incorporated Law Society (OFS) v V 1960 (3) SA 887 (O) at 891C-G.
[8] 2016 JDR 1512 (GP); [2016] ZAGPPHC 711 (16 August 2016)

partner who is supposed to be responsible for his practice. Being less involved in the running of the practice or preparation for payments from trust is no defence at all. The duty of compliance with the Act and the Rules is expected of any attorney in practice, whether on his own or in partnership. Non-compliance does not automatically result in a diminished moral blameworthiness[9]

[124] It is therefore not a defence for Bezuidenhout to say that he delegated all responsibilities of the financial administration of the firm to Ronald Bobroff. He had a duty to participate in the administration and control of the trust accounts. His failure to do so enabled the Bobroffs to take advantage of the situation.

Fit and proper

[125] The exercise of a discretion at the second stage involves the weighing up of the conduct complained of against the conduct expected of an attorney and is, to that extent, a value judgment.

[126] The profession of an attorney is an honourable one and as such demands complete honesty, reliability and integrity from its members. It is required of an officer of this Court to act with 'scrupulous integrity and honour'[10]. The nature and scale of the contraventions identified by the inspectors showed that as far as the Bobroffs are concerned they were not fit and proper to practice as attorneys.

[127] Mr Bezuidenhout maintained that he was not a party to case 61790/12. Mr Ronald Bobroff had informed him that the practice had a sound basis to oppose the applications. He did not ask, and was not told, what the grounds were upon which the applications were opposed and left it in the hands of the other directors (the Bobroffs). He does not accept responsibility for the irregularities that occurred in the practice. It evidences a lack of insight as far

[9]Cowling, at para 134
[10] Law Society, Cape v Randell 2013(3) SA 437

as his duties and responsibilities are concerned. Instead, he blames the Bobroffs and the firm's bookkeeper.

[128] In mitigation, Bezuidenhout obtained affidavits of senior colleagues who confirmed that he conducted himself with integrity and honesty in matters where they each litigated against him. He also assisted the curator in running the firm on a full time basis and settled existing claims against the RAF, secured payments and accounted to the clients.

[129] The Law Society submitted that Bezuidenhout's failure to accept responsibility or to take remedial steps to become more involved in the financial management of the firm, indicated that he was not fit and proper to practice for his own account and that if this Court were to suspend him from practise it should be subject to certain conditions.

An appropriate sanction

[130] The third stage of the enquiry is also a matter for the discretion of the Court and depends upon factors such as the nature of the conduct complained of, the extent to which it reflects upon the person's character or shows him or her to be unworthy to remain in the ranks of an honourable profession, the likelihood or otherwise of a repetition of such conduct and the need to protect the public. Ultimately it is a question of degree.

[131] In deciding on a sanction the Court is not imposing a penalty. The main consideration is the protection of the public. The possibility of a repetition of the conduct complained of must therefore be taken into account.

[132] It is seldom that a mere suspension from practice will transform a person who is unfit to practise into one who is fit to practise. Accordingly, any order of suspension must be conditional upon the cause of unfitness being removed. An attorney who is the subject of a striking off application and who wishes a court to consider the lesser option of a suspension, must place the court in the position of formulating appropriate conditions of suspension.

[133] If a court finds dishonesty, the circumstances must be exceptional before a court will order a suspension instead of a removal. However, dishonesty is not a *sine qua non* for striking off and where dishonesty has not been established the Court still has to exercise a discretion within the parameters of the facts.

[134] This Court was satisfied that the shortcomings in relation to Mr Bezuidenhout could be dealt with by an order of suspension with appropriate conditions. In the result, he was suspended from practising for his own account for the period and subject to the conditions which were included in the order of suspension.

[135] In so far as the Bobroff's are concerned the only appropriate sanction was to strike their names from the roll of attorneys. Mr Ronald Bobroff, as I said, was a senior member of the attorneys' profession and a past president of the Law Society. Despite repeated admonitions from several judges he, together with Mr Darren Bobroff, persisted in using every possible avenue to delay, frustrate and avoid facing up to the serious charges of a practice-wide conduct of overreaching clients, contravening the Contingency Fees Act by relying on unlawful common law contingency fee agreements, making clients sign several different fee agreements with a view to using the one that was later the most advantageous to the firm, and other unprofessional, dishonourable and even fraudulent conduct. I have set out above in some considerable detail the extent of the contravention of the Rules of the Law Society and the Attorneys Act as well as in all probability evasion of VAT and income tax.

Costs

[136] If the Law Society becomes cognisant of any professional or alleged professional misconduct and after due examination there is in their opinion a prima facie case, it is incumbent upon the Law Society to bring the circumstances to the notice of the Court.

[137] The Law Society has long been recognised as a special litigant acting in the public interest. It is not claiming anything for itself from the defendant but acts under a duty to approach the Court when complaints are lodged against an attorney for alleged misconduct. As a general rule, it is entitled to its costs even if unsuccessful, and usually on the scale as between attorney and client.

Mr Bezuidenhout

[138] Mr Bezuidenhout had asked for a costs order to be granted against the Law Society for joining him as a party to the application. Having found that his conduct merited a suspension from practise, it was only appropriate that he be ordered to pay the costs of his opposition to the application by the Law Society against him and that too on the attorney and client scale.

The Bobroffs

[139] The Bobroffs having been struck off the roll, were ordered to pay the costs of the Law Society on the attorney and client scale as well.

[140] These, then, are the reasons why we made the orders that we did.

[141] The costs of the Grahams in relation to case number 61790/2012 are dealt with in that matter.

[142] The Registrar of this Court is directed to forward a copy of these reasons for judgment to the Commissioner for the South African Revenue Service and the National Director of Public Prosecutions for investigation into probable contraventions of the Income Tax Act, Value Added Tax and other legislation by the firm and its directors.

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RANCHOD J
JUDGE OF THE HIGH COURT

I agree

_____

JANSE VAN NIEUWENHUIZEN J
JUDGE OF THE HIGH COURT

Appearances:

Counsel on behalf of Applicant	: Adv. H.J.L Vorster
Instructed by	: Rooth & Wessels Inc
Counsel on behalf of first, second and fourth Respondents:	
	Adv Adv D.J Vetten
Instructed by	:John Joseph Finlay Cameron
Counsel on behalf of third Respondent	: Adv I.P Green SC
	: Adv R.J.A Moultrie
Instructed by	: Brugmans Incorporated
Counsel on behalf of fourth, fifth and sixth Respondents	
	: Adv M. Du Plessis SC
	: Adv S. Pudifin-Jones
Instructed by	: ENSafrica
Date heard	: 6 December 2016
Date delivered	: 20 July 2017