

Transcript of recording

CARTE BLANCHE INTERVIEW

File 20150303 140843

- MS SUMMERS: Can I put these outside? I just want to put them out of the way for...
- UNIDENTIFIED SPEAKER: No, (inaudible)
- MS GOVENDER: I wonder what the ratings did in that timeslot.
- MR BOBROFF: I don't know. I know I had (inaudible) from time to time and they gave us feedback. I used to have between five and seven thousand (inaudible) and I had a huge amount of fan emails which I used to try and answer generically wherever I could.
- 10 MS GOVENDER: *Ja.*
- MR BOBROFF: It was a lot of fun but sometimes it became a bit of a drag. Like you know Camps Bay beach and you know you've got to sort of get to Cape Talk Studios by 6:30.
- MS GOVENDER: *Ja.*
- MR BOBROFF: But it was fun. It was fun because it forced me to (inaudible) of the law.
- MS GOVENDER: Yes. *Ja, ja, ja.*
- MR BOBROFF: Because I had to answer. It was one hour with a guest and one hour for live phone in.
- 20 MS GOVENDER: Mmm.
- MR BOBROFF: And very often the guests didn't know their subject. You know the subject specialists.
- MS GOVENDER: *Ja, ja, ja.* No, we also get that.
- MR BOBROFF: (Inaudible) and numerous so-called experts that haven't read the latest legislation in their area of speciality.
- MS GOVENDER: *Ja,* and then you...
- MR BOBROFF: So I had to actually speed read and make sure I was an expert on that till the next day.
- MS GOVENDER: Mmm.
- 30 MR BOBROFF: And afterwards it just (inaudible).

- MS GOVENDER: It's not easy. I ran a talk show for ten years.
- MR BOBROFF: I remember, *ja*.
- MS GOVENDER: And guests are sometimes (inaudible).
- MR BOBROFF: Well you know if it's live and you're a lawyer, you can't be caught out. Colleagues used to try, used to phone in with the most esoteric legal points.
- (Speaking aside)
- MS SUMMERS: Okay, just remember to hide it because we are now seeing you.
- 10 MR BOBROFF: I'm a bit nervous to show my diamond ring because Beamish will say I bought this ring with ill-gotten gains whilst driving my bullet proof BMW.
- MS SUMMERS: Oh *ja*, he will (inaudible) I'm sure.
- MR BOBROFF: (Inaudible).
- MS SUMMERS: So do you have a bullet proof BMW?
- MR BOBROFF: I've got a stock standard X5 that's eight years old and I've got a ten year old Z4 which I bought second hand as a present for myself when I got too scared to ride my motorbike. I used to come to work on a motorbike but after having lots of clients who lost their heads,
- 20 legs, arms, whatever, I thought you know what, I've been lucky since...
- MS GOVENDER: *Ja*, I think after a while...
- MR BOBROFF: I've ridden a bike since I was 14. It's time to – so I bought myself a second hand BM Z4 which is *lekker*.
- MS SUMMERS: But is it bullet proof?
- MR BOBROFF: Well, it's got a soft top. It's a bit difficult.
- MS SUMMERS: So where does Beamish get the bullet proof...
- MR BOBROFF: I'll tell you – I had a bookkeeper who turned out to be a criminal with ten convictions of fraud by false pretences and before
- 30 I knew that she was what she was...

MS SUMMERS: Are you talking about Bernadine Van Wyk?

MR BOBROFF: Ja. I happened to just say to her, because I had a BM 740 and I was just saying you know, finally I found out why this car – I gave her an invoice from a dealer which had just serviced it and I said finally we found out why this car's brakes are so bad. You've got to stand up to make the car stop. The dealer checked with Germany against the vehicle code and found out it was an armoured vehicle. I bought it second hand from a guy in Pretoria at 5000 kms and the doors were armoured.

MS GOVENDER: And you didn't realise that...

10 MR BOBROFF: That's why it was so heavy, hence it wouldn't work. So I told Van Wyk. I said you know – and she must have told Van Niekerk. They're all working together against me. It's like an unholy alliance and that's where it comes from.

MS SUMMERS: So is it not true Ronald? Is it a whole...

MR BOBROFF: No, it's not. Well, if you come and fire into it, provided you'll fix it.

MS GOVENDER: The 740 was armour proof but he bought it without knowing it.

MR BOBROFF: Ja.

20 MS SUMMERS: Oh, so you do have...

MS GOVENDER: It's like Joseph (inaudible). You know, one of our (inaudible). He had that huge Mercedes (inaudible).

MR BOBROFF: I'm going to grab a little water here.

MS GOVENDER: ...bullet proof.

MR BOBROFF: In fact, one of my clients has got a bullet proof X5. He got it imported from Germany. It's like two bars.

You know, firstly, no-one has ever tried to harm me, thank God, in my 42 years, because I like to think my clients like me. Secondly, if they want to get you, they're going to get you when you step out the car.

30 MS SUMMERS: That's true.

- MS GOVENDER: Not in the car.
- MR BOBROFF: Not in the car, so *ja*. It's a fallacy.
- MS SUMMERS: Okay. So Ronald, you won't be talking to me even though...
- MR BOBROFF: No, no.
- MS GOVENDER: Kebble although had an experience in the car.
- MR BOBROFF: *Ja*, but it was planned.
- MS GOVENDER: But that was a bit planned.
- 10 MR BOBROFF: It was planned. It was planned, *ja*.
- MS GOVENDER: Apparently so.
- MR BOBROFF: *Ja*.
- MS SUMMERS: Do you want to guys just check that the audio is fine.
- MS GOVENDER: One, two, three, four, five, six, seven.
- MS SUMMERS: And we'll need to do a clap as well.
- MS GOVENDER: Eight, nine, ten, eleven, twelve.
- MS SUMMERS: Are all phones off?
- MS GOVENDER: Are you happy with Ronald's sound?
- 20 MR BOBROFF: One, two, three, four, five, let's jive.
- MS SUMMERS: Devi I have asked Mr Bobroff to...
- MR BOBROFF: I'm Ronald. I'm not that old.
- MS SUMMERS: Ronald.
- MS GOVENDER: Okay, so can we keep this as succinct as possible.
- MS SUMMERS: Yes. That I have already asked.
- MR BOBROFF: I'll try. It's hard hey. It's hard.
- MS GOVENDER: But you understand how this works.
- MR BOBROFF: I know.
- 30 MS SUMMERS: But she'll interrupt you at a point.

- MR BOBROFF: *Ja.*
- MS SUMMERS: When you start to go off.
- MS GOVENDER: *Ja.* Remember make it as simple as possible....
- MR BOBROFF: Sure.
- MS GOVENDER: When it gets complicated I'll...
- MR BOBROFF: Sure. Sure.
- MS GOVENDER: Well, it's never been complicated before so it shouldn't be a hassle. So let's do that.
- 10 Can I ask, will you be happy if I get this done and over and out in under an hour?
- MS SUMMERS: Yes.
- UNIDENTIFIED SPEAKER: Rolling.
- MS SUMMERS: Can I give you a clap? Are you rolling?
Yes. Clap. Happy.
- UNIDENTIFIED SPEAKER: Clap. Rolling.
- MS GOVENDER: Ronald, how many years in the business?
- MR BOBROFF: Forty two, despite my boyish looks.
- MS GOVENDER: Always as charming.
- 20 MR BOBROFF: I notice you didn't contradict me.
- MS GOVENDER: No.
- MR BOBROFF: *Ja.*
- MS GOVENDER: It's what I said. So 42 years in the business and how would you describe your reputation in the industry?
- MR BOBROFF: Well, I've always striven to do the best I can for my clients and I have tried to convey that to the numerous attorneys that I have trained in the 42 years and my partners and professional assistants and the facts speak for themselves that we are exceptionally busy. All our work comes by referral. We have no touts that we pay to go to
- 30 hospitals and bring us clients. It's all by referral and by results and by the

service that we render.

MS GOVENDER: So would you say that you run a respectable and ethical business?

MR BOBROFF: I believe so and I have been honoured by my colleagues to have been elected to the Council of the Law Society for over 20 years. I have served as the president of the Law Society and I have held numerous offices within the organised profession and of course also served as a Commissioner in the Small Claims Court for almost two decades, tutored at the Wits Legal Aid Clinic free of charge to skill and equip young students
10 and also mentored numerous emerging young practitioners of colour in learning how to become lawyers and how to conduct their practices. The tricks of the trade as it were.

MS GOVENDER: Are you the biggest in the business

MR BOBROFF: No, definitely not. We are relatively small players. At any given time we probably have less than 1000 claims. For example if you compare us to attorneys that advertise extensively, one firm has on its website that they have 6000 claims at any given time, which you can never get by reputation. You have to have touts at many hospitals, etcetera, etcetera. We are a small player by volume but we focus on important
20 cases, on big cases, and we build the cases to give our clients the best possible result and to give them back their lives insofar as money can do so, and we have done this for 42 years.

MS GOVENDER: I was trying in my head before this interview to find a name for you, apart from your obvious name, and would it be fair to say that you are the godfather of personal injury law in South Africa?

MR BOBROFF: You know, I would give that title rather to one of my former partners, Malcolm Lyons, a senior attorney with whom I worked in the seventies and I think he was perhaps the first attorney that really brought respectability and true professionalism to the law and I am
30 proud to say I learned from him and going forward I've obviously learned a lot

from international associations to which I belong, the American Trial Lawyers Association, the Australian Plaintiff Lawyers Association...

MS GOVENDER: I think you are being far too modest here. No-one knows your partner. Everyone knows you.

MR BOBROFF: Well, I've done my best and I have tried to deliver what I believe to be a service of quality and professionalism.

MS GOVENDER: Do your clients get value for money? Have they always received value for money?

MR BOBROFF: Well Devi, I think the facts once again
10 speak for themselves. The Law Society has issued a certificate as at late 2013 to the effect that there has never been in the 40 years that this practice has been established, ever any complaint or finding of unprofessional conduct against this practice, and given the fairly contentious nature of the work we do, that I would suggest is an astonishing record. And I would like to add that the only complaints against us presently are those incited by Discovery Medical Aid, with whom there is a dispute, a difference of opinion. Whilst representing Mark and Joe De Bello, clients of ours, ironically former employees of Discovery, we uncovered Discovery's failure to comply with the Medical Schemes Act and the way in which it bullied and unfairly treated its
20 members injured in road accidents and that in fact has led in turn to the complaints against us.

MS GOVENDER: I am going to come to Discovery.

MR BOBROFF: Thank you very much.

MS GOVENDER: What I am going to do is let's just keep everything in compartments. It's going to get confusing otherwise.

MR BOBROFF: That's fine. No, that's fine.

MS GOVENDER: So let's just park Discovery for later and I will come to it later.

MR BOBROFF: Fine. Fine. Thank you. I appreciate that.

30 MS GOVENDER: All right. So Law Society very happy.

You've got a clean bill of health right up until 2013.

MR BOBROFF: The only – we still have a clean bill of health. We have never to this day ever been found guilty of any unprofessional conduct. Ever.

MS GOVENDER: So what is with the overreaching?

MR BOBROFF: Well you know Devi, overreaching has a very special context. It means that an attorney tricks the client. You basically take advantage of a client who is in a weaker position than you. For example, someone who is mentally compromised and you trick them into agreeing to something which is improper. It's got a very special meaning as opposed to overcharging, because overcharging, you know, how long is a piece of string and how do you value the services given by a professional person. We have never overreached a client. We have never wilfully overcharged a client, and once again, we have never had a complaint or any filing against us ever of overcharging or overreaching.

MS GOVENDER: No complaint where? Just general, no complaint?

MR BOBROFF: Never. Never. Never been a finding against this practice in over 40 years.

20 MS GOVENDER: No fine?

MR BOBROFF: No finding.

MS GOVENDER: No finding.

MR BOBROFF: No finding, no.

MS GOVENDER: And no complaint...

MR BOBROFF: Look, I'm sure we have had complaints over the years.

MS GOVENDER: Ja.

MR BOBROFF: But I can't recall any complaint about fees. You know maybe there's been a complaint and a client said you know we're not moving fast enough or something like that, but there's never been any

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complaints of consequence.

MS GOVENDER: Sorry, just so that I am clear here. No – nobody that ever complained about fees related issues?

MR BOBROFF: Not that I can recall, no.

MS GOVENDER: Are you sure?

MR BOBROFF: I'm positive.

MS GOVENDER: Okay.

MR BOBROFF: Except for the latest bunch which are all Discovery generated.

10 MS GOVENDER: Okay, the bunch I am talking about are not related to Discovery at all.

MR BOBROFF: Well, I suggest they are because the names that have been mentioned in discussions previously, those are all persons who were solicited by Discovery's agents...

MS GOVENDER: But they don't even have Discovery Medical Aid.

MR BOBROFF: No, I understand that

MS GOVENDER: *Ja*.

20 MR BOBROFF: But they have been identified by Discovery and its agents and we have proof of that.

MS GOVENDER: Okay. Let's come to that in a bit. Okay. Right. There was that Law Society investigative hearing on the 2nd of Feb.

MR BOBROFF: Yes.

MS GOVENDER: So just marry that with what you have just told me that there are really no problems.

MR BOBROFF: Yes. Yes.

MS GOVENDER: But I am seeing problems.

30 MR BOBROFF: One of our partners represented a Mr Graham who was injured in a road accident and whose wife assisted in the matter. It ran for two years. It was a difficult claim, both with regard to the

causation of the accident, because he had no recall of the accident. His driver was killed. There were two witnesses who gave conflicting destructive versions, so if you took one version it destroyed the other. It ran for two and a half years. There were ten expert witnesses. He wasn't declaring his income for tax purposes. It all went into his wife's bank account. It was a difficult case. On the day of trial...

MS GOVENDER: Okay. I'm not interested in...

MR BOBROFF: On the day of trial, the Road Accident Fund offered R900 000.00 which Mr Graham and his wife were desperate to accept. It took all our persuasive powers to say wait till tomorrow, which was the day of trial. We will try and negotiate a better deal. We got him another R1 million. He was charged at his request, or rather, at his request he insisted on being given a guaranteed payout. Then his wife said we want to know exactly how much he is going to walk away with. So we said okay, we guarantee – I didn't deal with it but one of my partners – we guarantee you R1.2 million. That's what they got and our fee was based on time.

MS GOVENDER: Okay. I'm not talking about any of that

MR BOBROFF: Sure.

MS GOVENDER: I am talking about that hearing and the
20 *prima facie* evidence of overreaching.

MR BOBROFF: Okay. I hear you.

MS GOVENDER: That's what I am talking about.

MR BOBROFF: Let me just take one step back. Why did Mr Graham complain – and his wife? They had been accounted to six months before the alleged complaint was raised by Mr George Van Niekerk, Discovery's attorney, instructed and paid for by them and was duly recognised by the Law Society in affidavits filed in Court. They received a letter, which many of our other clients received, because you see Devi, when I stood up for the rights...

30 MS SUMMERS: Sorry, can I just stop you there for a

moment? Because as I understand the Graham matter is not in that 2nd of February...

MR BOBROFF: No, that was the one.

MS SUMMERS: I thought it was De La Guerre and De Pontes.

MS GOVENDER: De La Guerre and De Pontes.

MR BOBROFF: No, no. Are you talking 2012?

MS SUMMERS: No, I'm talking now in January.

MR BOBROFF: Oh no, that was De La Guerre and De Pontes. Sorry, De La Guerre and De Pontes.

MS SUMMERS: *Ja.*

MS GOVENDER: So we're not talking of any of that.

MR BOBROFF: Oh, I'm sorry. I understand. Sorry.

MS GOVENDER: So the Law Society investigative committee, the hearing on the 2nd of February this year...

MR BOBROFF: Yes. Yes.

MS GOVENDER: ...talks about *prima facie* evidence of overreaching.

MR BROOKS: Yes. Yes.

20 MS GOVENDER: Which is what you say you don't do.

MR BOBROFF: Yes. Thank you for the opportunity to explain that. Unfortunately the committee, certainly the Chair, Mr Mayot, who is a commercial (inaudible) seemed totally to lack any understanding whatsoever of the rulings by the Law Society on whose committee he actually sits. As you all know, the Law Society in 2002 issued rulings, and it followed those rulings up in 2003 and furthermore in correspondence with then Deputy Judge President Van Der Merwe in 2011, where it said that its members are permitted and encouraged to charge straight percentage contingency fees.

MS GOVENDER: That's the Law Society?

30 MR BOBROFF: Exactly.

- MS GOVENDER: But that's against the law.
- MR BOBROFF: Well, it wasn't then.
- MS GOVENDER: No, it was.
- MR BOBROFF: No.
- MS GOVENDER: When did the law come in?
- MR BOBROFF: Well, we'll come to that. As at 2002 the only place that dealt with contingency fees was the (inaudible) where Judge Cameron upheld it and said it's a good thing. The attorney there (inaudible) to charge 25%, the late Peter Soller.
- 10 MS GOVENDER: Okay. Now wait, wait, wait, wait. You know what is going to happen here, we are all going to go off in different directions. I am coming to all of that.
- MR BOBROFF: Sure.
- MS GOVENDER: Right. Let's just stick with this issue very carefully now about the Law Society investigative committee hearing on the 2nd of February.
- MR BOBROFF: Yes.
- MS GOVENDER: The De Pontes and De La Guerre.
- MR BOBROFF: Exactly.
- 20 MS GOVENDER: Right. So don't give me that history now. Give it to me when it is relevant.
- MR BOBROFF: Yes. Sure.
- MS GOVENDER: Because it is not relevant now. They are looking at overreaching.
- MR BOBROFF: Yes.
- MS GOVENDER: This is 2014.
- MR BOBROFF: Exactly.
- MS GOVENDER: Are you overreaching?
- MR BOBROFF: No. The fees charged to Ms De La Guerre
- 30 and Mr De Pontes was before. The agreements were entered into years ago.

- MS GOVENDER: When?
- MR BOBROFF: 2005, 2006. Years and years ago. The first definitive decision holding that the Law Society's recommended common law contingency fee arrangements was invalid was in the De La Guerre case which was before a full bench in the Pretoria High Court...
- MS GOVENDER: But the Contingency Fee Act came in, in 2001.
- MR BOBROFF: 1999.
- MS GOVENDER: Even better. 1999.
- 10 MR BOBROFF: 1999, yes.
- MS GOVENDER: So when did you sign these agreements with these people?
- MR BOBROFF: 2004, 205, 2006.
- MS GOVENDER: That's after 1999.
- MR BOBROFF: Exactly.
- MS GOVENDER: So?
- MR BOBROFF: The Law Society, as I say, in 2002, due to a request from members of the public to the attorney saying look, will you act for me on a percentage basis and they had seen this in various American TV
- 20 shows and movies. A civil trial with John Travolta in Erin Brochovich where the American system...
- MS GOVENDER: Are you quoting movies now?
- MR BOBROFF: Absolutely.
- MS GOVENDER: What for? It's fiction.
- MR BOBROFF: Because the public – no, it's not fiction, it's fact because the public saw that in America for 150 years attorneys charged straight percentages and what was happening is attorneys such as us got phone calls from prospective clients to say will you take my case on for "X" percent and the Law Society received letters from members, can we do this,
- 30 and we said well we actually don't know. Let's appoint a committee, the Court

Practice Committee, to investigate this. That committee was chaired then, as it is now, by Mr C.P. Fourie, twice president of the Law Society.

MS GOVENDER: So the Law Society said yes you can?

MR BOBROFF: No, no. No, the Law Society said we will investigate it and what happened was...

MS GOVENDER: But the law said you can't.

MR BOBROFF: No, the law didn't say you can't. You see...

MS GOVENDER: What did the law say in 1999?

MR BOBROFF: You see the Contingency Fees Act didn't
10 say that you cannot enter into an agreement to represent a client on contingency, on no win, no fee, save in terms of the Act, and there are other Acts of Parliament. For example the old Credit Agreements Act said you can't sell goods on credit by way of 60 instalments or more save in terms of the Act. Now the Contingency Fees Act didn't say that.

MS GOVENDER: What did it say?

MR BOBROFF: It said that you can enter into a contingency fee agreement with a client in terms of the Act. It didn't say that you could not have an agreement outside of the Act. Okay?

MS GOVENDER: You can't have an agreement outside the
20 Act because the Act is the law.

MR BOBROFF: Well, let me just share this with you, because as recently as Feb 2014 the Constitutional Court judges, learned judges, our Apex Court said that there was once, and I can give you the actual quote, but in a nutshell it said – in fact, let me read it because I think I have it here...

MS GOVENDER: But that same Constitutional Court turned around recently in the De La Guerre matter and said that common law contingency fees were illegal.

MR BOBROFF: No, absolutely. No, I accept that. It was the
30 same judgment.

MS GOVENDER: Ja. Then?

MR BOBROFF: It was the same judgment. This is what the Court said.

MS GOVENDER: I know what the Court said.

MR BOBROFF: Well, I'd like to quote it.

MS GOVENDER: Because they said it's illegal.

MR BOBROFF: No, the Court said – they said that – I'm just trying to find it, if you will bear with me a moment. It said that:

10 *“Certain Law Societies made rulings allowing their members to charge
in excess of the percentages set in the Act.”*

MS GOVENDER: Which was against the law.

MR BOBROFF: *“Uncertainty reigned in the attorneys’
profession about the correct legal position...”*

MS GOVENDER: You are lawyers. You understand the law.

MR BOBROFF: No, no, we don't.

MS GOVENDER: What?

MR BOBROFF: *“Uncertainty reigned in the attorneys’
profession about the correct legal position in relation to contingency
fees. Could these fees be charged only under the Act or outside its
positions.”*

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So the Apex Court recognised that the Act was so ambiguous that there was wide differences of opinion within the profession, and there was.

MS GOVENDER: Okay. I am not a lawyer.

MR BOBROFF: Sure.

MS GOVENDER: I read the Act.

MR BOBROFF: Sure.

MS GOVENDER: It is very clear to me.

MR BOBROFF: I'm glad and that's why (inaudible) and I'll give you a job as a professional assistant because it's not that clear. Senior
30 counsel...

- MS GOVENDER: No, but you see you're a lawyer.
- MR BOBROFF: Sure.
- MS GOVENDER: You stick to the law.
- MR BOBROFF: As it's understood. Every Act is interpreted by lawyers. Lawyers place different interpretations on Acts. That's why there is litigation.
- MS GOVENDER: No, no. No, no, no. No. No. The law says that you are allowed to charge 25%...
- MR BOBROFF: Up to 25%.
- 10 MS GOVENDER: Yes.
- MR BOBROFF: Yes.
- MS GOVENDER: Or, double your normal fee...
- MR BOBROFF: Whichever is the lesser.
- MS GOVENDER: ...whichever is less.
- MR BOBROFF: Exactly.
- MS GOVENDER: So what is difficult there to understand?
- MR BOBROFF: Now what is difficult is this, and I just want to repeat it again. You see it didn't say, and this is a very important distinction, it didn't say, and many Acts of Parliament do have that, where government's
- 20 intention is that you can only transact in a certain way as set out in an Act of Parliament, the Act normally says so. And for example...
- MS GOVENDER: I have not – I didn't understand a word that you just said.
- MR BOBROFF: Okay. Well, let me try...
- MS GOVENDER: I've just explained to you what the Act says.
- MR BOBROFF: Okay. Well, I want to simplify it.
- MS GOVENDER: Please.
- MR BOBROFF: The Credit Agreements Act, which was the
- 30 old Hire Purchase Act, okay...

- MS GOVENDER: No, no, talk to me in terms of this law.
- MR BOBROFF: No, it's important that I speak to you about that one first. It said that you cannot sell goods on hire purchase save in terms of this Act. It was specific. It said the only basis on which you can sell goods on hire purchase by instalments is in terms of that Act. The Contingency Fees Act didn't say that and the opinion taken and given...
- MS GOVENDER: Irrespective, you were wrong. The Constitutional Court said you were wrong.
- MR BOBROFF: We were wrong.
- 10 MS GOVENDER: Right. So let's – what are we arguing this for? You were wrong.
- MR BOBROFF: We were wrong. Correct. We were wrong.
- MS GOVENDER: So why the story? You were wrong.
- MR BOBROFF: No, but it's necessary to give background as to why...
- MS GOVENDER: It doesn't matter. It was wrong. The Constitutional Court has said you were wrong in doing that.
- MR BOBROFF: Twelve years after the decision was taken.
- MS GOVENDER: Exactly.
- 20 MR BOBROFF: Yes.
- MS GOVENDER: Ja, but which decision? Your decision?
- MR BOBROFF: No, the Law Society's decision.
- MS GOVENDER: Who is the Law Society? The Law Society cannot supersede the law.
- MR BOBROFF: It can't.
- MS GOVENDER: Thank you. Let's just move on now. Right. So...
- MR BOBROFF: But the point I want to make is important and I will insist on making it.
- 30 MS GOVENDER: Make it.

- MR BOBROFF: The Law Society comprises 24 senior attorneys, 24 senior responsible attorneys, many of whom, in fact I'd say probably a third of the council that took the decision in 2002 and 2003 are now sitting judges.
- MS GOVENDER: They made a mistake. They were wrong.
- MR BOBROFF: But they took the conscious decision, a responsible decision, a rational decision, backed up by an opinion by an eminent Pretoria advocate, Adv Etienne Labuschagne, that the Contingency Fees Act did not prevent a common law agreement. That view was supported
- 10 by Adv Martin Brassey SC, etcetera.
- MS GOVENDER: It doesn't matter Ronald. They were wrong.
- MR BOBROFF: They were wrong. The Constitutional Court eventually said they were wrong, but at the time the decision was taken...
- MS GOVENDER: It doesn't matter.
- MR BOBROFF: But it was in good faith.
- MS GOVENDER: It doesn't matter.
- MR BOBROFF: It was in good faith.
- MS GOVENDER: So when did you start using this method of billing clients?
- 20 MR BOBROFF: Most attorneys started using it shortly after 2002, 2003.
- MS GOVENDER: When did you start?
- MR BOBROFF: Probably 2003, 2004. Not in all matters.
- MS GOVENDER: Around that...
- MR BOBROFF: Not in all matters but in some matters.
- MS GOVENDER: Why not in all matters?
- MR BOBROFF: Because not every matter was suitable to that kind of a fee agreement. Some clients preferred to be charged for straight time. Other matters were too small to make it financially viable.
- 30 MS GOVENDER: Then you don't take it on then.

- MR BOBROFF: Well you want – you know often someone wants help. You don't want to turn them away so you say well okay, I'll charge you an hourly rate. You agree an hourly rate and they sign an agreement that you'll bill them out so much per hour.
- MS GOVENDER: Okay. So I am going with you.
- MR BOBROFF: Yes.
- MS GOVENDER: It was misinterpreted. You went along with it.
- MR BOBROFF: Yes.
- 10 MS GOVENDER: For a while, but...
- MR BOBROFF: No, for twelve years.
- MS GOVENDER: *Ja...*
- MR BOBROFF: And it wasn't me. It was 16000 attorneys.
- MS GOVENDER: *Ja*, but I'm talking to you now.
- MR BOBROFF: And two Law Societies and the Black Lawyers Association.
- MS GOVENDER: Okay. So let's say that you went along with this idea that it was correct.
- MR BOBROFF: Yes.
- 20 MS GOVENDER: But there was the Gilbert Marcus, Trengove opinions.
- MR BOBROFF: Yes, there were.
- MS GOVENDER: In 2004, 2005. Around that time.
- MR BOBROFF: *Ja, ja.*
- MS GOVENDER: And they said that it was wrong.
- MR BOBROFF: That's correct.
- MS GOVENDER: So you ignored that.
- MR BOBROFF: The Law Society preferred the opinions of Adv H.M. Labuschagne.
- 30 MS GOVENDER: Because it suited what the Law Society

were saying at the time.

MR BOBROFF: I don't believe so. You know I don't think you must suggest that the Law Society acted in bad faith. They considered the opinions by Mr Trengove and Mr Marcus carefully and they took opinion from Adv Etienne Labuschagne and the consensus was that Mr Labuschagne's view was the correct one and they...

MS GOVENDER: Because it was in line with what the Law Society – their decision, what they had taken a while ago.

MR BOBROFF: That could be. That could be so, yes.

10 MS GOVENDER: Ja. I am trying to understand. It was contentious even at the time. We forget. Time dulls memories to a large extent.

MR BOBROFF: It was new. It was a new progressive decision.

MS GOVENDER: Ja. Uncharted territory perhaps, but then why didn't you especially take a precautionary approach to it and say hang on guys? You were president of this Law Society and even...

MR BOBROFF: Only for one year.

20 MS GOVENDER: Well, it's a big thing. You were vice president. You have always played an important role in the Law Society.

MR BOBROFF: I have been a councillor for 20 years, yes.

MS GOVENDER: Did it ever cross your mind at that point to say, hang on guys, let's take a step back and let's take only a precautionary measure, let's be careful?

MR BOBROFF: Well, in fact the Law Society did that/

MS GOVENDER: When?

30 MR BOBROFF: I think it was in 2006 or 2005, when it said to its members – there was a case called the Price Waterhouse Decision, a decision of the Supreme Court of Appeal. It's a very interesting case because that Court made dramatic new law. You see before then it was against the law

in South Africa and of course in England as well, that you could not fund litigation in return for a share of the spoils.

MS GOVENDER: Mmm.

MR BOBROFF: So you and I – forget I’m a lawyer. You and your friends could get together and say let’s put money in the kitty and we’ll look for suitable cases to fund and we will contract for a share of the spoils. You couldn’t do that. It was called champerty, maintenance and champerty. The Price Waterhouse case was a farmers’ co-op wanted to sue their auditors for negligence, never had money to pay attorneys. So the attorney said to
10 them, look, why do you guys put money in a kitty, in a bank account, to fund the litigation and you can enter into an agreement with the co-op that you will receive 45% of the damages recovered. And the insurers’ attorneys found out about that arrangement and they said this is champerty. You can’t do it. It’s against the law and...

MS GOVENDER: What happened in the end?

MR BOBROFF: It went all the way to the Supreme Court of Appeal and in a unanimous judgment the Court said maintenance and champerty are no longer part of our law. It is perfectly in order for lay persons – I emphasise lay persons – unregulated, no controls, to fund litigation in
20 return for a share of the spoils.

Now we looked at that decision carefully and we took opinion on that decision from Adv Labuschagne again and the opinion given was that it cannot be right, it cannot be correct that unregulated lay persons can go out looking for litigation to sponsor, fund it and take an unlimited percentage, but attorneys who are tightly regulated could not do so in terms of the Law Society’s rulings.

MS GOVENDER: Sjoie! But the moral of the story is that smart people get it wrong sometimes.

MR BOBROFF: Of course.

30 MS GOVENDER: And that’s what happened here.

- MR BOBROFF: Sure. Sure.
- MS GOVENDER: So let's go to this Constitutional Court judgment. Ronald, I don't get this. It goes to the High Court, you lose. It goes to the Supreme Court of Appeal. You appeal, you lose.
- MR BOBROFF: Yes.
- MS GOVENDER: Then you go all the way to the Constitutional Court.
- MR BOBROFF: Yes.
- MS GOVENDER: Why?
- 10 MR BOBROFF: You know...
- MS GOVENDER: Why didn't you just leave it?
- MR BOBROFF: ...Devi, it was a matter of such importance to the profession. Now it was not just our practice. In fact, it was the South African Association of Personal Injury Lawyers which has represented the majority of respectable and ethical personal injury attorneys in this country. It was that organisation that for example, and I'm very proud of it, challenged the Road Accident Fund amendments in 2008, lost in the Pretoria High Court. The learned judge in the Pretoria High Court said you cannot recover private health care for road accident victims. The amendments were constitutional
- 20 and we could have simply said, okay, the judge has spoken.
- MS GOVENDER: So you did it on behalf of the industry.
- MR BOBROFF: Well, we went to the Constitutional Court and we got back private health care for all road accident victims, which has saved hundreds of thousands of lives.
- MS GOVENDER: Yes...
- MR BOBROFF: So there was an obligation on SAAPIL representing personal injury attorneys to get clarity on the law and we needed to get clarity from the Apex Court.
- MS GOVENDER: You've got the clarity now.
- 30 MR BOBROFF: And we got the clarity.

- MS GOVENDER: Yes, not the clarity you wanted maybe.
- MR BOBROFF: True. True.
- MS GOVENDER: But you got the clarity.
- MR BOBROFF: We did.
- MS GOVENDER: Right. You weren't happy.
- MR BOBROFF: No.
- MS GOVENDER: In fact, you called it disastrous at some point.
- MR BOBROFF: We believe so.
- 10 MS GOVENDER: Disastrous for whom?
- MR BOBROFF: For attorneys who acted in good faith.
- MS GOVENDER: Yes.
- MR BOBROFF: In accordance with the Law Society's guidelines, yes.
- MS GOVENDER: You see, I don't know how you can call that good faith.
- MR BOBROFF: Well, you know when 24...
- MS GOVENDER: When the victims of accidents lost money.
- MR BOBROFF: Well, they didn't really. They didn't really.
- 20 MS GOVENDER: Where did it go then?
- MR BOBROFF: No, they did very well. They were charged straight 25% or less, or sometimes a few percent more in accordance with the Law Society's guidelines. They received service from attorneys, sometimes for five years or more at the attorneys' risk and cost. They got outstanding results and they got a good result. The amount at stake...
- MS GOVENDER: Ja, but it's a risk that you have to assess. If you thought it was too risky you didn't have to take it.
- MR BOBROFF: Yes.
- MS GOVENDER: And some of them had no risk actually.
- 30 MR BOBROFF: I have never had a matter that is risk free.

- MS GOVENDER: *Ja*, a small amount of risk.
- MR BOBROFF: I've never had a matter that's risk free.
- MS GOVENDER: No, you can't get risk free.
- MR BOBROFF: There is no such a thing as a risk free matter. And Devi, I want to point out just once again...
- MS GOVENDER: *Ja*.
- MR BOBROFF: ...that 25% is very often far less than you would be entitled to if you charged a straight hourly rate. So it's swings and roundabouts. In your smaller cases where...
- 10 MS GOVENDER: But that's your risk.
- MR BOBROFF: No, I accept that, but I'm saying it's swings and roundabouts, so in those cases where you've got a really brilliant result for a client through special effort and through special skills, it's only fair that you should get the reward commensurate with that result and that's why for example other jurisdictions, Australia and United Kingdom are doing their very best to move away from time based fees.
- MS GOVENDER: Look Ronald, you've done well. If you weren't doing well you wouldn't be in this business, so it's a good business.
- MR BOBROFF: We've made a living, yes.
- 20 MS GOVENDER: Exactly.
- MR BOBROFF: Sure.
- MS GOVENDER: *Ja*, so you're going to get a few that may not quite work out.
- MR BOBROFF: Yes.
- MS GOVENDER: But in the main it's going to work out.
- MR BOBROFF: Yes.
- MS GOVENDER: In fact, according to the Road Accident Fund they say that up until 2013 nearly R1 billion involving just over 3150 claims, 25% in terms of the contingency claims, were paid out to you guys,
- 30 your company.

- MR BOBROFF: Well of course you see if you unpack that you see the nonsense that it's in...
- MS GOVENDER: *Ja.*
- MR BOBROFF: ...because the billion rand, if it was – of course their figure are so reliable that first they said it's R1.5 billion and then they reminded themselves a few months later, oh sorry, we made a mistake.
- MS GOVENDER: *Ja.*
- MR BOBROFF: It was in fact...
- MS GOVENDER: They did make a mistake in those Court
10 papers, I know.
- MR BOBROFF: *Ja.*
- MS GOVENDER: And it was corrected.
- MR BOBROFF: And if it was a billion rand, and I don't know if it was, it represents the damages to our clients. It represents the cost payable to our experts, to our advocates and the amount of our fees would certainly not be 25% of a billion rand.
- MS GOVENDER: Would it be more?
- MR BOBROFF: No. Nonsense. Nowhere near that.
- MS GOVENDER: Okay, but I need to just work with the
20 figures. The Road Accident Fund says your company alone the paid out a billion rand.
- MR BOBROFF: I accept that.
- MS GOVENDER: Up until 2013.
- MR BOBROFF: Yes.
- MS GOVENDER: Right.
- MR BOBROFF: Yes.
- MS GOVENDER: Right. So if...
- MR BOBROFF: Over a decade. Over ten years.
- MS GOVENDER: *Ja, ja, ja.* Sorry, over ten years. It's still a lot
30 of money.

- MR BOBROFF: Well, insofar as we do big claims and we recover millions for our clients, the vast majority of that goes to our clients, not to us.
- MS GOVENDER: 25% plus went to you.
- MR BOBROFF: No. But we don't take a percentage in every matter. For example, let's assume in the case of Victim A, the Road Accident Fund...
- MS GOVENDER: You have to take up to 25% because the law says it's either 25% or double your fee, whichever is less.
- 10 MR BOBROFF: Yes, I know, but what you need to understand is that for example in a claim for you – let's assume I do a claim for you.
- MS GOVENDER: Mmm.
- MR BOBROFF: And I set your claim say for R3 million and I recover party and party costs. So I might recover an additional million. That additional million is going to go to my experts and to my advocates.
- MS GOVENDER: Yes. True.
- MR BOBROFF: Then of the balance I might charge you 20% or 25% or less...
- 20 MS GOVENDER: But that's separate. No, no, no, your 25% is your business.
- MR BOBROFF: Yes.
- MS GOVENDER: That's just for you. The experts is all separate.
- MR BOBROFF: No, but I'm saying if they say they paid us a billion rand over ten years, that includes all the expenses of the experts and experts are expensive; all the expenses of counsel and advocates' fees for a High Court trial lasting three or four days...
- MS GOVENDER: No Ronald I know that. I'm saying the 25%
- 30 is what will come to you. The experts is a separate line item.

- MR BOBROFF: No, no, my dear. No. No.
- MS SUMMERS: Can I just...
- MS GOVENDER: We're not going to use that.
- MS SUMMERS: We'll come back to it, but according to the Road Accident Fund 25% of that billion rand was paid out on contingency fees...
- MR BOBROFF: That's nonsense. How would they know that? That's nonsense. It couldn't be.
- MS SUMMERS: Okay.
- 10 MS GOVENDER: So let me pose that question to you. The Road Accident Fund says that 25% was paid out in contingency claims to your company.
- MR BOBROFF: Paid out in claims, not contingency. Paid out capital and costs. Capital and costs.
- MS GOVENDER: So paid out in fees.
- MR BOBROFF: No, no, capital and costs.
- MS GOVENDER: The 25%.
- MR BOBROFF: No.
- MS SUMMERS: He's saying 25% weren't contingency fees.
- 20 MS GOVENDER: Yes. That's what I'm asking him.
- MR BOBROFF: No, no. Look...
- MS GOVENDER: Wait, wait, wait. Wait. Wait. Let's just start this again because things get confused. Whatever is said on camera is what was said.
- MR BOBROFF: Sure.
- MS GOVENDER: You can't correct later, so I want to be clear here.
- MR BOBROFF: I know and I want you to be clear.
- MS GOVENDER: Yes. According to the Road Accident Fund
- 30 they paid out 25% of that R1 billion to your company and they are calling it

contingency fees.

MR BOBROFF: No. The Road Accident Fund didn't say that. They said...

MS GOVENDER: But that's what they said to us.

MR BOBROFF: Well, I don't know what they said to you. I know what they said in the Court papers. They said that they paid to our practice during the period of ten years approximately R1 billion.

MS GOVENDER: Mmm.

MR BOBROFF: That was in respect of damages plus the
10 costs which the fund has got to pay towards the victims' claims and that would include enormous amounts in respect of the experts used in those claims, and the advocates. So my guess is, just working on rule of thumb from my experience, about a third of what you recover goes towards your costs, your experts, your advocates, etcetera. The balance is what is left for the client and the attorney and the attorney's fee would be based on that balance. So it's totally false and misleading for anyone to say that because an attorney is paid "X" amount in respect of damages plus costs over a fixed period that the attorney's fee is 25% of that amount. It's nonsense.

MS GOVENDER: Well, what profit do you think you made out
20 of the R1 billion?

MR BOBROFF: No, our profit margins are approximately 23%, according to our figures.

MS GOVENDER: Right.

MR BOBROFF: Have you seen our papers? It's actually in our papers.

MS GOVENDER: So you made R230 million out of the R1 billion?

MR BOBROFF: Over ten years, yes, possibly.

MS GOVENDER: That's it.

30 MR BOBROFF: Possibly.

- MS GOVENDER: Okay. So let's move on.
- MR BOBROFF: I doubt. I'm just thinking. Ten years. No, no, it would be nowhere near that. Nowhere near that.
- MS GOVENDER: But you said 23% would be your profit.
- MR BOBROFF: No, our fees average out at 23%.
- MS GOVENDER: *Ja*.
- MR BOBROFF: So if you want to say...
- MS GOVENDER: Fees out of the R1 billion.
- MR BOBROFF: The fees and then there's overheads.
- 10 Overheads are currently 70% in most of these kinds of practices. So for every R100.00 that a personal injury practice earns 70% goes towards your overheads and you're left effectively with about 30% and that's taxed.
- MS GOVENDER: But that's your business...
- MR BOBROFF: No, no, it's taxed.
- MS GOVENDER: It's got nothing to do with...
- MR BOBROFF: No, as president of SAAPIL I am in touch with the profit structures of most plaintiff firms or many plaintiff firms, because we discuss these things and the average profit ratio is about 30% in this kind of a practice.
- 20 MS GOVENDER: But that's your internal business operation.
- MR BOBROFF: Well, absolutely.
- MS GOVENDER: How you spend the money in between...
- MR BOBROFF: I'm saying but it's absolute nonsense to say that if a firm is paid "X" million or billion by the Road Accident Fund over any period that the firm's fees are 25%. Let me give you an example.
- MS GOVENDER: No, I get that. I get that.
- MR BOBROFF: The (inaudible) say – attorneys in (inaudible) say that they have 6000 RAF claims. Now you can ask yourself how much would the fund pay them. It's the same example. It's nonsense.
- 30 MS GOVENDER: Ronald I'm going to have to push you. I get

that. I understand exactly what you're saying now.

MR BOBROFF: Sure.

MS GOVENDER: Okay. How did you feel when the Constitutional Court said that perhaps you were muddling your rights as a lawyer with those of your clients' rights?

MR BOBROFF: We understood that and we empathise with that and in fact, it's not the first time the Court has said that. For example, the Law Society about three years ago brought a matter to the Court to say that look, surely the public, surely employers and employees are entitled to legal representation at the CCMA and the Court said no, and the Court made the same observation to say well, the Application seems to be brought to protect the rights of lawyers to represent clients in the CCMA. Perhaps it should have been brought by a worker to say I want to be represented and I have been deprived of it. So it's...

MS GOVENDER: But you couldn't have felt good.

MR BOBROFF: No, no, it was not an unfair remark and it may be correct and perhaps the correct way of bringing that Constitutional challenge was to have had a client who wanted to contract with an attorney on a straight percentage.

20 MS GOVENDER: Does this judgment now have repercussions for other clients who you signed on, on a contingency fee basis?

MR BOBROFF: This judgment will affect every single plaintiff attorney that does any form of work on contingency. That's...

MS GOVENDER: True, but I'm talking about you.

MR BOBROFF: As with every other attorney, obviously it can have an impact.

MS GOVENDER: So what happens? Do the clients have to now come up to you or do you say I owe you and pay back the money?

30 MR BOBROFF: Well, what is really interesting is this, that

given that attorneys, and I include our practice amongst that, acted entirely in good faith, in accordance with directives by the regulatory body, in accordance with what the law was, and the only case in point was that of Judge Cameron's judgment in the ¹Hedley Clinic case which said these agreements are valid and not only valid, the judge commented favourably.

In fact Devi, I'd like to share with you this. As recently as 2010 probably one of the most eminent judges in our Supreme Court of Appeal, Judge Malcolm Wallace, presented a paper at a conference on costs and I can read what he said. He basically said – I have it here. I can read it to you but he said
 10 – in fact, I'd like to read it to you if you permit me to do so.

MS GOVENDER: But Ronald, you were all wrong.

MR BOBROFF: Yes, but Judge Wallace, who is a judge...

MS GOVENDER: It doesn't matter.

MR BOBROFF: I accept we were wrong, but even Judge Wallace in 2010...

MS GOVENDER: Judge Wallace was wrong too.

MR BOBROFF: But he said common law contingency fees work. It suits the public and he said that no attorneys in his experience use the Contingency Fees Act because it is impractical and unworkable. He said
 20 that, and with respect, I bow to the superior wisdom of Judge Wallace who is a judge in the Supreme Court of Appeal. As it turns out the Constitutional Court overruled all of us.

MS GOVENDER: Yes.

MR BOBROFF: It holds those views and we honour and respect that decision.

MS GOVENDER: Okay. Earlier in our interview you said that you haven't wilfully ever done anything in terms of fees that was not correct.

MR BOBROFF: Absolutely.

MS GOVENDER: In your mind.

¹ Spelt phonetically

- MR BOBROFF: Absolutely.
- MS GOVENDER: So I have a document here...
- MR BOBROFF: Yes?
- MS GOVENDER: ...that is in the De La Guerre matter.
- MR BOBROFF: Yes?
- MS GOVENDER: And it is a letter that was sent to Gerry Joubert.
- MR BOBROFF: Yes.
- MS GOVENDER: 18th of February 2011. It says here:
- 10 *“Please urgently prepare an attorney client bill so as to ensure that you can justify the hours for a total fee plus VAT of R1.1 million.”*
- MR BOBROFF: Yes.
- MS GOVENDER: What is this?
- MR BOBROFF: I am aware of this letter. I know it is a letter which was stolen by one of our former members of staff.
- MS GOVENDER: It doesn't matter.
- MR BOBROFF: It was given to Discovery's attorney.
- MS GOVENDER: Is this a real letter?
- MR BOBROFF: I am aware of the letter. It is a real letter.
- 20 MS GOVENDER: So now you sent this – what...
- MR BOBROFF: This letter was sent by a secretary who is prepared to give evidence and will give evidence if and when the Graham matter ever gets before a disciplinary committee which Discovery's attorneys have...
- MS GOVENDER: It's the De La Guerre.
- MR BOBROFF: I'm sorry, is this De La Guerre?
- MS GOVENDER: De La Guerre.
- MR BOBROFF: When De La Guerre comes before a committee. An explanation was given at the...
- 30 MS GOVENDER: What is the explanation?

- MR BOBROFF: It was this. An instruction was given by the attorney concerned to...
- MS GOVENDER: Who?
- MR BOBROFF: I think it was Mr Darren Bobroff in this case.
- MS GOVENDER: Your son.
- MR BOBROFF: I think it was his case, yes – to his secretary to say please forward the file to Mr Joubert and request him to do an attorney/client time bill. Inform him what the fee charge in the matter was, because he needs to have an understanding, you know, what the fee was.
- 10 She of her own bat used a standard letter that...
- MS GOVENDER: You have this as a standard letter?
- MR BOBROFF: No, no, no. If you read the rest of the letter it basically deals with what is called party and party costs. It's a letter which is sent to the cost consultant to prepare what is called a special account in terms of a court tariff in respect of what has got to be paid by the loser in the action, and she took that letter and she changed wording and it's absurd. And we are embarrassed by that letter, but none of us in the practice authorised that letter and she will give evidence on oath that that was her letter and she was not instructed to use that terminology.
- 20 MS GOVENDER: Okay. Where she got it from then nobody knows.
- MR BOBROFF: No, no, she was told send the file to Mr Joubert.
- MS GOVENDER: But she misinterpreted?
- MR BOBROFF: No, no, she got it right. She was told send the file to Mr Joubert to prepare an attorney client time account. Inform him that the fee charged in the matter was rand "X". That was it.
- MS GOVENDER: But we still have to work backwards. So the fee charged was 1.1...
- 30 MR BOBROFF: Yes.

- MS GOVENDER: This is the fee. It's 1.1, so go back and justify it.
- MR BOBROFF: But you can't justify it...
- MS GOVENDER: No.
- MR BOBROFF: No, but you can't justify it if the file doesn't justify it.
- MS GOVENDER: Exactly, but then – okay, so you're blaming her. You're blaming the staff now.
- MR BOBROFF: I'm not blaming her. She made a mistake. It
10 was a simple mistake.
- MS GOVENDER: It was quite a – no, no, not a simple mistake. It looks bad Ronald. That's what I'm saying. It does look bad. I accept it looks bad and she had been reprimanded and she has apologised.
- MS GOVENDER: She still works here?
- MR BOBROFF: She does.
- MS GOVENDER: Why did you keep her? This is not good.
- MR BOBROFF: Because she is an excellent secretary and...
- MS GOVENDER: She is not very good.
- 20 MR BOBROFF: Well, she is very good in other ways.
- MS GOVENDER: Okay. So this is a once-off. Please tell me this is a once-off.
- MR BOBROFF: I think she did it in two matters.
- MS GOVENDER: Which was the other matter?
- MR BOBROFF: I don't recall. I think there was another matter. I can't recall.
- MS GOVENDER: And she still works here?
- MR BOBROFF: She still works here. She was...
- MS GOVENDER: And who instructed her?
- 30 MR BOBROFF: In that case it was a professional assistant,

as far as I am aware.

MS GOVENDER: Is a professional assistant allowed to instruct somebody to that level?

MR BOBROFF: No, professional assistants are qualified attorneys.

MS GOVENDER: Well, I don't know how it works.

MR BOBROFF: I'm sorry. It's a qualified attorney.

MS GOVENDER: Okay. Then...

MR BOBROFF: And the instruction, I repeat, was not to
10 draw a bill and get to a fictitious fee.

MS GOVENDER: That's what it sounds like.

MR BOBROFF: I know it does. It's bad and she was reprimanded because it's embarrassing, and that's why it was stolen from our office to embarrass us.

MS GOVENDER: It shouldn't have happened.

MR BOBROFF: It shouldn't have happened.

MS GOVENDER: That other letter that you're talking about is in the Graham case.

MR BOBROFF: Okay.

20 MS GOVENDER: Just to remind you. Those are the two examples. Same story, cut and paste job.

MR BOBROFF: Exactly.

MS GOVENDER: Exact cut and paste job.

MR BOBROFF: Using a standard letter for other purposes.

MS GOVENDER: So was I only the subject line then?

MR BOBROFF: No. The mistake was she shouldn't have used that letter at all. She should have simply said here is the file in whichever matter it is. Please prepare a time attorney and client account. Period. And she could have said...

30 (Interjection – inaudible)

- MS GOVENDER: Mmm.
- MR BOBROFF: ...and she could have said the fee charge was rand "X". She didn't have to say it but she could have and we wouldn't criticise her for that.
- MS GOVENDER: You do know though that this was after amounts were submitted. So like for example in the De La Guerre case R1.1 million. So that was sent...
- MR BOBROFF: Yes, a perfectly legitimate fee in terms of common law contingency, yes.
- 10 MS GOVENDER: Then it sounds now like we have to make a plan now...
- MR BOBROFF: No well...
- MS GOVENDER: ...to add up to that.
- MR BOBROFF: Now well Devi the situation is this. The fee charged to Ms De La Guerre was in accordance with the Law Society's guidelines...
- MS GOVENDER: I told you the Law Society was wrong.
- MR BOBROFF: No, I accept that.
- MS GOVENDER: And you should really have had better
- 20 thinking caps on at the time.
- MR BOBROFF: Well you know we're all clever after the event, but the bottom line is...
- MS GOVENDER: Ja, still.
- MR BOBROFF: ...at the time it was done it was ethically permissible and proper and Ms De La Guerre had no complaints whatsoever until she was incited by Discovery's Jeffrey Katz and we have proof of that.
- MS GOVENDER: Because she is a layman and she didn't know any better.
- MR BOBROFF: Well no, she knows that was the fee
- 30 charged in the profession because I'm sure she and her friends would have

enquired elsewhere. But be that as it may, she was charged a proper fee in accordance with Law Society recommendations.

MS GOVENDER: Okay.

MR BOBROFF: When the fee was challenged we were obliged in terms of the law to do the best we could on a time basis to show what fee we could justify and hence the file was sent to a cost consultant to do an attorney/client time bill from the contents...

MS GOVENDER: After the fact.

MR BOBROFF: Yes, but from the contents of the file. You
10 can't invent. The file speaks for itself.

MS GOVENDER: Exactly.

MR BOBROFF: *Ja*. Whatever is in the file, you can only draw a bill from that.

MS GOVENDER: Right.

MS SUMMERS: Sorry, can we just make one thing clear there?

MR BOBROFF: *Ja*.

MS SUMMERS: Because I am under the distinct impression that was after the Road Accident Fund had already settled those matters.

20 MR BOBROFF: No, no, no, it was after...

MS SUMMERS: It was like a year after...

MR BOBROFF: No, it was when we knew that Ms De La Guerre had been solicited by Jeffrey Katz to be sent to Mr Millar to sue us and challenge our common law fee agreement. So we knew that we would then be obliged, if our agreement was going to be successfully challenged that we would only justify our fee on the alternative basis in terms of our mandate on a time basis.

MS GOVENDER: Wait. Wait a minute. Surely when the Road
30 of that...

- MR BOBROFF: Yes. Yes.
- MS GOVENDER: ...you had already submitted a bill.
- MR BOBROFF: No, no, no.
- MS GOVENDER: How does it work?
- MR BOBROFF: No, no. Let me explain to you. In addition to the damages that you recover from any wrongdoer, so whether you sue someone whose dog bit you or whether you sue a doctor for negligence, in addition to the compensation that you recover the loser pays something towards the expenses of the action.
- 10 MS GOVENDER: Okay.
- MR BOBROFF: That's called party and party costs. It's a miniscule amount you recover, but it's part of our system and the cost consultant prepares that.
- MS GOVENDER: In the De La Guerre matter there was this referral fee of R385 000.00.
- MR BOBROFF: Yes.
- MS GOVENDER: Are you aware of this?
- MR BOBROFF: It's in fact not a referral fee.
- MS GOVENDER: What is it?
- 20 MR BOBROFF: It's a total misnomer.
- MS GOVENDER: What is it?
- MR BOBROFF: I'll tell you what it is. We had a number of bookkeepers sadly who were not up to scratch, after having one for 20 years who left us in 2005. The instruction given to this bookkeeper was debit a fee of – and I forget the amount – R285 000.00 or something in that region. Once that fee has been debited and given that we practice as a company in a (Pty) Ltd, draw a cheque in the amount of whatever it was, debit the personal drawings account of the director concerned and deposit a cheque into that account. That's how attorneys legitimately who practice in companies are able
- 30 to take their drawings out of the company apart from salaries.

What this bookkeeper did, she omitted to debit the fee, but next to the cheque she put "REF". In other words, she was told the reference is to a fee. She put referral. There was no referral. This client came to us directly. She was referred by a friend. It was a mistake. Once we became aware of it, it was rectified.

MS GOVENDER: You're blaming staff again now.

MR BOBROFF: It was the bookkeeper, yes. It was.

MS GOVENDER: Do you have competent people working here?

10 MR BOBROFF: We have very competent people working here.

MS GOVENDER: Because these are big numbers that we are talking about.

MR BOBROFF: It is true, yes.

MS GOVENDER: R385 000.00. When was this spotted?

MR BOBROFF: It was spotted...

MS GOVENDER: And by whom?

MR BOBROFF: It was spotted by our auditor I think in 2012, It was immediately corrected and it was regularised with SARS. So the
20 client suffered no prejudice whatsoever. It was an error on the part of a bookkeeper and unfortunately you know with the best will in the world if you are running and business...

MS GOVENDER: Why did it go to Darren's wife though?

MR BOBROFF: It was supposed to – it was drawings for Darren Bobroff as a director and his drawings account was to be debited and it was supposed to be deposited in his wife's account, yes. They were going to buy – I think they were going to buy a property. Perfectly legitimate. Perfectly legitimated.

MS GOVENDER: It doesn't look good.

30 MR BOBROFF: It doesn't look good. It was a mistake by

the bookkeeper.

MS GOVENDER: But then when you start adding up all the things that don't look good, then it looks terrible.

MR BOBROFF: Well no. No, sorry, I disagree with you.. we handle – we handle many, many claims each year. We have had no problems with any of these claims.

MS GOVENDER: Where is this bookkeeper?

MR BOBROFF: Oh, she is not with us anymore.

MS GOVENDER: She's left?

10 MR BOBROFF: Definitely. We'd never keep such a person.

MS GOVENDER: Then there was the charges to the accident scene. Miss De La Guerre says she never went to any accident scene. She is unaware of it. There were charges that were included.

MR BOBROFF: No. We didn't charge her for going to the accident scene. The advocate in the matter, Adv Kahn, on his account billed for an inspection *in loco*. That means to go to the accident scene.

MS GOVENDER: By himself.

20 MR BOBROFF: No, he said he had an inspection of the accident scene. We can't contradict him. If he says he went with the client we accept that.

MS GOVENDER: But he didn't. Now we know that.

MR BOBROFF: Well, we don't know that, because Ms De La Guerre at the proceedings in February or – was it January this year – was a most unsatisfactory witness, could remember nothing. In fact, said that she had no problem with the 30% fee. It was put to her by Adv Cassim representing our practice, well, why are you here? What is your complaint? And she turned to Mr Millar to say well, what is the complaint?

MS GOVENDER: I interviewed her. She seems...

30 MR BOBROFF: Well, we have the transcript and the recording of what she said at that hearing.

- MS GOVENDER: Did you reverse that amount of R385 000.00 and make it right?
- MR BOBROFF: Yes, it was debited – no, not to be reversed. It was correctly debited as a fee because that was part of the practice's fee and it has been fully declared for VAT...
- MS GOVENDER: But wasn't it a line item payout?
- MR BOBROFF: No. No. No, no, no. It's got nothing to do with the client. It's our fee. It should have been referred to as a fee and it should have been debited. It didn't affect Ms De La Guerre at all. She got
10 accounted to...
- MS GOVENDER: This was part of the fee?
- MR BOBROFF: It was part of the fee.
- MS GOVENDER: The R385 000.00?
- MR BOBROFF: That is so, yes.
- MS GOVENDER: So are your directors allowed to draw against the fee...
- MR BOBROFF: Yes of course.
- MS GOVENDER: ...for themselves?
- MR BOBROFF: No, no. What is – no. The procedure is this.
20 The fee is supposed to be debited so the line entry should have been fee, okay, R385 000.00. Once that was done, what the bookkeeper was supposed to do, and this happens all the time in all practices which are corporate practices, she was supposed to draw a practice cheque...
- MS GOVENDER: Sorry, I get that, but Mr Bobroff, if you are a director and drawings as people who are in the business...
- MR BOBROFF: Yes.
- MS GOVENDER: ...it's money (inaudible) you take from the company for yourself.
- MR BOBROFF: Yes.
- 30 MS GOVENDER: But you take that out of another thing. You

don't take it out of payments from the RAF received as a line item.

MR BOBROFF: No, no, no, we do.

MS GOVENDER: Why?

MR BOBROFF: No, because that's how it works. There is no other way you can take it.

MS GOVENDER: You must take it from your profits.

MR BOBROFF: No, no, no, no, no. You're wrong.

MS SUMMERS: Shall we move on Devi.

MS GOVENDER: All right.

10 MR BOBROFF: No. It comes – Devi, let me explain to you. Once you take the fee – the money comes in as trust money. Okay? Money received for and on behalf of a client is regarded as trust money. Now it can only be used to pay disbursements for and on behalf of the client and for a fee by the attorney.

MS GOVENDER: Mmm.

MR BOBROFF: But you can't take it as the attorney unless you debit the fee.

MS GOVENDER: Okay.

MR BOBROFF: And the bookkeeper should have debited
20 the fee. That was the one mistake she made. For the rest it was correct. She didn't debit the fee. Once we found out about it, we debited the fee and we notified SARS that the fee should have been debited and in the tax year in question and we have paid the VAT and the income tax on that fee. We regularised it.

MS GOVENDER: So let's stick with what the law says now. 25% or double your fee, whichever is less.

MR BOBROFF: That is the situation now.

MS GOVENDER: It has always been the situation.

MR BOBROFF: Well, *ex post facto*. We are all clever after
30 the event.

MS GOVENDER: Sure. So in an email though that you sent to your colleagues in 2014 you make it very clear in this email. You say:

“The reality of it being impossible to tax an attorney and client bill remotely approaching a percentage contingency fee charged, the attorney will end up not only receiving no fee whatsoever in respect of years of work and risk.”

This makes it quite clear that you don't agree with that 25% or double your fee, whichever is less scenario, you don't think that's feasible for an attorney.

MR BOBROFF: No, no, you're misunderstanding.

10 MS GOVENDER: Tell me what you think.

MR BOBROFF: I'll tell you. You see where you have an agreement in terms of the Act Devi...

MS GOVENDER: Ja.

MR BOBROFF: ...then you can charge for time spent, double it up, provided it doesn't exceed 25% of damages recovered. But if you didn't have such an agreement signed by the client and all you had was your straight common law fee, which was a straight percentage, and the Court has now held that it's valid, all you fall back on is your normal hourly rate and you cannot double that up, and therefore, because you can't double it up as you
20 would be entitled to do in terms of the Act, you are never going to get to the fee which the Act would entitle you to, and that's what I was referring to.

MS GOVENDER: Is that good or bad?

MR BOBROFF: It's bad. It's very bad.

MS GOVENDER: For whom?

MR BOBROFF: It's very bad for attorneys who acted in good faith and with respect, what the Court should have done, as it has done in many other cases, where there has been uncertainty in the law, and there was uncertainty, and the Court itself has said so, it normally makes what is called a prospective ruling. So it says look, there was confusion. People acted
30 in good faith. The Law Society acted in good faith. We are now clarifying the

law and we issue a ruling to say that prospectively going forward these agreements are invalid, but what is done is done.

MS GOVENDER: Let's look at the De Pontes case. You received R6 million from the Road Accident Fund.

MR BOBROFF: Yes.

MS GOVENDER: The agreement that you had with him is 30%...

MR BOBROFF: That is so, yes.

MS GOVENDER: It was against the law.

10 MR BOBROFF: It was perfectly proper and ethically proper and according to the Law Society's rulings and the law as we and the Law Society understood it and there was nothing wrong with it at the time.

MS GOVENDER: That assessed fee was R346 000.00.

MR BOBROFF: It could be.

MS GOVENDER: That was assessed. That's what the fee should have been.

MR BOBROFF: Well, it's the fee...

MS GOVENDER: You charged R2.1 million.

20 MR BOBROFF: It's the fee in terms of the straight hourly rate.

MS GOVENDER: Yes.

MR BOBROFF: Basically we fell between two stools in the sense that our Law Society compliant common law agreement was deemed to be invalid. We did not have an agreement with Mr De La Guerre in terms of the Contingency Fees Act and therefore all we could do was charge a modest amount in terms of our time bill out rate.

MS SUMMERS: We're talking about De Pontes now.

MS GOVENDER: I'm talking about De Pontes.

30 MR BOBROFF: De Pontes. I'm sorry. Same thing. It's the same principle throughout.

- MS GOVENDER: Right. *Ja*. You see...
- MR BOBROFF: Sorry, De Pontes, which was handled by our senior attorney, Ms Phillipa Farage, I understood that she taxed an amount almost at R500 000.00. I may be wrong, but that was my understanding.
- MS GOVENDER: Mmm.
- MR BOBROFF: It's a pity she is not available, because she would be able to tell you.
- MS GOVENDER: Mmm. The assessed fee again was
10 R346 000.00 and you charged R2.1 million. The total legal fee is for R2.4 million. I went to...
- MR BOBROFF: Excuse me, you can't add VAT in as a legal fee. That goes to the Receiver.
- MS GOVENDER: *Ja*, I know that. I get that. That's why let's stick to the percentages. 30% plus VAT.
- MR BOBROFF: No, 30%. That's the fee. The VAT goes to the Receiver.
- MS GOVENDER: *Ja*.
- MR BOBROFF: So you can't say it belongs to the attorney.
- 20 MS GOVENDER: No. That's why you say 30% plus VAT.
- MR BOBROFF: So she received – she actually got an astounding result for Mr De Pontes, way beyond anything that the advocates in the case thought they would recover...
- MS GOVENDER: Then why are you paying back? Why did you pay back money then?
- MR BOBROFF: Because the Court ruled that our Law Society compliant agreement was no longer valid. We never had an agreement with her in terms of the Contingency Fees Act and therefore we could not double up our time fee and we did the best we could, which is
30 simply a nominal time charge basis. That's what happens and that's what has

happened to Attorneys Fluxmans, that's what has happened to Attorneys (inaudible), that's what has happened to Attorney Mike Friedman in Durban. It's happened to Attorney Michael De Broglio (inaudible)...

MS GOVENDER: The allegation is that you made Mr De Pontes get dressed, schlep all the way to Court when you had already settled the matter.

MR BOBROFF: Okay. Well, it's unfair to say that I did it because I had absolutely nothing to do with the De Pontes claim, but Ms Farage, who is a most senior competent attorney, has a policy, with which I
10 happen to agree, and it is that she believes the clients should be fully aware of what is happening in their claims...

MS GOVENDER: The case was over.

MR BOBROFF: No it wasn't over. She wanted the client to be in Court when the settlement was made an Order of Court and to see with his own eyes and with his parents to see and hear that's how the case has been settled. It was her decision. I don't criticise her. I had nothing to do with it.

MS GOVENDER: He is a quadriplegic.

MR BOBROFF: He is indeed.

20 MS GOVENDER: Have you met him?

MR BOBROFF: I have met him, once, at the Law Society proceedings. Never met him otherwise.

MS GOVENDER: But there was no reason for him to be there because the case had apparently already been...

MR BOBROFF: Ms Farage takes the view, and I agree with that view, that the client must be privy to everything and there should be full transparency.

MS SUMMERS: It was after the settlement wasn't it?

MS GOVENDER: Ja, it was after the settlement.

30 MR BOBROFF: It's never settled until the Court makes it an

Order because you've got to hand up the affidavits in terms of settlement procedures. It's never settled until the Court makes it an Order. That's the procedure and she takes the view, and I don't criticise her...

MS GOVENDER: Do you do the same?

MR BOBROFF: I...

MS GOVENDER: Would you have done the same?

MR BOBROFF: I am not sure. I can't answer that. He wasn't my client. I'm unaware of the circumstances.

MS GOVENDER: Do you (inaudible) quadriplegics to the
10 Court? Do you...

MR BOBROFF: I have. I normally like the client – I give the client the choice and if the case has been settled beforehand, I will say to the client would you like to come to Court to hear your settlement being made an Order of Court. That's what I do. As to whether Ms Farage did that, only she can answer that.

MS GOVENDER: This thumb print that I'm finding here, is it normal, because he's a quadriplegic, so do you need...

MR BOBROFF: Well, if he can't sign, how else do you get a person...

20 MS GOVENDER: That's what I wanted to ask you.

MR BOBROFF: It is usual, yes. It is usual.

MS GOVENDER: Is there anything else about De Pontes?

MS SUMMERS: Ja, just that 16 ½ hours that point number 4 there.

MS GOVENDER: Oh yes, sorry. But he was charged for 16 ½ hours because all – it was just – what is the word you used, the finalisation? The ruling? The what? That day when you got there to Court you wanted him to come there to...

MR BOBROFF: Well, I had nothing to do with this case.

30 MS GOVENDER: Ja. Well 16.5...

MR BOBROFF: So don't say me. I had nothing to do with it.

MS GOVENDER: Okay. *Ja*, but it is your employee and you knew we were talking about this, so it would have been prudent to have gone through the files. However, he was charged 16.5 hours for that one day.

MR BOBROFF: By Ms Farage.

MS GOVENDER: Yes.

MR BOBROFF: Now my understanding from her evidence was it was not for the one day because as far as I can recall they had to come back on a second occasion, that the Court couldn't hear the matter or make it
10 an Order of Court initially and they had to come back later. But I really can't comment. It was her file and she gave the explanation as to why that happened to the Law Society and I really can't take it further.

MS GOVENDER: What did she say to the Law Society?

MR BOBROFF: As I say, my recollection was that she explained it was on a Friday and they had to come back on the Monday, but I really can't take it further and I would be misleading you and doing Ms Farage an injustice. I just don't know.

MS SUMMERS: It's one of the charges.

MS GOVENDER: It's one of the charges though of the Law
20 Society.

MR BOBROFF: There's no charges at this stage whatsoever.

MS GOVENDER: What – yes. Are we calling it discussion points?

MR BOBROFF: There's discussion points. There are no charges.

MS GOVENDER: So it's a discussion point at the Law Society.

MR BOBROFF: We don't believe that the Law Society
30 Council have any regard to what we believe are absurd – I mean how can an

attorney be charged for doing that which the Law Society said the attorney should do? How can an attorney be charged for using an agreement, a common law contingency agreement...

MS GOVENDER: Well, then you must take the Law Society to Court.

MR BOBROFF: No we're not taking...

MS GOVENDER: Because they gave you that information.

MR BOBROFF: No, we're not taking them to Court. The Law Society Council will consider the rulings – the recommendations made by that committee which we believe are wholly unjustified and in fact quite bizarre and decide what to do about it.

MS GOVENDER: Okay. So then the Constitutional Court said we're not doing percentage fee agreements, flat percentage fee agreements anymore.

MR BOBROFF: That is so.

MS GOVENDER: Finish and *klaar*. That's it Ronald.

MR BOBROFF: That's it.

MS GOVENDER: It's over

MR BOBROFF: Not only Ronald. That is to the profession.

20 MS GOVENDER: That's it profession. It's over.

MR BOBROFF: Yes.

MS GOVENDER: So what did Ronald do? Did Ronald stop doing this?

MR BOBROFF: Indeed we did.

MS GOVENDER: So what's the story with Yasmin Motara then?

MR BOBROFF: Yasmin Motara was charged a straight time rate in terms of an agreement in terms of the Contingency Fees Act. We have the agreement and the time account is as we speak being prepared and we are quite comfortable that that fee will be entirely justified. We have not

charge any percentage fee obviously after the Con Court says you can't

MS GOVENDER: You didn't?

MR BOBROFF: No.

MS GOVENDER: So the 25 – what did you charge her? What was the deal there?

MR BOBROFF: No Motara was – Ms Cora Van Der Merwe who was employed by this practice as an in-house cost consultant and subsequent to that as a candidate attorney, her task was to do time accounts, time sheet accounts in matters to give the attorneys an indication of how
10 much time had been spent in their matters. She did a time sheet in Motara, which came to a certain amount of hours which when you multiply that by the bill out rate in the agreement in terms of the Act and double it up, it came to the fee which she was charged.

MS GOVENDER: Are you allowed to charge 25% plus VAT or must it all equal 25%?

MR BOBROFF: The Law Society's view and that of most observers is that the Act does not require the attorney to absorb what is essentially that which goes to the Receiver. The 25% is the cap and the VAT goes to the Receiver. If the Receiver...

20 MS GOVENDER: What does the law say about that?

MR BOBROFF: The law is silent. There is nothing in the Act to say one way or another. It simply says you can charge for time spent at your normal bill out rate...

MS GOVENDER: Do all attorneys agree on this?

MR BOBROFF: I believe so, yes. I have not come across a single attorney of substance...

MS GOVENDER: Of substance?

MR BOBROFF: Of substance and credibility, that says that you must include that in your fee. It's absurd, because what if government
30 tomorrow bumps up VAT to 40% or 30%? It doesn't make sense.

- MS GOVENDER: So this is still pending, this issue with Ms Motara?
- MR BOBROFF: Well there is nothing really pending. I mean – let me put it this way...
- MS GOVENDER: You sent an affidavit and it's all still happening now.
- MR BOBROFF: There's an agreement in terms of the Act.
- MS GOVENDER: Ja.
- MR BOBROFF: It's a legitimate and valid agreement. We're
- 10 obliged to justify the fee on a time basis and we'll do so.
- MS GOVENDER: Right. R50 000.00 for photocopies. What were you photocopying?
- MR BOBROFF: In every single matter, apart from the routine photocopying, you are obliged to prepare what is called bundles for Court. So for example, and I'm not familiar, firstly, with this matter but let's assume there were say ten medico legal reports. Each medico legal report runs to sometimes 50 to 80 pages or more. Then you've got reports by industrial psychologists, you've got reports by actuaries, etcetera, and a bundle has got to be made for every party in the litigation. That's the Court,
- 20 the witness...
- MS GOVENDER: It sounds right to you is what I am asking.
- MR BOBROFF: No, I'm saying we've got to do it and you try...
- MS GOVENDER: But does R50 000.00 sound right? Because for me I'm like wow. Something is not right here.
- MR BOBROFF: If that was the amount of copies done then obviously it would then be right and obviously you've got to justify and you've got to prove it, so if R50 000.00 of copies weren't made it will become clear that that wasn't the case. If it was, it will become clear that was the case.
- 30 MS GOVENDER: But does it sound right?

- MR BOBROFF: Absolutely.
- MS GOVENDER: It sounds right?
- MR BOBROFF: Sure. I've been involved in commercial cases – we also do commercial...
- MS GOVENDER: It's not a commercial case. I'm talking about...
- MR BOBROFF: No, but I'm saying, you know unfortunately there is so much paper in litigation and there are so many parties. Because for example if we had ten experts and the other side had let's say five experts, that's fifteen experts, each one has got to get a bundle of every document.
- 10 MS GOVENDER: How much – I know it may sound really stupid to you.
- MR BOBROFF: *Ja?*
- MS GOVENDER: But then how much are you charging per page?
- MR BOBROFF: R6.00 a page.
- MS GOVENDER: What?
- MR BOBROFF: R6.00 a page.
- MS GOVENDER: Well, how many colour pictures do you
- 20 have in these documents?
- MR BOBROFF: I have no idea
- MS GOVENDER: R6.00 a page?
- MR BOBROFF: R6.00 a page. That's the standard rate in the profession at the moment.
- MS GOVENDER: No Ronald.
- MR BOBROFF: Yes it is.
- MS GOVENDER: That can't be right.
- MR BOBROFF: No, it is. It actually is.
- MS GOVENDER: *Sjoe!* All right. I'm just going to move my
- 30 head off this R6.00 now. It's hectic. But some of the lawyers that I spoke to

said that even at 25%...

MR BOBROFF: Yes?

MS GOVENDER: ...it's a good living. You don't need to get more. You can make enough.

MR BOBROFF: I won't challenge that. Sure.

MS GOVENDER: So why were you doing 30% and more?

MR BOBROFF: No, we weren't doing – no, we never did more. We never did more.

MS GOVENDER: It was always the 30?

10 MR BOBROFF: No, no...

MS GOVENDER: Why were you doing 30?

MR BOBROFF: No, no, no. No, we didn't always do 30.

MS GOVENDER: You sometimes did 30?

MR BOBROFF: We sometimes did 30.

MS GOVENDER: Why?

MR BOBROFF: Now if you would have read the documents I sent to your producer, the Law Society in a letter to then Deputy Judge President Van Der Merwe, said that the Law Society did not lay down any minimum or maximum. They said that given that the Act speaks of 25%, that
20 would be regarded as the law. To the extent that you charge more than 25% you have to justify it and the Law Society set out certain guideline or parameters. For example, the importance of the matter to the client, the result obtained, the overhead structure of the attorney's practice and numerous other factors. We never charged more than 30%. I do know for example that Mr De Broglio, who advertises on Carte Blanche, and I don't criticise him, his standard mandate, and I have it here for you, was 33%, 33.3%. I don't criticise him because that was his decision.

MS GOVENDER: In Mr De Pontes's case there was no risk. The man is a quadriplegic. You charged...

30 MR BOBROFF: Why do you say there is no risk? The fact

that he's a quadriplegic has got nothing to do with the merits of the action.

MS SUMMERS: (Inaudible).

MS GOVENDER: But I'm saying to that you worked on 30% in that case. You see I'm just trying to understand. I'm not getting this.

MR BOBROFF: Sure. No, no. Devi...

MS GOVENDER: You know what the problem is, you can't quantify it. I can't quantify it.

MR BOBROFF: You need to understand. There's two stages in litigation. The first is the issue of merits. Okay? Can you prove that
10 the other driver was to blame? Because you have to show that a driver is to blame for the injuries. So that's the first part. That's the risk and trust me, I can tell you after 40 years in practise, there's no certain case on risk. You can have witnesses who will say – you can have three witnesses who will say it was the other driver that went through a red traffic light, and you know what, your witnesses all collapse under cross-examination.

MS GOVENDER: Mmm. We've seen that.

MR BOBROFF: That's the first part. The second part is what is the quantum? Now Mr De Pontes, as I understand from Ms Farage, was a very low level basic mechanic. He was no quiz kid. He was never going
20 to be a quiz kid, but through the skill that she's acquired of 15 years specialisation in this kind of practice and through the use of expert evidence, she presented a scenario that he could even become a Porsche mechanic and the result that she obtained for him, it was quite amazing. Now based on that a 30% fee was entirely justifiable in accordance with Law Society parameters.

MS GOVENDER: Ronald, it just struck me now. If the law said 25% that's what the law said.

MR BOBROFF: The law didn't say 25%. The law...

MS GOVENDER: It said...

30 MR BOBROFF: In terms of the Contingency Fees Act it did.

MS GOVENDER: In terms of the Act

MR BOBROFF: The Law Society's rulings and the law as the Law Society understood it and as I understood it, was that you could have a common law agreement outside the Act and that could be anything depending on fairness.

MS GOVENDER: It sounds to me that the law said one thing and in my mind it was quite clear, and that lawyers like yourself and others in the industry took the gap.

MR BOBROFF: I disagree with that. The law was the
10 decision in the Hedley Clinic case, Judge Cameron, an eminent judge, now a judge in the Constitutional Court, rubber stamped Attorney Peter Soller's 25% mandate. That was a common law fee agreement. There was not from then until late 2011 a single Court decision saying that you could not have a valid common law contingency fee agreement.

MS GOVENDER: Is the Law Society on your side?

MR BOBROFF: What do you mean?

MS GOVENDER: Are they okay with you? Is everything fine?

MR BOBROFF: The Law Society is a statutory body that is
20 obliged to do its duty. If an attorney, and whether it's a past president or a current president or any councillor, has committed professional misconduct the Law Society has got to do its duty and it has done its duty in respect of the Graham complaint but it has also recognised in affidavits filed in Court that that complaint was incited, contrived and driven by Discovery's attorney, Mr George Van Niekerk, and there's five affidavits to that effect.

MS GOVENDER: How many disciplinaries have you ever faced at the Law Society?

MR BOBROFF: None. Ever.

MS GOVENDER: But Bernadine Van Wyk's affidavit,
(inaudible) it reads like a...

30 MR BOBROFF: It does too...

- MS GOVENDER: (Inaudible).
- MR BOBROFF: Of course she doesn't disclose her criminal record.
- MS GOVENDER: Clients' money paid into Darren's account, VAT not being paid over, false invoicing.
- MR BOBROFF: Yes.
- MS GOVENDER: Even taking the light bulbs out of the boardroom...
- MR BOBROFF: Absolutely. Can you imagine?
- 10 MS GOVENDER: ...so the lawyer couldn't see the files.
- MR BOBROFF: Absolutely terrible.
- MS GOVENDER: This boardroom?
- MR BOBROFF: No, no, no, downstairs. A very bright one which doesn't need light.
- MS GOVENDER: All right. So is she making all of this up?
- MR BOBROFF: Bernadine Van Wyk applied for a position of trust in this office and forgot, she said – she said she forgot to disclose she has not one, not two, but ten convictions of fraud by false pretences.
- MS GOVENDER: Don't you do a criminal record check?
- 20 MR BOBROFF: We've never done it before. We do it now. And that she had been a jailbird. She also forgot to tell us that in 2008 she stole R1.3 million from Attorney De Bruyn and she is currently on the run and the police are looking for her to charge her and I would imagine she will eventually be charged and found guilty of that theft. She is an out and out criminal. She is a liar. She is a thief and a cheat and nothing in her affidavit is true. It's out and out lies.
- MS GOVENDER: Why did she take on someone of your stature?
- MR BOBROFF: Well you see...
- 30 MS GOVENDER: You're a big boy in the industry. Say what

you like.

MR BOBROFF: No. You see Discovery are bigger than I am and Discovery on affidavit – we have an affidavit and we have proof...

MS GOVENDER: So they have instructed her?

MR BOBROFF: They have offered her a job. They offered, and we have proof, to purchase a house to the value of R1 million and to buy her a car. We have evidence on this and we have gone public on this and Discovery have never denied it.

MS GOVENDER: Okay, I'll put that to them.

10 MR BOBROFF: *Ja.*

MS GOVENDER: So now Cora. Let's talk about Cora. She makes the protected disclosure...

MS SUMMERS: Just hold on. Sorry to interrupt you. We've got a battery issue. Do you want to swop your battery quickly?

UNIDENTIFIED SPEAKER: I've got to change the battery.

MS SUMMERS: Sorry, let's just change it while we...

MR BOBROFF: You've been a long time here.

MS SUMMERS: I'm just doing my job.

MR BOBROFF: I know.

20 MS SUMMERS: I just want to go back to one thing, is that Hedley Hospital thing.

MR BOBROFF: Mmm.

MS SUMMERS: As I understood it the Supreme Court of Appeal overruled that.

MR BOBROFF: No. The Supreme Court of Appeal overruled in De La Guerre. That was in...

MS SUMMERS: No, no, I'm talking about the earlier one.

MR BOBROFF: Never. It never overruled...

30 MS SUMMERS: There was no overruling by the Supreme Court of Appeal on that particular issue.

- MR BOBROFF: Never. Never. The first time Hedley Clinic was considered was in the De La Guerre case.
- MS SUMMERS: So you did this all because – you carried on because you thought that the Hedley Clinic thing set a precedent?
- MR BOBROFF: Well, you know Joy if you – as an attorney...
- UNIDENTIFIED SPEAKER: Can we roll?
- MS SUMMERS: Are you rolling?
- UNIDENTIFIED SPEAKER: No, not yet.
- 10 MS SUMMERS: Just hold on. Hold on. Don't roll yet. I just want to get clarity...
- MR BOBROFF: As an attorney...
- MS SUMMERS: Wait. Wait.
- MS GOVENDER: Sorry. Sorry guys. Sorry.
- MR BOBROFF: As a prudent attorney...
- MS GOVENDER: Ronald and then can you face me and then give the answer (inaudible).
- MS SUMMERS: *Ja. Ja.* And then we'll go on to Cora.
- MR BOBROFF: Sure. Okay.
- 20 MS SUMMERS: I just want to...
- MS GOVENDER: Were you using that hospital matter as proof that you could go ahead with whatever you were doing?
- MR BOBROFF: Devi, you know a prudent attorney tries to find out what is the law. You go with the law and the decided case dealing with common law contingency fees, the only one that we could find, and when I say we, the Law Society as well, was the Hedley Clinic case where Judge Cameron approved and found valid the late Attorney Peter Soller's 25% common law contingency fee agreement and he based his judgment on very favourable remarks made by Judge Stegmann in the Good Gold case, which
- 30 was a previous decision, and to the best of my knowledge that case was

never overruled until De La Guerre which was I think late 2013. So if you wanted to make a *bona fide* genuine effort to say what is the law, that was the only case you could find and that was the law.

MS SUMMERS: Devi sorry, your question again about the 30% and the 25% (inaudible) as I understand it is what you asked, but I don't think we got an answer.

MS GOVENDER: Okay. The law said...

MS SUMMERS: The Act said up to 25% or double your fee and not more.

10 MR BOBROFF: That is correct.

MS GOVENDER: That's the law.

MR BOBROFF: That is correct.

MS GOVENDER: Clear cut. You were charging more than that.

MR BOBROFF: Not clear cut at all. The Constitutional Court itself said that it was unclear and there was confusion in the profession as to whether the Act excluded agreements outside the Act. That was the Law Society's view for twelve years.

20 MS GOVENDER: But agreements outside the Act, the Act still supersedes those agreements.

MR BOBROFF: I disagree because the Act didn't say that you cannot have a common law agreement, and we have in many areas of the law an Act which sets out a way of doing things. Not the only way, but a way of doing things, but there is another way and that's the common law way. And the common law which is the law which is not made by parliament develops and in terms of our constitution it develops parallel to the law given by parliament. And it was the view of the Law Society – and remember, 24 councillors, 23 excluding myself – the Cape Law Society and interestingly – sorry, the Free State Law Society, and interestingly as at 2011 eventually the
30 last colonial outpost, the Cape, in 2011 in writing and I've given it to your

producer, announced that they have now decided to fall in line with the Law Society and the law of the provinces and accept that it should be a straight common law percentage situation. So we've got the Free State, we've got the Law Society of the Northern Provinces governing 60% of attorneys, we've got the Natal Law Society, not officially, but effectively permitting it and the Cape eventually comes into line in 2011.

- MS GOVENDER: All wrong.
- MR BOBROFF: All proved wrong.
- MS GOVENDER: Thank you.
- 10 MR BOBROFF: But all acting in good faith.
- MS GOVENDER: It doesn't matter. All wrong.
- MR BOBROFF: Well...
- MS GOVENDER: And you're the bigwigs. I want to still get this here.
- MR BOBROFF: No, I want to say...
- MS GOVENDER: Because what we are forgetting – one minute Ronald. You know what we're forgetting?
- MR BOBROFF: Yes?
- MS GOVENDER: We're forgetting those victims who walk
- 20 into offices like yours across the country coming for help. These are not necessarily lawyers themselves
- MR BOBROFF: Sure.
- MS GOVENDER: These are people who don't understand the law, which as we very well know is extremely complicated. If the lawyers themselves think it is complicated who are we?
- MR BOBROFF: Yes.
- MS GOVENDER: I am talking about those individuals...
- MR BOBROFF: Of course.
- MS GOVENDER: ...who may not necessarily know better.
- 30 MR BOBROFF: Exactly. I accept that.

- MS GOVENDER: They lost.
- MR BOBROFF: They didn't. In fact they gained. They gained access to justice. They gained access to superb legal representation. They gained access to superb experts and advocates.
- MS GOVENDER: Above the legal rates.
- MR BOBROFF: They got outstanding – in most cases the fees were 25%. In most cases.
- MS GOVENDER: They will all come crawling out after this programme airs. They will all go and find their agreements and come to Carte
10 Blanche...
- MR BOBROFF: In most cases...
- MS GOVENDER: ...and other media organisations and say look, this is what Ronald charged me too.
- MR BOBROFF: It wouldn't be Ronald. It would be 14000 attorneys throughout the country. It would be all the attorneys...
- MS GOVENDER: Everything. The worms are going to come out.
- MR BOBROFF: But as I am saying, effectively the norm was 25%. Those clients got a very good service at no risk to themselves.
- 20 MS GOVENDER: And less money in their pockets.
- MR BOBROFF: Not necessarily, because if they charge an hourly rate as Mr Millar, and I have Mr Millar's agreement here and I hope you will refer to it...
- MS GOVENDER: Mr Millar?
- MR BOBROFF: Mr Millar who represents all clients that have sued us, every single one...
- MS SUMMERS: Let's come back.
- MS GOVENDER: ...and his agreement is a common law contingency fee agreement in which he deliberately says I am not limiting it.
- 30 MS GOVENDER: Right.

- MS SUMMERS: We're going to come to that.
- MS GOVENDER: I'm going to come to that.
- MR BOBROFF: He doesn't limit it. He doesn't limit it. That's fine.
- MS GOVENDER: Right. What is the story with Cora? Is Cora wrong?
- MR BOBROFF: About what?
- MS GOVENDER: She made a protected disclosure about the overreaching issues specifically. She is also alleging fraud.
- 10 MR BOBROFF: We have no...
- MS GOVENDER: Why is she doing this?
- MR BOBROFF: We have no knowledge of what Cora said. We do know that Cora was in trouble with the Receiver of Revenue in the sense that she had not declared her earnings from this practice before we took her on as a fulltime employee. She was an independent contractor and our bookkeeper insisted month after month that Cora produced a tax invoice. When she refused to do so, Natasha, the bookkeeper, said she'd have no choice but to refer it to SARS because we were not prepared to get ourselves into trouble because Cora was not producing tax invoices.
- 20 MS GOVENDER: Sour grapes?
- MR BOBROFF: I can't say what it was. I do know, and we have recordings of her discussions with me where she comes to me and she says, Mr Bobroff, I want to open my heart to you. I have been communicating with Mr Beamish. I was trained in counterespionage in the South African Navy and I was sent to Russia to train in this as well.
- MS GOVENDER: She said that to you?
- MR BOBROFF: She said this and I have a recording.
- MS GOVENDER: You've got a recording of that?
- MR BOBROFF: I'll make it available to you. And she says I
- 30 have been corresponding with him. I want to show you the whatsapps and

emails that he sent me and I have gained his confidence.

MS GOVENDER: She's a secret agent?

MR BOBROFF: That's what she says.

MS GOVENDER: Do you believe that?

MR BOBROFF: I don't know what to believe about this woman.

MS GOVENDER: She's a spy? That's what she told you?

MR BOBROFF: That's what she told me.

MS GOVENDER: Now she also says that she was kidnapped
10 by Paul O'Sullivan.

MR BOBROFF: Well you know I think she has serious psychological challenges. Mr O'Sullivan interviewed her in this office. He recorded the interview. I have seen the verbatim transcript of that interview. I have spoken to the staff that observed Ms Van Der Merwe leaving these offices with Mr O'Sullivan and his assistant. The receptionist says she was smiling and said I'll be back in about half an hour or an hour. I'm just going with Mr O'Sullivan. The security guard at the gate said she accompanied him quite willingly and certainly, if she was kidnapped, you know why didn't she scream and shout and run away? I mean it's bizarre.

20 MS GOVENDER: You accused her of theft.

MR BOBROFF: She did steal, yes.

MS GOVENDER: Have you laid charges against her?

MR BOBROFF: Our attorneys are busy preparing charges,
yes.

MS GOVENDER: What are you waiting for?

MR BOBROFF: It's not that simple because she didn't steal a physical, tangible object. She downloaded electronic information from our server illegally and unlawfully and made it available to Beamish and Discovery and it's probably industrial espionage. It's a very complicated area of the law
30 but criminal charges will be laid.

MS GOVENDER: So what's the story with Tony Beamish and you? He seems to have gotten under your skin or what is this?

MR BOBROFF: Well you know it's interesting. The first time I clapped eyes upon Mr Beamish was in the Pretoria High Court in January 2014 and I said to him, who are you? He said oh, I'm a reporter. Okay. Why are you here? Well, I'm covering it. It's an interesting case. I said would you like to join us for lunch? Because I like the media. I'm a media person. And he did join us for lunch and our legal team and he made some very derogatory remarks about South Africa and said my God, he's just come back from
10 France and this has turned into a third world cesspool and look at the potholes, etcetera, etcetera. And how wonderful it is, he lives in the south of France in a villa. So I said to him well if it's so great over there why are you back here? And he said they brought me back. I said who brought you back? And he just laughed and from his actions thereafter it's quite clear to me he was brought back obviously by Discovery who had been waging a vendetta against me and he has written so far I think 30 articles attacking this practice for its use of common law contingency fees, notwithstanding that he has been given mandates of at least 20 other attorneys...

MS GOVENDER: Why don't you sue him?

20 MR BOBROFF: We will in due course.

MS GOVENDER: Why are you waiting?

MR BOBROFF: These things take time and he is giving us more ammunition every day.

MS GOVENDER: Now...

MR BOBROFF: For example, he has been given the pleadings in the case against Fluxmans Attorneys where Mr Millar is attacking their common law contingency mandate, exactly the same as ours. He has been given the pleadings in the case against Mr Michael Friedman, a prominent plaintiff attorney in Durban. He has been given the pleadings in
30 various other matters. He has been given the fees mandates of other

attorneys. Why is it only us that he is singles out? The reason is simple. He is following his mandate from Discovery.

MS GOVENDER: Do you have proof that he is a proxy of Discovery? We spoke about it on the phone and you said you do have proof.

MR BOBROFF: We have exchanges of emails between him and Discovery's Mr Jeffrey Katz and...

MS GOVENDER: Will you give me those emails?

MR BOBROFF: I will do so.

MS GOVENDER: Will you?

10 MR BOBROFF: I will do so. And of course the emails are always copied between Mr Jeffrey Katz, Mr Anthony Millar and Mr Tony Beamish. Why?

MS GOVENDER: Please yes, I would appreciate that.

MR BOBROFF: I'm saying why.

MS GOVENDER: So you called him a one-eyed freak.

MR BOBROFF: I haven't called him a one-eyed freak.

MS GOVENDER: Because if you did that's a bit mean because he was born like that.

20 MR BOBROFF: I have never called him – I have never insulted him. As it happens my own son has only vision in one eye.

MS GOVENDER: Did you never call him that?

MR BOBROFF: Never.

MS GOVENDER: He has made it up?

MR BOBROFF: I never called him that.

MS GOVENDER: Okay. Now going on to Discovery as promised, but in a nutshell.

MR BOBROFF: It needs a big nutshell.

MS GOVENDER: You've got to fit it. We have to, because I need to make this simple for people to understand.

30 MR BOBROFF: *Ja.*

- MS GOVENDER: Right. What did Discovery do wrong?
- MR BOBROFF: Discovery fails to comply with the Medical Schemes Act. It does not disclose to its member when they join or at any time thereafter that the only medical care that Discovery provides its three and a half million members is that arising out of illness. In terms of its Rule 15.6, never disclosed in its Annexure "C" of exclusions it specifically excludes any medical care required due to what it calls the act of another. That if you require medical care for any cause other than illness and due to the act of another, you have got to...
- 10 MS GOVENDER: Ronald I can't use that.
- MR BOBROFF: Too long?
- MS GOVENDER: Too long.
- MR BOBROFF: Shorter?
- MS GOVENDER: Right. If I am a member of Discover...
- MR BOBROFF: Okay.
- MS GOVENDER: ...and I meet with an accident...
- MR BOBROFF: Okay.
- MS GOVENDER: ...I go and claim from the RAF and I get some money. What happens? What does Discovery want...
- 20 MR BOBROFF: Let's do it the other way round.
- MS GOVENDER: Sure.
- MR BOBROFF: Just ask me again what did Discovery do wrong.
- MS GOVENDER: What is Discovery doing wrong?
- MR BOBROFF: Discovery fails to disclose to its members that it does not provide medical care as of right for anything other than illness. It never provide its rules to its members, as the Act requires it to do and the first time members find out about these exclusions is when they or their dependants are in hospital fighting for their lives when they are forced to sign
- 30 an unlawful undertaking that they will claim against the wrongdoer, the Road

Accident Fund, the police, the owner of the dog that bit you, etcetera, etcetera, at their own risk and cost and pay Discovery back every cent.

MS GOVENDER: Discovery says they don't force their clients to do that.

MR BOBROFF: Well, if you look at the annexures to our document, "A shocking discovery for Discovery members", you will see affidavits by people that Discovery has done this to and I have many more.

MS GOVENDER: So logically speaking, if I am a Discovery member, which I am not, so I have an accident, I claim from the Road Accident Fund. Let's say they pay me out R10 million. Let's say.

MR BOBROFF: Yes.

MS GOVENDER: So then I remember, oh yes, but I need to give Discovery some of their money back because they paid for me while I was in hospital.

MR BOBROFF: Well, you don't remember that because you were never told either by your brokers...

MS GOVENDER: No, not now.

MR BOBROFF: Either by their brokers or by...

MS GOVENDER: It's in the small print.

20 MR BOBROFF: It's in the small print which they never give to their members, ever.

MS GOVENDER: All right. So that's the problem that you have with Discovery, but the argument is...

MR BOBROFF: Well, it goes further Devi.

MS GOVENDER: Right.

MR BOBROFF: It goes further, that I believe it's immoral that you approach a person such as Ms (inaudible) where her husband is fighting for his life from a brain injury in a road accident and you say to her, as they do to many of their members, if you don't sign this undertaking that you will claim against the Road Accident Fund, at your own risk and cost and pay

30

us back every cent, we will immediately terminate your treatment now. We will claim for the cost of treatment already rendered. Four days in ICU, that's half a million, and we'll terminate your membership. What choice does that give the member? It's blackmail. It's never disclosed in terms of the Medical Schemes Act and it's totally illegal and it's immoral.

MS GOVENDER: Discovery though is saying that you're taking such a big – just stay with me on this.

MR BOBROFF: Sure.

MS GOVENDER: You're taking such a big piece of the pie,
10 there's nothing left for them in the end to cover their own expenses.

MR BOBROFF: Well, it's interesting they say that, because every one of their panel of attorneys, and I have given your producer a copy of their panel of attorneys, I have copies of their mandates. They charge exactly on the same basis as we, a straight percentage, 25% - 30%. But of course it goes further. For the privilege of getting on Discovery's panel you get to tout. You get to say to Discovery members, because they send their panel of attorneys a list every week and they then phone the member and say, I am on Discovery's panel Devi. If you don't do your claim via me you will not get medical care and you need to come and sign up with me.

20 Now the *quid pro quo* for getting onto the panel is you've got to agree that you will force your client, Discovery's member, to agree to refund Discovery and in return for that in addition you get 12% - 15% secret backhand commission.

MS GOVENDER: These are massive allegations you are making.

MR BOBROFF: And I have made them publicly and Discovery has never denied it.

MS GOVENDER: And do you have proof?

MR BOBROFF: I have proof.

30 MS GOVENDER: It's not that you sound hesitant about the

proof...

MR BOBROFF: I have proof.

MS GOVENDER: ...I think you're worried that I'm going to ask you for it.

MR BOBROFF: I have proof. I will not make it available at this stage.

MS GOVENDER: Okay.

MR BOBROFF: I invite Discovery to sue me.

MS GOVENDER: Right.

10 MR BOBROFF: And I invite you to ask Mr Katz of Discovery to produce copies of the agreements between him – or not between – between Discovery Medical Aid and their panel of attorneys.

MS GOVENDER: Do they have a vendetta against you?

MR BOBROFF: Mr Katz has a vendetta, and the reason he has a vendetta is very clear. You see in a letter he wrote to the Law Society, in April or February 2011, after the Law Society had circulated to its members, not mentioning Discovery by name, but simply saying look, when your clients are confronted with a demand by a medical aid to claim and reimburse, please advise them according to whether the medical aid has complied with
20 the Medical Schemes Act and were their members made aware of these terms and conditions. That's all the circular said.

Mr Katz sent an hysterical letter to the Law Society in which he said since the circular was sent out to attorneys, Discovery's recoveries from members had dropped to 25% of what it had been, and we know it's in the region of R300 million a year. We have proof that Mr Katz's income package is linked as a percentage to what is duressed, squeezed, screwed, out of Road Accident Victims.

MS GOVENDER: Now you...

MR BOBROFF: And I caused them hassles because it's
30 cost them a lot of money. Now I didn't do this deliberately. I have no war with

Discovery, because Devi, if you come to me as a client and you say look Ronald, the medical aid are demanding that I reimburse them, it makes no difference to me whether I pay you the money or I pay the medical aid the money in respect of past medical expenses recovered. It's no difference to me, but I am obliged as an attorney to advise you of your rights, and that's what we did with regard...

MS GOVENDER: But you are also obliged to pay the money over to the medical aid.

MR BOBROFF: No, no, I have – it's not my money. It's your
10 money.

MS GOVENDER: Ja, but you have to tell me, look Devi, we've got to...

MR BOBROFF: No. No, no, you've got to if the medical scheme complied with the Act. Did they disclose this? Did you get the rules? Etcetera, etcetera.

MS SUMMERS: Sorry, just cut here, because we're getting so detailed that we're never going to get to use this.

MS GOVENDER: Okay. The point still remains is that you complained...

20 MS SUMMERS: Devi sorry, because we're not running.

MS GOVENDER: Ja.

MS SUMMERS: We just also need to pick up that all those things were put into the (inaudible).

(Speaking aside).

MS SUMMERS: What's going on?

(Speaking aside).

MS SUMMERS: Devi, should we do the pickups now while we break or do you want to...

MS GOVENDER: Ja, we've got very little left.

30 MR BOBROFF: Okay. Whilst we are just waiting for

(inaudible) to find the packet – did you find the packet?

UNIDENTIFIED SPEAKER: No, they are not in here.

MR BOBROFF: Okay. Can I stand up? Can I stand up?

UNIDENTIFIED SPEAKER: *Ja*, sure.

(Speaking aside)

MS GOVENDER: *Ja*.

MR BOBROFF: You know guys, what is really important...

MS SUMMERS: Just hold on a second Ronald. I just want to get (inaudible).

10 MS GOVENDER: I'll stand up for two seconds.

MS SUMMERS: Oh sorry. *Ja*, okay.

We've got to keep this Discovery thing briefer and more simple.

MR BOBROFF: No, it's the most important part of this whole interview, with respect. Because that's....

MS SUMMERS: Ronald, you said you've got proof that Tony Beamish is paid by Discovery.

MR BOBROFF: No, I don't have proof who is paying him.

MS SUMMERS: So you have no proof. Because he is absolutely adamant that he is working on his own bat and the whole point is about the overreaching.

MR BOBROFF: Well, ask yourself this.

MS SUMMERS: Okay.

MR BOBROFF: Ask yourself this. He knows. I've sent him the same stuff I've sent you. Okay. He knows that the vast majority of attorneys use common law contingency fee agreements.

MS SUMMERS: Okay, but we're talking to you.

MR BOBROFF: Well hang on. He knows that Discovery's panel of attorneys use common law contingency fee agreements. Same as us.

30 MS SUMMERS: Well, I don't understand that.

- MR BOBROFF: He knows that Fluxmans have been sued.
- MS SUMMERS: It is another story.
- MS GOVENDER: It's another story.
- MR BOBROFF: No, no. No, but hang on. He knows Fluxmans have been sued. He knows that it's across the board that attorneys were using these agreements. Why is he only attacking us? Why does he never mention in his articles? Why was he not in the Court during the hearing of the case against Fluxmans? Why has he not published...
- 10 MS SUMMERS: Aren't you deflecting Ronald, because the allegations are against you.
- MR BOBROFF: No, but he's seeking me out. He is targeting me out because Discovery has got this vendetta against me and me alone.
- MS GOVENDER: But Ronald if we park all of that aside...
- MR BOBROFF: *Ja.*
- MS GOVENDER: We just park that aside.
- MR BOBROFF: *Ja.*
- MS GOVENDER: In the end the Constitutional Court did prove that you and everybody else were all wrong.
- 20 MR BOBROFF: No, I accept that. I accept that. Of course I accept that.
- MS GOVENDER: So you know when you start going into vendettas and somebody...
- MR BOBROFF: No, but I – no but hang on. (inaudible – speaking together. I am being singled out. I am being singled out.
- UNIDENTIFIED SPEAKER: Okay. Clap.
- MS GOVENDER: I am just saying it doesn't matter. When we talk about vendettas it deflects from the actual issue. The Constitutional Court proved that you and others were wrong, but I am here talking to you.
- 30 MR BOBROFF: I accept that.

- MS GOVENDER: So it doesn't matter who has what against you. The Court found that. The highest Court in the land...
- MR BOBROFF: Yes, but why are you not speaking to other attorneys as well?
- MS GOVENDER: I am looking at you now.
- MR BOBROFF: But what about all the other 14000 attorneys?
- MS GOVENDER: I'll get to all of them.
- MR BOBROFF: Not all of them.
- 10 MS GOVENDER: I'm looking at you now.
- MR BOBROFF: Just get to three or four, including one that advertises on Carte Blanche. Why only this practice? I'm serious. Why only this practice?
- MS GOVENDER: Are you saying that other attorney firms are bigger than yours?
- MR BOBROFF: Absolutely. Mr De Broglio...
- MS GOVENDER: So if the Road Accident Fund in ten years paid your firm a billion rand have they paid those guys more in ten years?
- MR BOBROFF: Well, in the Court papers, and I'll make
20 copies available to you, on affidavit Adams & Adams and other firms deposed as to how many files they've got. Ten times more files than we have. Levin Van Zyl on their website, if you go to it, say they have at any given time 6000 claims.
- MS GOVENDER: I know but I'm talking numbers now. Or maybe I should just get that from the Road Accident Fund. Maybe they should tell me who else they paid out in the same ten years.
- MR BOBROFF: We are small players.
- MS GOVENDER: You say you're a small player.
- MR BOBROFF: Our numbers are small.
- 30 MS GOVENDER: Okay. Let's just go back again to this

Discovery issue.

MR BOBROFF: *Ja.*

MS GOVENDER: You took Discovery to the Council for Medical Schemes.

MR BOBROFF: No, my client, Mr Belon did. Mark Bellon.

MS GOVENDER: So on your client's behalf.

MR BOBROFF: Exactly.

MS GOVENDER: Right. Okay. And the Council dismissed it.

MR BOBROFF: Well, consider the fairness of this. Mr
10 Bellon lodges a complaint. He says that he was never informed of Discovery's rules and conditions. He was never given a detailed summary of their rules and he describes how he and his wife were duressed into signing Discovery's undertaking described by Adv Wim Trengove as illegal and unlawful. What does the Registrar, Dr (inaudible) do? He gives them an extension of time for them to get a senior advocate to make the submission. He doesn't tell us. He never sends us this big submission and kangaroo court style based on that submission, he finds against Mr Bellon.

MS GOVENDER: The Council is an industry body, the Council for Medical Schemes.

20 MR BOBROFF: That is so.

MS GOVENDER: Just like the Law Society.

MR BOBROFF: Not quite the same.

MS GOVENDER: Similar.

MR BOBROFF: Not really but it's supposed to protect members of medial schemes.

MS GOVENDER: That's what you...

MR BOBROFF: It's doing a lousy job.

MS GOVENDER: And the Law Society is also supposed to protect...

30 MR BOBROFF: Well, it's a statutory regulatory body. It's

different.

MS GOVENDER: *Ja.* So in fact the Law Society in a sense has more to answer for because they are a statutory body.

MR BOBROFF: To answer for? For what?

MS GOVENDER: Well, for this mess.

MR BOBROFF: It's not a mess. They acted in good faith.

MS GOVENDER: Of course it's a mess.

MR BOBROFF: No. They acted in good faith.

MS GOVENDER: Right.

10 MR BOBROFF: And I have every confidence...

MS SUMMERS: Sorry, Ronald. This one. This one.

MS GOVENDER: The traction issue?

MS SUMMERS: *Ja*, that one, because that's the whole point.

MS GOVENDER: You see, I'm listening to you about the Discovery story

MR BOBROFF: *Ja.*

MS GOVENDER: And I'm hearing what you are saying.

MR BOBROFF: *Ja.*

20 MS GOVENDER: But it seems that when you went to Court about it and mentioned you had no traction they dismissed the Discovery issue as well.

MR BOBROFF: It wasn't dismissed.

MS GOVENDER: What was it?

MR BOBROFF: You see the Court focussed on the actual factual issue. The factual issue is, is common law – were the common law contingency agreements valid or not. That was the central issue.

MS GOVENDER: Mmm.

MR BOBROFF: And the Court focussed on that. So whilst
30 Discovery was important to show the motive, it didn't go directly to the issue to

be decided by the Court.

MS GOVENDER: Do you see my position now in terms of Discovery? I need to focus on the common law contingency issue.

MR BOBROFF: No, I accept that, but you need to focus also on how is it that Mr Millar has got clients of ours, only clients of ours via Discovery or its agents...

MS GOVENDER: That light just went. Can we just leave it?

UNIDENTIFIED SPEAKER: Ja, it's one of the room lights.

MR BOBROFF: Ja. And we are the only attorneys targeted
10 by Mr Beamish.

MS GOVENDER: It doesn't matter, because Mr Millar's clients who were your former clients are not benefiting from Mr Millar. They've got more money in their pockets.

MR BOBROFF: Well, we're not quite sure what Mr Millar is going to be charging, because he is using a common law contingency fee agreement now. Now after 2014.

MS GOVENDER: On what percentage?

MR BOBROFF: This is the thing. You see he doesn't
(inaudible). He says he charges R3 000.00 an hour and he specifically says in
20 paragraph – in paragraph – oh gosh, I don't have the whole thing here but I'll give it to you. He specifically says I am not limiting my fee in relation to the amounts obtained. I think I have emailed your producer...

MS GOVENDER: So I'll have to find him charging more than that then I can sit in front of him and ask him these questions too.

MR BOBROFF: Well, we have files – we have files where he charged up to 80% of the actual amounts recovered.

MS GOVENDER: Will you give me those files?

MR BOBROFF: I will indeed.

MS GOVENDER: Okay. So let's just quickly move on here.
30 What happens now Ronald? Because here is the big question. You were

wrong but there are definitely other cases where you charged 30%.

MR BOBROFF: Or 25.

MS GOVENDER: No, I'm looking at the 30%.

MR BOBROFF: Yes, okay.

MS GOVENDER: Right.

MR BOBROFF: Yes.

MS GOVENDER: So are you going to take responsibility for that and pay back the money?

MR BOBROFF: We have done so already.

10 MS GOVENDER: Give me the cases.

MR BOBROFF: It's the case of De La Guerre and De Pontes.

MS GOVENDER: No, no, I mean apart from them. These weren't the only two.

MR BOBROFF: You must remember that what we started doing way back already in 2009, and many other attorneys as well, was to adopt a fallback position and in fact our common law agreement specifically says – it say in the event of any Court or professional body ever deciding or ruling that this agreement is invalid, because it was a new development, then
20 in that event we will charge in terms of such other agreement as you may have signed. So 2009 onwards, it might have been earlier, all our clients were requested to sign agreements in terms of the Contingency Fees Act, so save for De Pontes and De La Guerre, there may be one or two others, I can't remember, every client that Mr Millar has got his hands on, signed an agreement in terms of the Act and those agreements are valid and we will prepare a time bill, double it up, and I am confident we will get to the fee that we charged as a common law percentage.

MS GOVENDER: Right. Let's just go through this very quickly.

30 MR BOBROFF: Sure.

- MS GOVENDER: There are other cases where you've charged 30% which is against the Act. Right.
- MR BOBROFF: Yes.
- MS GOVENDER: I'm not even asking (inaudible)...
- MR BOBROFF: (inaudible).
- MS GOVENDER: There are.
- MR BOBROFF: And we have no – we don't think we did anything wrong.
- MS GOVENDER: So you owe some people money.
- 10 MR BOBROFF: You can't say that either because the fact that we charged 30% in a given matter doesn't mean that we'll not be able to justify that or more on a straight time basis. It depends on what the settlement was.
- MS GOVENDER: It can't be more than 25%.
- MR BOBROFF: No, it can be, because if our agreement was a simple time charge matter, not in terms of the Act, (inaudible) "X" thousand rand an hour and I do an account in respect of time spent, I may get to more than I actually charged you.
- MS GOVENDER: Maybe I don't get any of this. I am just
20 saying that in the De Pontes – in the De La Guerre case, especially De La Guerre, because that was the landmark case.
- MR BOBROFF: Yes.
- MS GOVENDER: If the Constitutional Court said you were wrong...
- MR BOBROFF: Yes.
- MS GOVENDER: ...I would go back and see where else I was wrong and not wait for those people to contact me. I would make it right, because that is the right thing to do.
- MR BOBROFF: No but that would be commercially absurd.
30 It's the same thing as saying that government has legitimately in terms of the

Exchange Control Act levied people who take their money out of the country 10%. Mr Shuttleworth has changed that and he is in the Constitutional Court I think even today to say that that levy was wrong. Now are you saying that government must contact every South African going back to the thirties, who took their money out of the country and paid a 10% levy or whatever it was, and say oh, we want to pay you back?

MS GOVENDER: They should.

MR BOBROFF: Well, no, I disagree with you.

MS GOVENDER: Why? Because it's too much work for
10 government.

MR BOBROFF: No, because what they did was...

MS GOVENDER: They were wrong.

MR BOBROFF: They did what was – you know you can't have an Alice in Wonderland situation.

MS GOVENDER: These are people who need the money. These are Road Accident Fund victims.

MR BOBROFF: You can't have an Alice in Wonderland situation to say well, you know we'll wave a magic wand and officially comes (inaudible). It's conceded by the Constitutional Court...

20 MS GOVENDER: Don't you feel bad Ronald?

MR BOBROFF: Not at all. I feel proud of what we've done.

MS GOVENDER: That you took money from people and you were wrong about it.

MR BOBROFF: No.

MS GOVENDER: And we know now that you were wrong.

MR BOBROFF: The Constitutional Court has...

MS GOVENDER: This is the precedent. The precedent has been set. You know that.

MR BOBROFF: Going forward

30 MS GOVENDER: Not going forward. These are people who

lost money going back to when you first started this.

MR BOBROFF: No they didn't. They didn't lose money. They got a very good legal service from us and thousands of other attorneys at no cost and risk to themselves in accordance with what the law was understood to be at the time in accordance with the rulings of their professional bodies. They did nothing wrong. We do not believe for a moment...

MS GOVENDER: And this would have continued if it were not for the De La Guerre matter. You would have continued.

10 MR BOBROFF: Everyone would have continued and it would have become...

MS GOVENDER: And that's not right.

MR BOBROFF: I disagree with you. I think it was a great service to the public and I am confident that government will amend the Contingency Fees Act to make provision for a straight and workable percentage, because the Act at the moment is unintelligible and Judge Wallace...

MS GOVENDER: The Constitutional Court has made it quite clear now.

20 MR BOBROFF: No, it's not clear. No, it's not clear.

MS GOVENDER: It's still not clear?

MR BOBROFF: No, no, the Court has said that you can't have an agreement outside the Act. It hasn't clarified the meaning of the Act. There's lots of holes in the Act. There's lots of gaps in the Act and in fact Judge Wallace and other commentators speak on this.

MS GOVENDER: Do you sleep peacefully at night.

MR BOBROFF: Very peacefully.

MS GOVENDER: And you think that this is all okay.

MR BOBROFF: Absolutely. I am proud of what we've done
30 and I am proud of what the Law Society has done and I think every plaintiff

attorney who has gone on risk, spent his or her money, carried these cases for years, given clients a good service, given a good result, I think we've done a wonderful job. I'm proud of it, yes.

MS GOVENDER: And you're not going to go back and find those cases?

MR BOBROFF: Definitely not. Definitely not.

MS GOVENDER: And you don't feel that you should from a moral point of view?

MR BOBROFF: I can't begin to understand why you'd say
10 that.

MS GOVENDER: I can't begin to understand why you insist that you won't.

MR BOBROFF: Well, that's where we differ and we can agree to disagree.

MS GOVENDER: (inaudible) That's it.

MS SUMMERS: All right. Just cut there. The only thing is that the explanation on Discovery is way, way, way too long.

MS GOVENDER: How can we find a shorter explanation for this?

MR BOBROFF: You can look at my document and do a
20 précis.

MS GOVENDER: No, I need one from you. Your explanation. You've done this on radio before. Ronald you can do it. Give me a simple, simple one that somebody's granny can understand.

MR BOBROFF: Okay. Okay. Let's try it again.

MS GOVENDER: Ja.

MS SUMMERS: Okay. If you can.

MS GOVENDER: What's the problem with Discovery?

MR BOBROFF: If I was a Discovery broker and I came to
30 you and I said Devi, it's a great medical aid. You get cheap gym contracts and

airfares and I don't know what else you get, but I must warn you that the only medical care that you and your dependants are entitled to as of right in terms of Discovery's rules, is if you get sick. If you require medical care from any cause deemed to be the act of another – your neighbour's dog bites you, the police assault you, you fall in a sidewalk hole, you are not entitled in terms of Discovery's Rule 15.6 and Annexure "C", to any benefits whatsoever, and Discovery can and do regularly enforce that. That's wrong. That's illegal in terms of the Medical Schemes Act because they do not make the rules available to members and the brokers don't make that disclosure. In terms of

10 the Act it is also a criminal offence. Section 66(2).

Gems, the second largest medical scheme in South Africa, publicly announced in 2012 it was removing those rules, similar rules, from its rules because it was unfair. Medical scheme members pay a premium for medical care and they should not be forced at their own risk and cost to litigate. Discovery still does that. It's immoral. It's illegal. It's wrong, and that's why, through me exposing that, not by way of any malevolence or ill will towards Discovery, purely in defence of my clients, Mr and Ms Bellon, Discovery have declared war on me, and they have written to all our clients seeking to incite them and Mr Graham is one of those clients.

20 MS GOVENDER: Are you happy that the Minister of Finance has now insisted that South Africans pay more in the Fuel Levy as a contribution to the Road Accident Fund? It means it could be very good business.

MR BOBROFF: No, it's not going to be good business because the system is about to change, but I think what is good, it will mean hopefully that attorneys such as us will be able to recover for their clients the damages which the Courts may have ordered in terms of settlements, because at the moment it's taking six to nine months to get money out of the Road Accident Fund. So I think to that end it's going to be a good thing. I

30 believe that the system should be privatised as it used to be. The profit motive

creates efficiency. The Road Accident Fund is an incompetent bungling bureaucracy.

UNIDENTIFIED SPEAKER: No stop.

MR BOBROFF: You think maybe I satisfied them.

UNIDENTIFIED SPEAKER: *Ja*, I think that's (inaudible) was quite positive.

END OF RECORDNG