

	addition to the order of Mothle J and regardless of whether the order by Mothle J requires such inspection to be undertaken.
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14. THE LAW SOCIETY'S DISCIPLINARY POWERS

- 14.1 The relevant facts concerning the Law Society's disciplinary duties and powers bear repeating.
- 14.2 Complaints submitted to the Law Society are referred to and dealt with by the Law Society's disciplinary department. The complaints are investigated by legal officials in the employ of the said disciplinary department.
- 14.3 If the legal official is of the view that a *prima facie* case of unprofessional conduct has been made out, the complaint will be referred to the attorney and he will be requested to furnish the Law Society with his comments thereon. The attorney's comments, if any, are then referred to the complainant who is afforded an opportunity to reply thereto.
- 14.4 It is expected of an attorney against whom a complaint had been lodged to reply

to the compliant and he should do so properly and comprehensively. If an attorney fails to reply to the complaint or if he fails to address the pertinent aspects of the complaint, he does so at his own peril. An attorney's comments on a complaint need not be under oath and the Law Society cannot compel an attorney to place his version under oath.

14.5 The Law Society is not obliged to consider any further documentation or affidavits in addition to those referred to above. The Law Society does however have a discretion to do so. Where additional points are raised or additional facts submitted, the Law Society will normally accept the additional documents or affidavits. In those circumstances It will refer the additional documents or affidavits to the attorney or the complainant for purposes of their comments.

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

reply.

- 14.7 The legal official entrusted with the matter will refer the contents of the complaint, the attorney's reply and the complainant's reply thereto to a B committee of the Council for consideration and a recommendation as to whether charges should be formulated and the attorney concerned be called upon to answer thereto before a disciplinary committee, alternatively whether a discussion of the complaint should be arranged.
- 14.8 A disciplinary committee consists of senior members of the Law Society. Such committee is not a standing committee.
- 14.9 The disciplinary committee makes a finding on the available facts and evidence. In the event of a finding of guilty the committee imposes an appropriate sanction. The committee may also refer the matter to the Council in terms of the provisions of Rule 101 of the Law Society's Rules for purposes of considering an application to have the attorney suspended or to have his name struck from the roll of attorneys.
- 14.10 An attorney may take the findings of a disciplinary committee on appeal to the High Court both in respect of the finding and the sanction. A complainant who is

dissatisfied with a finding of a disciplinary committee may take the proceedings on review.

14.11 The B committee of the Council and a committee tasked with a discussion of the matter consist of practising members of the Law Society. The proceedings of these committees form part of the Law Society's investigation into the complaint.

14.12 At the conclusion of a committee's proceedings, the committee reports to the disciplinary department and furnishes it with its recommendations.

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

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

14.15 The Law Society's disciplinary department receives thousands of complaints annually. All these complaints are properly investigated. During the 2011-2012

period the Law Society received and investigated 8029 complaints. During the period 2012-2013 it received and investigated 6850 complaints and during the period 2013-2014, 7257 complaints.

14.16 During the first mentioned period the disciplinary department received 1 037 enquiries concerning its members, during the second period 1 199 enquiries and during the third period 1 849 enquiries. The Law Society received 751, 558 and 442 requests for legal assistance during the three respective periods.

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

Complaints	2011- 2012	2012- 2013	2013- 2014
Failure to give proper attention	1 212	1 127	1 049
Failure to account	168	116	156
Third party matters	833	580	396
Failure to comply with Rule 70	635	713	914
Overcharging	461	440	287
Fidelity fund certificates	8	16	7
Failure to pay accounts	336	279	251

Failure to reply to correspondence	314	287	227
Delay in payment of trust funds	267	237	260
Personal conduct	213	257	
Failure to pay subscription fees	422	258	351
Touting	18	12	31
Judges' complaints	62	39	24
Sequestration of attorneys' estates	11	6	6
Non payment of fines/costs	252	258	146
Holding out as attorneys	21	16	7
Ethical conduct	252	192	162

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

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

and 500 files.

14.20 Approximately 230 disciplinary committee enquiries are held each year. Eight disciplinary committees sit each week and each committee consists of three members who are members of the Law Society. An agenda bundle normally consists of approximately 300 pages. During the 2011-2012 period 203 disciplinary enquiries were held and 605 attorneys and 4 candidate attorneys appeared before disciplinary committees. During the 2012-2013 period 197 enquiries were held and 522 attorneys and 4 candidate attorneys appeared before committees. During the 2013-2014 period 178 disciplinary enquiries were held and 526 attorneys and 3 candidate attorneys appeared before the committees.

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

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

members of its Council and former members of its Council where necessary.

14.23 The Law Society will not be dictated to by either a complainant or an attorney. Complaints are dealt with in the normal course and in terms of the Law Society's Rules. The Law Society does not allow interference with its investigations and disciplinary enquiries.

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

14.25 The Grahams' complaint against the Bobroffs has been handled in accordance with these principles.

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

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

few of these Rules:

- 14.27.1 Rule 94.3: A complaint shall be in writing in the form of an affidavit with sufficient particulars of the conduct complained about and shall be lodged with the Secretary of the Law Society, provided that the head of the Law Society's disciplinary department may accept a complaint in any other form.
- 14.27.2 Rule 95.2.1: Where the Law Society is of the opinion that a *prima facie* case of unprofessional or dishonourable or unworthy conduct has been made out it may furnish the attorney with the particulars of the complaint and request him to furnish the Law Society with his explanation in answer to the complaint and the Law Society may require such explanation to be verified by affidavit.
- 14.27.3 Rule 96: During the course of the disciplinary enquiry the Law Society shall afford the attorney an opportunity of producing evidence relevant to the matter and of making such other relevant representations as he may wish.
- 14.27.4 Rule 97A.1: The disciplinary committee may at any stage prior to or

during the course of the disciplinary enquiry summon any person as a witness and interrogate or reinterrogate him, provided that the witness may be cross-examined by the attorney or his legal representative and that the attorney may only be examined if he has already testified in the enquiry or if a statement deposed to by him has been accepted as evidence.

14.27.5 Rule 97A.4: Evidence by way of affidavit of other document is admissible but the disciplinary committee is entitled to adjudicate the evidential value thereof by taking into consideration the fact that the evidence contained therein has not been tested in cross-examination.

14.27.6 Rule 100: Subject to the provisions of the Rules the person presiding at the disciplinary enquiry shall determine the procedure according to which the enquiry shall be conducted.

14.27.7 Rule 101: Where a disciplinary committee finds the attorney guilty of unprofessional, dishonourable or unworthy conduct the committee may, if it is of the view that the conduct of the attorney is such as to warrant an application by the Law Society for either the attorney's suspension or the striking of his name from the roll of attorneys, submit a written report on

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

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