

**RESPONSE TO THE INSPECTION REPORT INTO THE TRUST
ACCOUNT BOOKS AND RECORDS OF RONALD BOBROFF &
PARTNERS INC. (“RBP Inc.”) PREPARED BY THE LAW
SOCIETY OF THE NORTHERN PROVINCES (the “LSNP”)
AND DATED 27 JANUARY 2016**

Ad Paragraph 1.1

Correct.

Ad Paragraphs 3.1, 3.2, 3.3, 3.4, 3.5, 3.6 & 3.7

Correct.

Ad Paragraph 3.8.3

Although the WinLaw accounting programme removes the client ledger from the computer system when the account is archived, a paper copy of each subsidiary ledger was retained in RBP Inc.’s strong room. Unfortunately, the staff of RBP Inc. were unable to locate two of the files. A third file was offsite and could not be made available timeously to the inspectors.

Ad Paragraph 4.1

The trust surplus was transferred to the business account on the first business day after the month end, in line with normal protocols followed by the accounting staff of the RBP Inc.

Ad Paragraph 5.2.5

The final payment to the client was made 145 days after the capital award. It would appear from the Report that sixty days is the grace period normally given for these payments.

This client matter was dealt with by Ms. P. Farraj, senior associate attorney of RBP Inc., and her explanation for the delay is dealt with in Paragraph 5.2.4.

Ad Paragraphs 5.2.6 & 5.2.7

The wording of the letter signed by the client contains ‘standard wording’ (Schedule B8) similar to that used with all clients. Furthermore, the reference to “full and final” deals only with the damages received on behalf of the client up to the date of the letter. The final payment of R 40,170.90 was made to the client because the amount was correctly due to the client.

The response by RBP Inc. contains a typographical error – the fee reflected at Paragraph 1.4 of Schedule B10 of R 2,171,780.80 (inclusive of VAT) should have been reflected as R 2,101,871.83 (inclusive of VAT) (per page 6 of Schedule B6 and per Schedule B8). This explains the apparent difference of R 70,000.00 between the amount of R 572,262.17 paid to the client and the amount computed by the Report in Paragraph 5.2.7.

Ad Paragraph 5.4 to 5.8

The only beneficiary, if any, as a result of the delay in paying the AECI Medical Aid was the client.

Ad Paragraph 5.12

Any comparison between the fee charged by RBP Inc. and ‘party and party costs recovered’ is meaningless. The fee charged was based upon a ‘common law contingency fee agreement’ consistent with the various notices issued by the LSNP in terms of which the percentage fee charged would relate exclusively to the amount of damages recovered. This approach was again emphasized when the LSNP wrote to then Deputy Judge President Van der Merwe in October 2011 (a copy of the letter is attached hereto and marked as “Annexure 1”). This approach is amplified by two advisories from the LSNP (attached hereto and marked as “Annexure 2” and “Annexure 3”).

Ad Paragraph 6.6

It appears that in the case of this client, the final payment was not made timeously to the client. However, this was as a result of an error in the administration process of RBP Inc. and not due to any malicious intention of RBP Inc. The ultimate beneficiary of this error was the Fidelity Fund of the LSNP which received the interest received by the trust account on these funds.

Ad Paragraph 6.7

RBP Inc. has had long standing professional relationships with its experts and counsel. The various payment arrangements between RBP Inc. and its experts and counsel have been in place for many years. Never have any experts or counsel ever reported RBP Inc. to the LSNP or the Bar Council for late or non-payment of fees.

Ad Paragraph 7.7

The fee charged to the client was done before the publication in February 2013 of the High Court judgment in the De La Guerre matter referred to in the Report. It should also be noted that RBP Inc. subsequently appealed this judgement to the Constitutional Court, judgement in that case only being given in February 2014. Therefore, it is incorrect for the Report to state

that the directors of RBP Inc. knowingly charged the client a fee in terms of an 'invalid agreement'.

Ad Paragraph 7.8

Until the judgement issued by the Constitutional Court in February 2014 finally clarified the situation vis-à-vis 'common law contingency fee' agreements, RBP Inc. relied upon the various notices issued by the LSNP with respect to contingency fee matters. In terms of these notices there was no requirement to measure the hours spent on matters or to apply any parameter other than a straight percentage to the award received by the client (See "Annexure 2" and "Annexure 3" attached hereto).

Ad Paragraph 8.1.8

The Report correctly notes that the control file contained a detailed attorney and own client bill of costs in which RBP Inc.'s time based fees total R 855,989.23. When doubled up as is permissible in terms of the Contingency Fee Act, the amount billable to the client would increase to R 1,711,978.46. However, as the Contingency Fees Act limits the doubled-up fee to 25% of the capital award to the client, the client was correctly charged the lesser amount of R 1,502,091.80.

Ad Paragraph 8.1.16

The disbursement of R 17,316.00 is in respect of the cost of copies of bundles that were not recovered in the 'party and party' bill of costs, which were accordingly charged separately. Therefore, there was no duplication of the charge for bundles to the client's account. The rules of court require the plaintiff's attorney to prepare indexed and paginated bundles of all documents, in particular medico legal reports and medical records in respect of every expert the court, two copies for the defendants, a copy for the witness box, a copy for the attorneys file and for senior and junior counsel.

Ad Paragraph 8.2.8

The disbursement of R 7,236.00 is in respect of the cost of copies of bundles that were not recovered in the 'party and party' bill of costs, which were accordingly charged separately. Therefore, there was no duplication of the charge for bundles to the client's account. The rules of court require the plaintiff's attorney to prepare indexed and paginated bundles of all documents, in particular medico legal reports and medical records in respect of every expert the court, two copies for the defendants, a copy for the witness box, a copy for the attorneys file and for senior and junior counsel.

Ad Paragraph 8.3.14

The disbursement of R 9,030.00 is in respect of the cost of copies of bundles that were not recovered in the 'party and party' bill of costs, which were accordingly charged separately. Therefore, there was no duplication of the charge for bundles to the client's account. The rules of court require the plaintiff's attorney to prepare indexed and paginated bundles of all documents, in particular medico legal reports and medical records in respect of every expert the court, two copies for the defendants, a copy for the witness box, a copy for the attorneys file and for senior and junior counsel.

Ad Paragraph 8.3.17

The payments to Ms Glencross were charged to the client in error by one of the bookkeepers. After the staff of RBP Inc. identified the errors during the final reconciliation of the client's account, the amounts of R 13,500.00 and R 1,500.00 charged to the client during July and November 2013 respectively were reversed back to the client on 10 December 2013. Therefore, the client suffered no loss as a result of the error.

Ad Paragraph 9.2.7

A statement of account, while not dated by the signatory, was signed by the client's curator ad litem on the same day that the account was handed to the client and his wife (attached hereto and marked as "Annexure 5").

Ad Paragraph 9.3

This matter was finalised in 2008, falling into the September 2009 fiscal year of RBP Inc. In accordance with normal practice, the file was destroyed during early 2012, some eighteen months before the correspondence received from the LSNP in this regard. It is therefore patently incorrect of the Report to imply that the file was deliberately destroyed to that any enquiry by the LSNP.

Ad Paragraphs 9.2.9, 9.2.10, 9.2.11, 9.3.2 & 9.3.3

I am informed that whilst it was correct that Mr. D.R. Bobroff contacted the client and his wife to call at the offices in November 2011 it was to explain to the client that a bookkeeping error had been picked up by RBP Inc.'s auditors and that there was an additional amount due to him in respect of R 115,000.00 plus interest thereon totalling R 142,660.90. This is confirmed by the client's wife in an email to RBP Inc. dated 7 March 2014 (attached hereto and marked as "Annexure 6").

Ad Paragraphs 9.3.4. & 9.3.7

The error in respect of the amount of R 371,281.25 paid to “Mr. J. Kingsbury” is comprehensively dealt with in the affidavit deposed by RBP Inc.’s senior bookkeeper Mrs. Natascha da Costa on 4 December 2013 at paragraph 57 (attached hereto and marked as “Annexure 7”).

I am informed that the observation in the Report that the same bookkeeper had made a similar error on the account of another client (De la Guerre) is in fact correct. I am further informed that the bookkeeper in question was counselled by Mr. R. Bobroff and senior bookkeeper Mrs. da Costa to exercise greater care in her work and the standard procedures to be adopted in the debiting of fees and the payment to directors of drawings were reinforced with her.

The Income Tax affairs of RBP Inc. were the subject of an extensive audit by SARS between 2012 and 2015. After the conclusion of the audit SARS were satisfied that all amounts that should have been taxed were included in the taxable income of RBP Inc. Accordingly, SARS did not levy any ‘Understatement’ penalties on RBP Inc. for the failure to disclose taxable income to SARS.

Ad Paragraph 10.7

A reconciliation between Schedule J6 and Schedule J7 shows that a certain disbursement is not reflected on the Statement of Account to the client – MM Botha R 8,500.00. In addition, the Statement of Account to the client reflects a credit of R 6,500.00 being ‘By your travelling expenses’ that is not reflected in the Ledger. In fact, the Ledger shows payments to the client totalling R 1,800.00 for travel expenses of the client. The aggregate of these amounts is almost the difference between the fee per the Statement of Account and the fee per the Ledger (the difference being immaterial). Therefore, the fee charged per the Ledger is correct and the Income Tax and VAT obligations of RBP Inc. have not been understated as implied by the Report.

Ad Paragraph 11.6

The Report at Paragraph 11.2 reflects that RBP Inc. received R 6,956,220.72 from the RAF in settlement of the client’s claim against the RAF. Furthermore, the Report at Paragraph 11.3 reflects that the client received R 4,805,722.00 from RBP Inc. Further, at Paragraph 11.4 the Report records the disbursements to experts and counsel as R 323,997.50. In addition, sundry disbursements, bundles and disbursements (Items 3, 4 & 5 of Schedule L3) total R 36,700.32 are not included in the Report’s total of R 323,997.50 at Paragraph 11.4.

Summary	
Total received on behalf of client	R 6,956,220.72

Paid to client	(R 4,805,722.10)
Experts and counsel	(R 323,997.50)
Sundry disbursements	(R 36,700.32)
Balance available for fee to RBP Inc.	R 1,789,800.80
Fee charged by RBP Inc.	R 1,789,800.00

RBP Inc. included as Taxable Output in its VAT return for the month of March 2014 an amount of R 1,872,757.52, and paid over the VAT thereon of R 229,987.76 to SARS within the time legislated by SARS. Similarly, included in the November 2014 VAT return of RBP Inc. was a credit note in the amount of R 82,957.52 (VAT thereon of R 10,187.76) correctly reflecting the reduction of the fee received by RBP Inc. It is trite to state that RBP Inc. has met its obligations to SARS in full in respect of this matter.

It is clear that the Statement of Account was prepared before the finalisation of the matter and closure of the client's Ledger. This can be seen, for example, from the fact that the payment from Rontgen & Rontgen to RBP Inc. on behalf of the client of R 12,532.58 is not included in the Statement of Account. In point of fact, none of the entries on the Ledger after November 2014 are included in the Statement of Account. Therefore, the Report's allegation that the Statement of Account not agreeing with the accounting records (the client Ledger) represents a contravention of section 78(4) of the Act read together with Rule 68.1 is incorrect.

Ad Paragraph 11.9

The Report states that RBP Inc. overreached the client by an amount of R 58,612.97 – being the fee of R 1,872,757.52 less the fees per the bill of costs (Schedule L6) of R 1,814,144.65. The writer of the Report was aware that the final fee charged by RBP Inc. was R 1,789,800.00 (at Paragraph 11.6 of the Report). Accordingly, the fee charged by RBP Inc. did not exceed the fees per the bill of costs (Schedule L6) of R 1,814,144.65.

Ad Paragraph 11.10

The disbursement of R 10,830.00 is in respect of the cost of copies of bundles that were not recovered in the 'party and party' bill of costs, which were accordingly charged separately. Therefore, there was no duplication of the charge for bundles to the client's account. The rules of court require the plaintiff's attorney to prepare indexed and paginated bundles of all documents, in particular medico legal reports and medical records in respect of every expert the court, two copies for the defendants, a copy for the witness box, a copy for the attorneys file and for senior and junior counsel.

Ad Paragraph 12.2.5

The Report at Paragraph 12.2.3 reflects that RBP Inc. received R 826,253.77 from the RAF in settlement of the client's claim against the RAF. Furthermore, the Report at Paragraph 12.2.4 reflects that the client received R 516,787.73 from RBP Inc. Further, at Paragraph 12.2.8 the Report records the disbursements to experts and counsel as R 106,641.94. In addition, sundry disbursements, bundles and disbursements (Item 4 of Schedule N4) total R 11,990.03 are not included in the Report's total of R 106,641.94 at Paragraph 12.2.8.

Frothier, the client Ledger reflects total disbursements of R 21,499.39. This exceeds the amount reflected in the Statement of Account of R 11,990.03 (Item 4 of Schedule N4); a difference of R 9,509.36.

Summary	
Total received on behalf of client	R 826,253.77
Paid to client	(R 516,787.73)
Experts and counsel	(R 106,641.94)
Sundry disbursements per Statement of Account	(R 11,990.03)
Additional sundry disbursements per client Ledger	(R 9,509.36)
Balance available for fee to RBP Inc.	R 181,324.71
Fee charged by RBP Inc.	R 177,634.09

The difference of R 3,690.62 is not material.

Ad Paragraph 12.2.6

RBP Inc., due to an error by one of the bookkeeping staff, failed to charge the fee in this matter when the matter was first finalised. When the error was identified, the amount was immediately included as Taxable Output in its VAT return for the month of September 2014 and the VAT thereon paid over to SARS. It should further be noted that RBP Inc. prejudiced themselves by making this error. All interest earned on this uncharged fee was paid to the Law Society Fidelity Fund.

Ad Paragraph 12.3.9

The disbursement of R 14,400.00 is in respect of the cost of copies of bundles that were not recovered in the 'party and party' bill of costs, which were accordingly charged separately. Therefore, there was no duplication of the charge for bundles to the client's account. The rules of court require the plaintiff's attorney to prepare indexed and paginated bundles of all documents, in particular medico legal reports and medical records in respect of every expert the court, two copies for the defendants, a copy for the witness box, a copy for the attorneys file and for senior and junior counsel.

Ad Paragraph 12.5.7

Adv. Botha cannot be located, despite an intensive search for the advocate. There was never an intention not to pay the advocate in question. During the inspection by the LSNP, the LSNP inspectors were informed of the extensive steps taken by RBP Inc. to locate Adv. Botha.

Ad Paragraph 12.5.11

This client matter was exclusively handled by RBP Inc. associate attorney Ms. Gina Tognocchi who was no longer an employee of RBP Inc. at the time of the inspection by the LSNP. She was not contactable at the time of the inspection.

Ad Paragraph 13.6.13

On 12 February 2012 RBP Inc. raised a second invoice in this matter. This brought the total fee charged by RBP Inc. to the client to R 997,500.00 (inclusive of VAT). At the time, this represented 25% of the award received by the client – R 3,500,000.00 – plus VAT at 14%. These fees were in accordance with the fee agreement signed by the client on 28 September 2010 (Schedule T3). Accordingly, the Report is incorrect in stating that RBP Inc. had at the time contravened Rule 68.6.2.

After the costs were received from the defendant's attorneys on 5 August 2014, the account was finally reconciled. At this point RBP Inc. decided to reduce the fee previously charged to the client – thus a credit of R 126,745.77 was raised against the client Ledger – on the basis of advice received from the RBP Inc. associate attorney who dealt with the matter.

Ad Paragraph 13.6.14

When the bookkeepers of RBP Inc. realised that the amounts paid to Glencross in the amount of R 11,550.00 had been charged to the client Ledger and paid in error, the charges were reversed. The client suffered no financial loss as a result of the error.

Ad Paragraph 13.7.12

Again, when the bookkeepers of RBP Inc. realised that the amounts paid to Glencross in the amount of R 18,150.00 had been charged to the client Ledger and paid in error, the charges were reversed. The client suffered no financial loss as a result of the error.

Ad Paragraph 13.8.11

On 27 June 2014 RBP Inc. raised a second invoice in this matter. This brought the total fee charged by RBP Inc. to the client to R 1,652,810.06 (inclusive of VAT). At the time, this represented less than 25% of the award received by the client – R 5,836,494.07 – plus VAT at 14%. These fees were in accordance with the fee agreement signed by the client on 6 January 2010 (Schedule T18). Accordingly, the Report is incorrect in stating that RBP Inc. had at the time contravened Rule 68.6.2.

When the final reconciliation of the client Ledger was completed after the final cost had been received from the defendant, it was determined that the fees charged to date were in excess of those provided by the Contingency Fees Act, a credit note was passed to the client Ledger to correct the error. The client suffered no loss as a result of the initial error.

Ad Paragraph 14.8

This is dealt with in Mrs. da Costa's affidavit of on 4 December 2013 at paragraph 59 (attached hereto and marked as "Annexure 7"). The directors consulted with the then auditor of RBP Inc. – Andre van der Merwe – who gave his blessing to the scheme. RBP Inc. is now suing Van der Merwe for professional negligence as a result of his flawed advice. Ultimately, the only beneficiary of this practice was the Fidelity Fund of the LSNP which received all of the interest on the RBP Inc. trust account.

Ad Paragraph 14.12

The Income Tax affairs of RBP Inc. were the subject of an extensive audit by SARS between 2012 and 2015. After the conclusion of the audit SARS were satisfied that all amounts that should have been taxed were included in the taxable income of RBP Inc. Accordingly, SARS did not levy any 'Understatement' penalties on RBP Inc. for the failure to disclose taxable income to SARS.

Ad Paragraph 14.15

All transactions on the "Zunelle" accounts are reflected in the "business" accounts of RBP Inc. as with any other business investment of RBP Inc. The amounts in the "Zunelle" accounts were never included in the trust books of RBP Inc. and kept separate from the trust

monies at all times. Accordingly, SARS did not levy any ‘Understatement’ penalties on RBP Inc. for the failure to disclose taxable income to SARS.

Ad Paragraph 14.16

Interest earned on the “Zunelle” accounts was reflected as income in the AFS of RBP Inc. and in its tax returns for 2010, 2011, 2012, 2013 and 2014. Accordingly, SARS did not levy any ‘Understatement’ penalties on RBP Inc. for the failure to disclose taxable income to SARS.

RBP Inc. has had long standing professional relationships with its experts and counsel. The various payment arrangements between RBP Inc. and its experts and counsel have been in place for many years. Never have any experts or counsel ever reported RBP Inc. to the LSNP or the Bar Council for late or non-payment of fees.

Ad Paragraph 14.17

The directors consulted with the then auditor of RBP Inc. – Andre van der Merwe – who gave his blessing to the scheme. RBP Inc. is now suing Van der Merwe for professional negligence as a result of his flawed advice. In addition, as funds were transferred from the “11521 Suspense” account the VAT was paid over to SARS – therefore the fiscus suffered no losses as a result of the use of the “11521 Suspense” account.

Ad Paragraph 14.18

The Report fails to deal with the simple accounting in respect of copies made in client matters. So as to enable clients to be aware of the number of copies and the cost thereof which is to be recovered from the defendants in various matters, a separate item appears as a debit on the client accounts with a narration "Copies as per bill of costs". Further on the credit side of the accounts an item appears with the narrative “Costs recovered”. The amounts reflected as credits on the client accounts would include and would balance out the debit in respect of those copies, the costs of which would have been recovered from the defendants in the matters in question.

Ad Paragraph 14.19

The allegations contained in the Report are dealt with in detail above.

Ad Paragraph 16.1

The directors consulted with the then auditor of RBP Inc. – Andre van der Merwe – who gave his blessing to the scheme. RBP Inc. is now suing Van der Merwe for professional negligence as a result of his flawed advice. In addition, as funds were transferred from the “11521

Suspense” account the VAT was paid over to SARS – therefore the fiscus suffered no losses as a result of the use of the “11521 Suspense” account.

Ad Paragraph 16.11

The RBP Inc. trust account was in surplus at the time of the LSNP inspection in January 2016. Since the end of March 2016, the RBP Inc. trust account has been administered by a curator appointed by the LSNP. In the curator’s November 2016 report to the LSNP, the curator reported that the trust bank account was reconciled to the list of trust creditors. In addition, the curator reported that no claims had been brought against the Fidelity Fund by any clients of RBP Inc. Therefore, the assertion in the Report that the RBP Inc. trust account constituted a risk to the Fidelity Fund is incorrect.

FISCHER & ASSOCIATES

REGISTERED ACCOUNTANTS AND AUDITORS

18 August 2017