

*Copy*

**CONFIDENTIAL**

**THE LAW SOCIETY OF THE NORTHERN PROVINCES**

**REPORT**

**VISIT AT THE OFFICES OF**

**RONALD BOBROFF AND PARTNERS INCORPORATED**

**JOHANNESBURG**

**2015**

27 January 2016

The Director

The Law Society of the Northern Provinces

**VISIT AT THE OFFICE OF RONALD BOBROFF AND PARTNERS INCORPORATED**

We refer to the instruction to visit the above-mentioned firm with the view to perform an inspection of the firm's accounting records in terms of Rule 70 (1) of Rules of the Law Society.

We visited the firm on 15 October 2015 and was received by the Directors of the firm as well as their legal representative, Mr D Scholtz of Webber Wentzel. During the meeting on 15 October 2015, we informed the Directors of our mandate and provided them with our signed mandate. We made numerous attendances at the firm over the period 19 October 2015 up until 30 November 2015. The firm's offices situated at 37 Ashford Road, Rosebank, Johannesburg.

**1. NATURE AND STRUCTURE OF PRACTICE**

1.1 According to the records of the Law Society of the Northern Provinces, the firm was established on 1 October 1975 with the current Directors being, Mr R Bobroff, Mr S.D Bezuidenhout and Mr D.R Bobroff. We enquired whether Mr A Berlowitz was a director of the firm and Mr R Bobroff advised that there was an intention to amalgamate Mr Berlowitz's practice with the firm however the plan did not materialise. Mr R Bobroff further advised that an instruction was provided to the firm's former auditor, Mr A Van Der Merwe to amend the firm's statutory documents with the Companies and Intellectual Property Commission (CIPC) in order to include Mr Berlowitz as a Director however Mr Van Der Merwe failed to amend the company's registration documents with the Companies and Intellectual Property Commission (CIPC) once it was decided that Mr Berlowitz would not be joining the firm. According to Mr R Bobroff the firm's company registration documents have been amended in early 2015 to reflect the resignation of Mr Berlowitz.

We obtained a company report which confirms that the current directors of the firm are Mr R Bobroff, Mr D.R Bobroff and Mr S.B Bezuidenhout. The report indicates that Mr Berlowitz was appointed as a Director of the firm on 26 November 2013 and resigned on the same date. The report further indicates that the resignation of Mr Berlowitz was only amended on CIPC records on 8 May 2015.

A copy of the company report is attached hereto as Schedule A.

- 1.2 Mr R Bobroff informed us that the firm specialises in personal injury, medical malpractice and medico-legal matters. Mr R Bobroff further advised that the majority of the firm's clients were obtained by way of referrals.
- 1.3 The firm has a 3 Directors, 3 professional assistants, 3 candidate attorneys, 7 secretaries, 4 administrative staff and 2 bookkeepers in its employee. In addition the firm also utilises the services of an external bookkeeper.
- 1.4 According to the Directors, clients are attended to by the fee earners (directors, professional assistants and candidate attorneys) of the firm. Mr R Bobroff advised that an office manual is available to the staff of the firm which prescribes the procedures to be followed in respect of claims from the Road Accident Fund.
- 1.5 Mr R Bobroff advised that fee agreements are documented and signed by all clients of the firm. Mr Bobroff further advised that the fee agreement is usually signed by the client at the first meeting and that the client is provided with a copy of the signed agreement for their records.
- 1.6 Upon my enquiry Mr R Bobroff advised that following the Constitutional Court's judgement, the firm has only entered into contingency fee agreements in terms of the Contingency Fees Act. Mr R Bobroff also informed us that the professional staff are required maintain manual time sheets in respect of each file they work on. The time sheets are then used to calculate the firm's normal fee to determine the fee limit as prescribed in the Contingency Fees Act.

## 2. TERMS OF REFERENCE AND SCOPE OF INSPECTION

- 2.1 My inspection was directed at the following:

- 2.1.1 An overview of the accounting and supporting records, systems and procedures with a view to establish the general state thereof and the identification of and commentary on any aspects considered irregular and/or unsatisfactory.
- 2.1.2 The determination of the trust position of the firm at specific and/or selected dates and reporting on any trust deficiencies or other similar irregularities.
- 2.1.3 The identification of any other circumstances or irregularities which manifested themselves during the course of the inspection, which in my view required comment.
- 2.1.4 The identification of and reporting on any contravention of the Attorneys Act 53 of 1979 ("the Act") and/or of the Rules of the Law Society of the Northern Provinces ("the Rules"), with specific reference to the accounting records and administration of trust monies.

2.2 Limited substantive audit procedures on the documentation and accounting records presented to us.

### **3. ACCOUNTING AND SUPPORTING RECORDS, SYSTEMS AND PROCEDURES**

#### **3.1 *Introduction***

The firm's accounting records are maintained on Winlaw by the firm's bookkeeper, Ms N De Costa on a daily basis. A list of trust creditors is extracted monthly and compared to the trust funds on hand. The list of trust creditors is printed and filed monthly. In addition the firm engages the services of a part-time external bookkeeper, Ms C Rodel who reviews the control files, statement of account, trust ledger accounts to ensure that trust ledger and statement of account is correct as well as to ensure that all experts and counsel are paid.

The accounting records were written up and balanced up until 30 October 2015.

#### **3.2 *Banking accounts***

3.2.1 Separate trust and business banking accounts are held. The firm previously held trust and business bank accounts with Standard Bank, however Mr R Bobroff advised that the firm had moved their trust and business bank accounts to Nedbank due to poor service received from Standard Bank.

We inspected the bank statements of the trust account held with Standard Bank and noted that the firm had transferred the credit balance available in the account to the firm's trust bank account held at Nedbank on 30 June 2015. The trust bank account held at Standard Bank was closed on 9 July 2015.

3.2.2 The firm had also opened a trust bank account at First National Bank which would be used by the firm primarily for their medical negligence matters according to Mr R Bobroff.

3.2.2 The trust banking accounts are described and identified as follows:

**First National Bank**

Commercial Attorney's Trust Account

Ronald Bobroff & Partners

37 Ashford Road

Rosebank

2196

Account number: 62540 205 376

Branch: Rosebank

A bank statement of the firm's trust banking account dated 31 July 2015 reflected a credit balance of R611, 874.61.

**Standard Bank**

Account number: 001995049

Branch: Rosebank

A bank statement of the firm's trust banking account dated 28 February 2015 reflected a credit balance of R16, 184, 601.66.

### **Nedbank**

Account number: 1080501924

Branch: Rosebank

A bank statement of the firm's trust banking account dated 31 July 2015 reflected a credit balance of R22, 397.170.15

3.2.3 The firm held a number of S78 (2A) investment accounts which were held with Investec Private Bank and Nedbank.

### **3.3 *Receipt books***

A pre-printed, pre-numbered receipts book is utilised by the firm. The firm's bookkeeper prepares a receipt for all deposits in the firm's trust bank accounts. The receipt is prepared in duplicate. The original receipt is placed in the trust creditors control file and the duplicate receipt remains in the receipt book.

The majority of deposits received in the trust bank accounts are in respect of claims from the Road Accident Fund.

The receipt records the date that the monies were received as well as the amount and the trust creditor account number.

According to Mr R Bobroff the firm does not receive any cash payments from clients.

### **3.4 *Trust cash book***

3.4.1 The trust cash book is prepared on Winlaw by the firm's bookkeeper, Ms De Costa

3.4.3 Bank reconciliations are performed daily by Ms De Costa.

### **3.5 *Payments***

3.5.1 The majority of payments from the firm either from the business or trust bank account are effected via cheques.

3.5.2 All three directors are authorised signatories. A trust cheque can be signed by any two directors or by Mr R Bobroff alone.

3.5.3 According to Mr R Bobroff the firm requests the bank to perform electronic transfers to trust creditors in the event that payment exceeds an amount of R500, 000.00.

3.5.4 A cheque requisition is prepared in respect of all payments. The firm utilises pre-printed, pre-numbered cheque requisitions and has separate requisitions for the trust and business bank accounts. The cheque requisitions are prepared by the secretaries. The secretaries attach the supporting documents to the cheque requisitions and hand them over to the bookkeeper for authorisation. The bookkeeper reviews the supporting documents and authorises the requisition. The bookkeeper then prepares the cheque and provides the Directors with the requisition, supporting documents and the cheque for authorisation and signature. A copy of the cheque requisition is then placed in the trust creditors control file.

3.5.5 The experts and counsel utilised by the firm are paid by way of a business cheque. Mr R Bobroff explained that the firm has varying payment arrangements with the various experts and counsel instructed by the firm. Mr Bobroff explained that in certain instances experts and counsel are paid a deposit and the balance is paid after the party and party costs are recovered and in other instances the experts and counsel require full payment upon completion of their instruction.

Actual payments made to experts are recorded as a debit entry to the trust creditor's accounts in the business accounting records. Amounts owing to experts and counsel are recorded as debit entry to the trust creditor's account in the business accounting records and would usually be described in the ledger as "due to...."

We were advised that once the firm has received the party and party costs and finalised the client's statement of account, payment is made towards the outstanding accounts of experts and counsel. A letter is then sent to the relevant experts informing them that the matter has been finalised and proof of payment is provided.

3.5.6 We inspected the bank returned trust cheques for the period 1 October 2013 up until 31 March 2014 and noted that all cheques were issued to a designated payee and that all cheques were stamped, "non – transferable".

3.6 *Client ledger accounts*

- 3.6.1 The creditor's ledger is maintained on the Winlaw accounting system by Ms De Costa the firm's bookkeeper.
- 3.6.2 The trust creditor ledger accounts are updated from cashbook which is processed on the Winlaw accounting system.

3.7 *Fees journal and transfer procedure*

- 3.7.1 Each fee earner has a separate fee book which is updated by Ms N De Costa. The fee earners inform Ms De Costa of the fees to be transferred in a particular matter and Ms De Costa updates the fee book. An invoice is then raised on Winlaw based on the fees recorded in the fee books.
- 3.7.2 The Winlaw system then prepares a surplus report of all monies to be transferred in respect of fees and disbursements from the trust bank account to the business bank account. The surplus report is generated by the system based on amounts due to the firm provided that the client has a sufficient credit balance in the trust accounting records.

The surplus report reflects each individual trust creditor account which will be debited in respect of a fee transfer. The fee transfer was previously done by way of cheque deposit in the firm's business bank account however the firm now requests the bank to perform an electronic transfer from their trust bank account to the business bank account.

3.8 *Retention of trust accounting records*

- 3.8.1 According to Mr Bobroff the trust accounting records which are maintained on Winlaw and previously on Lawplan are retained for a period of five years. Mr Bobroff informed me that the client files are retained for a period of 3 years from the date that a final statement of account is provided to the client.
- 3.8.2 A control file exists for all finalised matters. The control file contains the fee agreement, the final and interim statement of accounts, the bill of costs, the original receipts, the cheque requisitions, the ledger as well as the invoices and statements from the experts

and counsel. In addition the file also contains the proof of payments made to the experts, counsel as well as the client. Once the matter is finalised a control sheet is completed by the attorney and the bookkeepers to confirm that file is ready to be archived.

3.8.3 During our inspection we requested the following control files:

- Ms A Reid

Ms N De Costa advised that the control file was destroyed as it was old. Ms De Costa provided us with a copy of the Lawplan ledger account for Ms Reid. The ledger account provided was not complete as it did not contain the transactions relating to the account for the period subsequent to 31 May 2011. Ms De Costa advised that the period after May 2011 would have been captured on Winlaw however the account was archived on the system and thus the ledger was not available.

A copy of the Lawplan ledger is attached hereto as Schedule V1.

- Mr S Kramer

Ms De Costa advised that the control file was destroyed as it was an old file. Ms De Costa provided us with a copy of the Lawplan ledger account for Mr Kramer for the period 12 June 2008 up until 25 May 2011. The ledger account provided was not complete as it did not contain the transactions relating to the account for the period subsequent to 25 May 2011. Ms De Costa advised that the period after May 2011 would have been captured on Winlaw however the account was archived on the system and thus the ledger was not available.

A copy of the Lawplan ledger is attached hereto as Schedule V2.

- Y Naicker

Ms De Costa advised that the file was not available as it was in the possession of Ms Cathy Rodel. This file was not returned to the firm's office during the period that we visited the firm.

The ledger accounts of Ms A Reid and Mr Kramer indicate that there would have been a significant amount of transactions subsequent to May 2011 for which the firm was unable to provide a ledger. It is thus clear that the firm has contravened Rule 68.4 by failing to retain the accounting records for at least five years.

During a meeting with the Directors on 26 January 2016, Mr Reddy queried the retention of records considering that if an account is archived on Winlaw it is no longer available and thus the firm would have to place reliance on hard copies. The issue however would be that the hard copy of the ledger account is placed in the control file which is only retained for three (3) years.

Mr R Bobroff stated that a hard copy of all ledger accounts are retained separately from the control files and that these are retained for a period of five (5) years. In our experience however this did not appear to be case as mentioned above regarding the ledger for Ms Reid and Mr Kramer.

#### 4. TRUST POSITION

4.1 I inspected the list of the trust creditors and compared the total to the bank balances per the bank reconciliations on the following dates:

	31/01/2015	30/09/2015
<b>Trust Creditors</b>		
Trust creditors per Trial Balance	R17,548,779.47	R18,111,716.41
<b>Trust Assets</b>		
Section S78 (1) Accounts	R16,547,344.87	R17,247,620.08
S78 (2A) Accounts	R1,347,202.97	R1,126,243.86
<b>Trust Surplus / (Deficit)</b>	<b>R345,768.37</b>	<b>R262,147.53</b>

#### 5. COMPLAINT BY MR A MILLAR ON BEHALF OF ADV. J.J BITTER

5.1 The Law Society received a complaint against the firm from Mr A Millar on behalf of his client, Adv. Justin John Bitter, the court appointed curator to Mr Anthony De Pontes on 2 April 2013.

5.2 A copy of an application launched on 28 March 2013 in the South Gauteng High Court against Ronald Bobroff & Partners was attached to the complaint and serves as the basis of the complaint. The following allegations are made against the firm:

- 5.1.1 The firm failed to give proper attention to affairs of its client and failed to timeously pay trust monies due to the client;
- 5.1.2 The firm failed to provide its client with a statement of account;
- 5.1.3 The firm failed to exercise the skill and care required of a reasonable attorney by failing to institute action in the correct forum so as to avoid unnecessary costs to the client.

A copy of Mr Millars complaint is attached hereto as Schedule B1.

5.2 We inspected the control file of Mr Anthony De Pontes and noted the following:

- 5.2.1 The fee earner attending to the file was Ms P Farraj;
- 5.2.2 A percentage contingency fee agreement was entered into between the firm and Mr De Pontes. The agreement is signed by Mr A De Pontes we presume (the agreement does not list whom the signatories are) as well as two witnesses. In addition the agreement contains a finger- print at the bottom of all three pages of the agreement. The fee agreement does not state the date on which the agreement was signed by the client, it merely states, "signed at Johannesburg on this the 06 day of..."

In terms of the percentage contingency fee agreement the firm is entitled to a fee amounting to thirty percent (30%) of the amount recovered on behalf of Mr De Pontes

A copy of the percentage contingency fee agreement is attached hereto as Schedule B2.

- 5.2.3 In addition to the percentage contingency fee agreement an attorney and own client fee agreement was signed by Mr De Pontes on 6 September 2007. In terms of this agreement, the firm is entitled to a fee amounting to R1, 800.00 per hour exclusive of VAT in respect of any work done on the client's behalf.

It appears that the attorney and own client fee agreement is entered into between the firm and the client to cater for paragraph 4 of the percentage contingency fee agreement which states the following:

*"In the event of:*

- 4.1 Your terminating our mandate at any time for any reasons; or*
- 4.2 At your instance any Court or professional body or any other authorised person or body not recognising this percentage contingency fee agreement;*
- 4.3 Your conducting yourself in such a manner with respect to our handling of your claim as to render it untenable or impossible for us to reasonably carry on representing you. Then and in that event, we shall have the option of electing to have fees calculated in accordance with our Attorney and client fee mandate/(s) signed by you in terms of which are fees are based on a rate per hour in terms of time spent"*

A copy of the signed attorney and own client fee agreement is attached hereto as Schedule B3.

5.2.4 The control file contained a final statement of account however it was not dated nor signed.

A copy of the statement of account is attached hereto as Schedule B4

We enquired as to the reasons for the statement of account not being signed via a letter dated 30 October 2015. According to the response received, Ms Farraj states that Mr and Mrs De Pontes were requested on numerous occasions to bring Mr A De Pontes into the offices to sign the statement of account. According to Ms Farraj, Mrs De Pontes wanted to send her daughter to the offices to sign the statement of account however they (the firm) would not allow her to sign the statement of account on behalf of Mr A De Pontes.

A copy of the relevant portion of the response to our letter is attached hereto as Schedule B5.

5.2.5 The ledger reveals that the following payments were received by the firm on behalf of Mr De Pontes:

Date	Description	Amount
11/01/2011	Capital received from the R.A.F	R 6,145,824.05
19/08/2011	Taxed party and party costs received from the R.A.F	R 260,468.54
<b>Total</b>		<b>R 6,406,707.59</b>

The ledger reflects that the following payments were made to Mr De Pontes:

Date	Description	Amount
2/12/2010	A De Pontes – Advance	R 50,000.00
25/01/2011	A De Pontes – Interim	R 2,450,000.00
30/03/2011	A De Pontes – Final	R 572,262.17
11/01/2012	A De Pontes – Final	R 40,170.90

A copy of the trust ledger is attached hereto as Schedule B6.

To summarise, Mr De Pontes was paid according to the following time-frame in relation to the receipt of monies from the Road Accident Fund:

- Mr De Pontes received an amount of R50,000.00 more than one month prior to the receipt of the capital award from the Road Accident Fund;
- Mr De Pontes received an interim payment in the amount of R2,450,000.00 fourteen (14) days after the receipt of the capital award from the Road Accident Fund;
- Mr De Pontes received a further payment of R572,262.17, seventy eight (78) days after receipt of the capital award from the Road Accident Fund;
- Mr De Pontes received a final payment in the amount of R40, 170.90, one hundred and fourty five days after the receipt of the party and costs from the Road Accident Fund.

We queried the reason for the delay in effecting final payment to the client in the amount of R40, 190.00. We were advised that after Ms Farraj had received instructions to pay the medical aid, the firm had effected a payment in the amount of R971, 690.05 to Karl Els Attorneys in respect of the amount due to

AECI medical aid and thereafter effected payment to the client which included interest accrued on monies invested on the client's behalf.

The explanation provided still does not explain why the final payment was made to Mr De Pontes more than three months after payment had been made to Karl Els Attorneys in respect of the medical costs due to AECI medical aid.

It is clear that there was a substantial delay in effecting the final payment in the amount of R40, 170.90 to Mr A De Pontes. We are thus of the opinion that the firm has contravened Rule 68.8 by failing to pay a client an amount due within a reasonable time.

5.2.6 On 30 March 2011 a letter was sent to Mr A De Pontes advising him that the payment in the amount of R572, 262.17 was in full and final settlement of his claim. It is uncertain why the client was advised that he was settled in full when there was an additional payment in the amount of R40, 170.90 made to him on 11 January 2012.

A copy of the letter dated 30 March 2011 is attached hereto as Schedule B8

We made an enquiry regarding the reason for Mr De Pontes being advised that the payment in the amount of R572, 262.17 was in full and final settlement of his claim via a letter to the directors of the firm dated 26 November 2015.

A copy of our letter is attached hereto as Schedule B9 (refer to par.1.4)

We received a written response to our enquiry which stated that the amount of R572, 262.17 was the residue from the capital amount of R6, 145,824.05 after deducting fees in the amount of R2, 171,871.80, the previous payments to Mr De Pontes in the amount of R50, 000.00 and R2, 450,000.00 and an amount of R971, 690.05 which was earmarked to pay AECI medical aid.

A copy of the response to our letter dated 26 November 2015 is attached hereto as Schedule B10 (refer to the par 1.4)

5.2.7 According to the response received from the firm, the residue that would have been available from the capital after deducting the fees inclusive of VAT, the previous payments to Mr De Pontes as well as the amount payable to AECI medical aid, would amount to R502, 262.20 and not R572,262.17 as stated. Furthermore the response received from the firm did not address the query which we had raised.

We are of the opinion that it was unusual that the client was advised via the letter dated 30 March 2011, that the amount of R572, 262.17 would be paid to him in full and final settlement of his claim despite that the fact that the firm had not even received the party and party costs from the Road Accident Fund at that stage.

The inference drawn from the wording of the letter sent by the firm to Mr De Pontes on 30 March 2011 was that there was no intention to make further payments to Mr De Pontes.

5.3 The following disbursements as per the statement of account were vouched to supporting documents and we noted the date on which the experts and counsel were paid by inspecting the bank stamped deposit slips, bank returned cheques of statements from the relevant expert/counsel:

Payee	Description	Amount	Date paid	Notes
Adv. Motala	Counsel	R750.00		
Dr G Read	Orthopaedic surgeon	R27,930.00	5/10/2011	5.3.1
Matissonn, Scott Tobias and Partners Inc.	Radiologist	R5,264.00	5/10/2011	
IM Ledwaba	Occupational Therapist	R15,000.00	5/10/2011	5.3.2
Dr Hurwitz		R4,000.00	Query	
MM Botha	Counselling Psychiatrist	R17,000.00	5/10/2011	
Friedland Hart Attorneys	Correspondent Attorney	R8,825.81	5/10/2011	
Dr L Fine	Psychiatrist	R13,680.00	5/10/2011	
Dr Rikhotso	Urologist	R6,969.00	4/4/2011	5.3.3
Bev Van Zyl	Neuropsychiatrist	R8,500.00	19/08/2011 & 04/04/2011	

Dr Lewer – Allen	Neurosurgeon	R21,945.00	10/11/2010 & 5/10/2011	5.3.4
Bradley Mendelowitz		R21,500.00	28/04/2011 & 5/10/2011	
Ivan Kramer	Actuary	R15,162.00	5/10/2011	
Adv. Justin Erasmus	Counsel	R30,780.00	16/02/2011	
Dawie Scholtz	Cost consultant	R12,502.01	3/10/2011	

5.3.1 Dr Read's invoice dated, 28/01/2011 was for an amount of R35,910.00 however he was paid an amount of R27,930.00 as an amount of R7,980 was taxed off by the taxing master;

5.3.2 We inspected a deposit slip which reflected proof of payment in the amount of R11, 100 only. We requested proof of payment in respect of the balance and was provided with a copy of an e-mail from Ms Ledwaba to Mr Dirk Kroes (Bookkeeper at RBP) confirming she had received payment in full towards her invoices amounting to R15, 000.00

5.3.3. The control file contained an invoice dated 30 October 2009 for an amount of R1, 000.00 as well as statement dated 4 February 20011 for a total amount of R4, 484.50. The deposit slip on file confirmed that Dr Rikhotsa was paid R4, 484.50. We requested proof of payment as well as further invoices from Dr Rikhotsa in respect of the balance in the amount of R2, 484.50 however this was not available and we were advised that the firm's bookkeeper, Mr Kroes was unable to contact Dr Rikhotsa to retrieve the required information.

5.3.4 Dr Lewer – Allen's account dated 31 August 2010 is for a total amount of R21, 945.00 yet he was paid R6, 270.00 on 10/11/2010 and R10, 972.00 on 5 October 2011 according to the deposit slips contained in the control file. We requested proof of payment in respect of the balance payable to Dr Lewer – Allen however we were advised that the payment was made via cheque (cheque number 121 765) however the cheque was destroyed as it was, "too old". We were however provided with a copy of an e-mail dated 7 December 2015 sent from Dr Lewer- Allen's office confirming that the account in respect of Mr De Pontes had been paid in full.

As can be seen in the table above, a large portion of the disbursements is only paid following the receipt of the taxed party and party costs from the Road Accident Fund. Mr R Bobroff explained that the firm has payment arrangements with some of the experts and counsel whereby they are only paid upon receipt of the taxed party and party costs and upon finalisation of the client's final account. In addition Mr R Bobroff explained that in certain instances the experts and counsel accept the amount allowed by the taxing master as full and final settlement of their account. Mr Bobroff explained that this was usually done to assist the client.

- 5.4 Advocate Justin Bitter refers to a delay in the payment of the amount due to AECL medical aid by the firm as per paragraph 37 and 38 of his founding affidavit. Advocate Bitter describes that the firm had paid an amount of R971, 690.05 to Karl Els Attorneys on behalf of their client, AECL medical aid on 3 October 2011 despite receiving the capital award from the Road Accident Fund some nine months prior to payment.
- 5.5 We inspected the trust ledger account and noted that the firm did in fact effect payment in the amount of R971, 690.05 to Karl Els Attorneys on 3 October 2011.
- 5.6 The Law Society's Disciplinary Department queried the reason for the delay in payment to the medical aid via a letter to Mr R Bobroff dated 10 July 2013. Ms P Farraj responded to the query via a letter dated 16 August 2013 (see paragraph 1.3) and states that Mr De Pontes had instructed her not to pay the medical aid until such time as he reverted as he was querying the amount due to the medical aid. Ms Farraj further states that an amount of R971, 690.05 was paid to Karl Els Attorneys on 3 October 2011 in respect of the medical expenses disbursed by AECL medical aid following the instructions received from Mr De Pontes.  
A copy of Mrs Farraj's letter is attached hereto as Schedule B11.
- 5.7 Ms Farraj also mentions that an amount of R830, 460.62 invested in a S78 (2A) investment account held with Investec Bank and was earmarked to settle the amount due to the medical aid.  
A copy of Mrs Farraj's letter is attached hereto as Schedule B11.
- 5.8 We inspected the bank statement of the S78 (2A) investment account held at Investec Bank and noted that an amount of R830, 460.62 was deposited into the account on 28 June 2011. The bank statements further reflect that an amount of R838, 252.54 was

transferred back into the firm's trust bank account and was utilised to effect payment in the amount R971, 690.05 to Karl Els Attorneys on 3 October 2011 as reflected in the trust ledger account. The statement of account on file correctly reflects the interest earned on the account, in the amount of R7, 790.92.

A copy of the investment bank statement s is attached hereto as Schedule B12.

5.9 We inspected the firm's fee agreement which was signed by Mr De Pontes. In terms of paragraph 10 of the fee agreement, Mr De Pontes authorised the firm to invest funds on his behalf in a trust savings or other interest bearing trust account with a banking institution.

A copy of the mandate is attached hereto as Schedule B2.

5.10 The statement of account reflects a fee in the amount of R1, 843,747.20 which amounts to thirty percent of the capital award received from the Road Accident Fund. Value Added Tax (V.A.T) was levied on the fee and amounted to R258, 124.60. The fee charged by the firm was in terms of the percentage contingency fee agreement signed by the client which entitled the firm to a fee which is calculated as being 30% plus V.A.T of any monies recovered by the firm.

5.11 Adv. Bitter's application to have the common law contingency fee agreement entered into between Mr De Pontes and the firm to be declared invalid, void and of no force or effect was successful and the firm was ordered to pay into applicant's attorneys trust account the amount of R2, 101,871.80 (being the fee charged by the firm) pending agreement on or settlement of the firm's bill of costs. The ledger reflects that an amount of R2, 101,871.80 was paid into the trust account of Norman Berger and Partner Incorporated on 29 April 2014.

5.12 In Adv. Bitter's founding affidavit (par. 31 and 32) he states that the total amount of costs recovered in Mr De Pontes case was a sum of R260,468.54 of which an amount of R83,169.47 were in respect of the firm's fees. Adv. Bitter further states that the fee actually charged by the firm in the amount of R2, 101,871.80 which amounts to more than twenty five times the party and party costs recovered.

A copy of the founding affidavit is included as part of Schedule B1 which is attached hereto.

5.13 In Ms Farraj's letter addressed to the Law Society's Disciplinary Department on 16 August 2013, Ms Farraj states that the fee charged by the firm was based on a

common law contingency fee agreement which was approved and endorsed by the Law Society of the Northern Provinces since 2002. Ms Farraj further states that the amount of R83, 169.47 represents the fees portion of the party and party bill which was based according to the applicable tariffs at the time and is irrelevant to the fee charged by the firm.

A copy of the letter is attached hereto as Schedule B11.

## 6. REFERRAL FROM JUDGE WEINER J

6.1 The copy of the judgement handed down in the South Gauteng High Court, Case no. 12/3663 in the matter between Ursula Yvonne Fourie and Ronald Bobroff and Partners Incorporated was referred to the Law Society.

In this matter Ms Fourie had lodged a claim against her former attorney of record, Ronald Bobroff and Partners Incorporated for damages allegedly suffered as a result of an alleged under settlement of her as well as her son's claim against the Road Accident Fund.

The relevance of the judgement in this matter to the Law Society is contained in paragraph 95 of the Honourable Judge Weiner's judgement which states that Ms Farraj could not explain why the hours and days charged for in the attorneys and client bill were substantially higher than those reflected in the party and party bill of costs with the inference being that the attorney and own client bill was manipulated in order to obtain a higher fee from Ms Fourie.

A copy of the judgement is attached hereto as Schedule C1.

6.2 We inspected the control file of Ms UY Fourie and noted that she had signed the following fee agreements:

6.2.1 A "percentage contingency fee agreement" was signed on 3 August 2005. In terms of the agreement the firm is entitled to a fee amounting to 25% plus VAT of any monies recovered on behalf of the client;

A copy of the agreement is attached hereto as Schedule C2.

6.2.2 A "no win – no fee" mandate was signed with on 3 August 2005. In terms of the fee agreement, the firm is entitled to a fee amounting to R1, 500.00 per hour with respect to any work done by professional staff and R100.00 per hour in

respect of non-professional services. According to the fee agreement the hourly rate would increase by 15% per annum compounded at the end of each completed period of 12 months from the date of instruction.

A copy of the agreement is attached hereto as Schedule C3.

The attorney and own client fee agreement is entered into between the firm and the client to cater for paragraph 4 of the percentage contingency fee agreement as explained fully in paragraph 5.2.3 above.

6.2.3 A "Fees Mandate and Special Power Of Attorney in terms of Tariff" was signed on 3 August 2005. This agreement is concluded between Ms Fourie and the firm and specifies the firm's fee rates in terms of the Rule 70 – Tariff of Fees of Attorneys. We presume this agreement is concluded to enable the firm to recover the party and party costs.

A copy of the agreement is attached hereto as Schedule C4.

6.3 We inspected the statement of account on file and noted that the fees charged by the firm was a sum of R444, 452.68 which amounts to 25% of the capital award recovered on behalf of Ms Fourie and her minor son, Lincoln Fourie. VAT at a rate of 14% was levied on the fee and amounted to R62, 223.37.

A copy of the statement of account is attached hereto as Schedule C5.

6.4 We inspected the trust ledger account and noted that the firm did not raise an invoice in respect of the fee due to the firm. The ledger reflects that the firm's fee inclusive of VAT in the sum of R506, 676.05 was transferred to account number 11521 on 27 March 2012. The transaction is described on the ledger as, "Fee Trf 11521". This practice is described in detail in paragraph 14.8 below.

It appears that the fee in the amount of R506, 676.05 inclusive of VAT was based on the percentage contingency fee agreement, as the fee amounts to 25% of the capital award received from the Road Accident Fund.

A copy of the ledger is attached hereto as Schedule C6.

6.5 The ledger reveals that the following payments were received by the firm on behalf of Mrs Fourie and Mr L Fourie from the Road Accident Fund:

Date	Description	Amount
Find out	Capital received from the R.A.F – L Fourie	R 70,000.00
02/09/2011	Capital received from the R.A.F – UY Fourie	R 545,497.01
23/09/2011	Capital received from the R.A.F – Loss of support	R1,162,313.69
12/04/2012	Party and party costs recovered	R 195,853.83
<b>Total</b>		<b>R1,973,644.53</b>

A copy of the ledger is attached hereto as Schedule C6.

6.6 The ledger reflects that the following payments were made to Ms UY Fourie:

Date	Description	Amount
14/11/2011	Mrs U.Y Fourie	R782,419.30
24/04/2012	Mrs U.Y Fourie	R300,000.00
01/11/2012	Mrs U.Y Fourie – Final	R245,294.24
<b>Total</b>		<b>R1,327,713.54</b>

A copy of the ledger is attached hereto as Schedule C6.

It appears that Ms Fourie received a final payment in the amount of R245, 294.24 on 1 November 2012, more than six months after the receipt of the party and party costs from the Road Accident Fund.

This represents a contravention of Rule 68.8 in that the Directors of the firm failed to pay an amount due to a client within a reasonable time.

6.7 The following disbursements as per the statement of account were vouched to supporting documents and we noted the date on which the experts and counsel were paid by inspecting the bank stamped deposit slips, bank returned cheque or statement from expert/counsel:

Payee	Description	Amount	Date paid	Notes
Adv. Zidel	Counsel	R5,130.00	3/11/2010	N1
Dr Read	Orthopaedic surgeon	R33,060.00	29/07/2013	

Drs Matisonn, Scott & Tobias	Radiologist	R15,824.00	26/05/2011 & 23/07/2013	
Dr Fine	Psychiatrist	R20,748.00	23/07/2013	
M Ledwaba	Counselling Psychiatrist	R7,800.00	24/06/2011 & 23/07/2013	
Zurayda Shaik	Psychologist	R8,000.00	1/06/2011 & 23/07/2013	
Ivan Kramer	Actuary	R8,550.00	23/07/2013	
Adv Justin Erasmus	Counsel	R25,194.00	08/11/2011	N2
Dawie Scholtz	Cost consultant	R9,701.91	23/07/2013	
Friedland Hart	Correspondent Attorney	R6,445.26	02/11/2011	N3

As reflected in the table above, a large portion of the payments to experts and counsel were effected in July 2013 more than fourteen (14) months after the receipt of the party and party costs and more than 8 months after final payment was made to Ms UY Fourie.

Whilst the Law Society has not received any complaints from the experts or counsel regarding the delayed payment of the amounts due to them by the firm, it appears that the firm has contravened Rule 68.9 of the Rules by failing to pay amounts due to medical and other experts within a reasonable time.

N1: The control file did not contain proof of payment. Following our request on 30 October 2015 we were provided with an invoice from Adv. Zidel whom had invoiced out his fees in various matters including Ms UY Fourie. The invoice provided was stamped as "Paid 2010-11-03".

A copy of the invoice is attached hereto as Schedule C5.

N2: The control file did not contain proof of payment. Following our request on 30 October 2015 we were provided with a copy of the bank returned cheque which was issued to Adv. DJ Erasmus on 8 November 2011 for an amount of R218, 676.00. The statement of account reflects a disbursement of R25, 194.00. We thus presume that the payment in the amount of R218, 676.00 was in respect of various matters attended to by Adv. Erasmus however this

would represent a departure from the firm's normal practice of issuing a separate cheque to the respective expert/advocate in respect of each matter which they attended to.

N3: The control file did not contain proof of payment. Following our request on 30 October 2015 we were provided with a copy of the bank returned cheque which was issued to Friedland Hart Solomon Nicolson Attorneys on 2 November 2011 for an amount of R24, 662.63. We were advised that the payment in the amount of R24, 662.63 included the amount of R6, 445.26 which was due to Friedland Hart Solomon Nicolson Attorneys in respect of the Fourie matter. As indicated in the paragraph above this represents a departure from the firm's normal practice.

6.8 The trust ledger reflects that an amount of R345, 492.01 was invested in a S78 (2A) investment account on 7 December 2011. The monies were invested in terms of S78 (2A) in an account held with Investec Bank. We inspected the investment bank statements and noted that an amount of R345, 492.01 was deposited into the account on 9 December 2011. The balance held in the investment account in the amount of R352, 445.37 was transferred back to the firm's trust bank account on 12 October 2012 and was utilised to effect the final payment in the amount of R245, 294.24 to Ms Fourie on 1 November 2012.

The total interest per the investment bank statements amounts to R6, 953.36 which is correctly accounted for on the statement of account.

6.9 The control file contained the bill of costs drawn on an attorney and own client scale however it did not contain the bill of costs drawn on a party and party scale. We requested the party and party bill of costs via a letter to the firm dated 26 November 2015 and we were advised that the party and party and party bill was not located in the file and that it would be provided in the new year.

A copy of an extract of the firm's response to our letter dated 26 November 2015 is attached hereto as Schedule C7.

We had not received the party and party bill of costs as at the date of this report, thus a comparison of the party and party bill of costs and the bill of costs drawn on an attorney and client scale could not be performed.

## 7. COMPLAINT FROM MR A MILLAR ON BEHALF OF MR G.D VIVIAN

7.1 The Law Society received a complaint on 12 November 2014 from Mr Anthony Millar whom represents Mr G.D Vivian. Mr Millar provided the Law Society with a copy of a judgement that was handed down in the South Gauteng High Court.

The background of the matter is as follows:

Mr G.D Vivian launched an application against Ronald Bobroff and Partners (first respondent), Mr R Bobroff (second respondent), Mr S.B Bezuidenhout (third respondent), Mr D.R Bobroff (fourth respondent) and the Road Accident Fund (Fifth respondent). Mr G.D Vivian sought an order on the following terms:

- 7.1.1 That the contingency fee agreement signed by him be declared invalid, void and of no force or effect;
- 7.1.2 That the first alternatively the second, third and fourth, the one paying the other be absolved, be ordered to pay into his attorneys trust account the sum of R1, 254,000.00;
- 7.1.3 That the first respondent deliver within 30 (thirty) days of the order a fully itemised and detailed accounting in the form of a "bill of costs" supported by the necessary vouchers and that he would be entitled to demand taxation thereof;
- 7.1.4 In the event that the first respondent does not deliver a bill of costs within 30 days then the amount of R1,254,000.00 which was to be paid into his attorneys trust account together with interest accrued thereon is to be paid to him;
- 7.1.5 The first, second, third and fourth respondents are jointly and severally liable, the one paying the other to be absolved, pay for the costs of the application on a scale between attorney and own client.

7.2 In Mr G.D Vivian's founding affidavit the following is stated:

- 7.2.1 He engaged RBP to assist him with a claim for damages in respect of personal injuries sustained by him as a result of a motor vehicle collision which occurred on 19 February 2005;

- 7.2.2 He attended the offices of RBP for a consultation with Ms Anna Kordas and was advised that RBP would be prepared to accept instructions from him on a contingency fee basis wherein he would be liable to pay RBP a fixed 30% plus VAT on the damages recovered;
- 7.2.3 He informed Ms Kordas that he was not prepared to sign a fee agreement based on 30% of the damages recovered but would do so if the fee was reduced to 25% of the damages recovered;
- 7.2.4 He signed a "Percentage Contingency Fee Agreement";
- 7.2.5 He has since been advised by his current legal representatives that the fee agreement which he signed was illegal, invalid and unenforceable as it did not comply with the Contingency Fees Act, 66 of 1997;
- 7.2.6 He was not advised of the existence of the Contingency Fees Act or any of its provisions;
- 7.2.7 He was not advised that RBP's fees would be limited to double their normal fee of 25% of the capital award which ever was the lower;
- 7.2.8 RBP instituted and prosecuted his action against the R.A.F and the matter was settled for an amount of R4,400,000.00 together with an undertaking for future medical and hospital expenses and party and party costs;
- 7.2.9 He was provided with a statement of account and requested to sign the same however he did not do so;
- 7.2.10 He was surprised when he was informed that he would be charged the full 25% plus VAT as he was of the opinion that very little consultation took place and considering that the case did not run in court;
- 7.2.11 He requested that proper accounting of the work that had actually been done however Mr Bezuidenhout (third respondent) refused to do so and had advised him that the fee agreement states that the firm would retain in respect of their

fees, irrespective of the work performed, 25% plus VAT of any monies recovered on his behalf;

- 7.2.12 His present attorneys had advised him that the fee agreement he had entered into with RBP was invalid and unenforceable as confirmed in the judgement delivered on 13 February 2013 by the Full Bench of North Gauteng High Court in the case of Juanne De La Guerre v Ronald Bobroff and Partners under case number 57523/2011;
- 7.2.13 The statement of account reflects that an amount of R412, 428.90 was recovered in respect of the party and party costs which is substantially less than the amounts he was charged;
- 7.2.14 He was concerned that an amount of R3, 888.00 had been charged in respect of "Bundles" on the statement of account whereas it appeared from the bill of costs that the charges for photocopies were included in the included in the bill of costs.
- 7.2.15 He was of the belief that he was been overcharged by at a minimum an amount of R749, 622.30 however the amount could possibly be as high as R1, 001,811.15;
- 7.2.16 He was not informed by RBP that the percentage contingency fee agreement which he signed did not comply with the provisions of law. In addition he was also not advised that there were alternative lawful agreements which could have been entered into;
- 7.2.17 The common law fee agreement was found to be illegal and unenforceable in the case of De La Guerre v Ronald Bobroff and Partners and although the judgement was delivered on 13 February 2013, more than three months before he received a statement of account, RBP continued to rely on an illegal form of charging fees when in his view they were aware that it was illegal to do so.

A copy of the application is attached hereto as Schedule D1.

- 7.3 An application was also brought by Ronald Bobroff and Partners (first applicant), Mr R Bobroff (second applicant), Mr S.B Bezuidenhout (third applicant) and

Mr D.R Bobroff (fourth applicant) against Mr G.D Vivian (first respondent) in the High Court of South Africa, Gauteng Local Division, Johannesburg under case number 2013/27388. The applicants sought an order that Mr G.D Vivian furnish their attorneys with security for costs in the amount of R500, 000.00.

7.4 Judgement was delivered on 30 June 2014 by the Honourable Judge Mokgoatlheng J in the matter between Ronald Bobroff and Partners v Vivian Glen Derek under case number 2013/27388. The following information contained in the judgement is pertinent:

- 7.4.1 On 19 February 2005, Mr G.D Vivian was involved in a motor vehicle collision;
- 7.4.2 On 1 July 2005, Mr G.D Vivian signed a common law contingency fee agreement with RBP in terms of which RBP was entitled to a fixed fee of 25% plus VAT on any monies recovered on Mr Vivian's behalf;
- 7.4.3 On 18 August 2005, the R.A.F admitted liability for Mr Vivian's personal injury damages. On the same day Mr Vivian signed a document entitled, "Settlement instructions and/or Confirmation";
- 7.4.4 Mr G.D Vivian's trial against the R.A.F was set down for determination of quantum commencing on 30 July 2012;
- 7.4.5 Due to the legal uncertainty regarding the validity of the, "Common Law Contingency Fee Agreement", a contingency fee agreement in terms of the Act was concluded between Mr Vivian and RBP on 27 July 2012;
- 7.4.6 Mr Vivian's claim against the R.A.F was successfully concluded on 31 July 2012 when he was awarded an amount of R4, 400,000.00 plus party and party costs.
- 7.4.7 Mr Vivian was charged legal fees in the amount of R1, 254,000 including VAT out of the settlement amount of R4, 400,000.00;
- 7.4.8 The initial (Common Law Contingency Fee Agreement) and the new (Contingency Fee Agreement in terms of the Act) were declared invalid and thus common law applied. In terms of common law, Mr Vivian is entitled to a reasonable fee in relation to the work performed on his behalf and taxation of

a bill of costs is the method whereby the reasonableness of a fee is assessed on an attorney and own client basis in relation to the work performed;

7.4.9 The application for security for costs was dismissed and RBP was ordered to present Mr Vivian with a bill of costs in respect of legal services it rendered to him in respect of case number 07/9289 within 21 days and such taxed bill of cost must be set off against the amount of R1, 254,000 which were retained by RBP as its fees in the matter.

A copy of the full judgement is attached hereto as Schedule D2.

7.5 We inspected the control file of Mr G.D Vivian and noted that the following fee agreements were signed by him:

7.5.1 A “percentage contingency fee agreement” was signed on 1 July 2005. In terms of the agreement the firm is entitled to a fee amounting to 25% plus VAT of any monies recovered on behalf of the client;

A copy of the agreement is attached hereto as Schedule D3.

7.5.2 A “no win – no fee” mandate was signed with on 1 July 2005. In terms of the fee agreement, the firm is entitled to a fee amounting to R1, 400.00 per hour with respect to any work done by professional staff and R100.00 per hour in respect of non-professional services. According to the fee agreement the hourly rate would increase by 15% per annum compounded at the end of each completed period of 12 months from the date of instruction.

A copy of the agreement is attached hereto as Schedule D4.

7.5.3 A “contingency fees agreement in terms of the Contingency Fees Act, 1997” was signed on 27 July 2012. In terms of this agreement the firm is entitled to a fee on the following basis:

- a) Fees in respect of all time spent at the agreed rate of R3,200.00 per hour plus VAT or part thereof pro rata, escalating at 10% per annum compounded from the date on which the work was done until date of payment;
- b) A success fee equal to double the normal fee in respect of all time spent at

the rate referred above.

Provided that the attorney's fee charged to the client will either be as calculated in terms of a) and b) above and doubled or will be equal to an amount of 25% of the monetary award recovered on the client's behalf, whichever is the lesser.

A copy of the fee agreement is attached hereto as Schedule D5.

7.6 The statement of account on file reflects that the firm's fee's in the amounted to R1, 100,000.00 being twenty five percent (25%) of the capital award recovered from the Road Accident Fund. VAT levied on the fee amounted to R154, 000.00.

A copy of the statement of account is attached hereto as Schedule D6.

7.7 The statement of account was not dated however the statement of account reflects that Mr Vivian was paid an amount of R296, 000.00. The ledger reflects that the amount of R296, 000.00 was paid to Norman Berger and Partners on behalf of Mr Vivian on 20 June 2013. The statement of account could thus only be issued after 20 June 2013. Thus if we assume that the firm's fees per the statement of account were based on the "Percentage Contingency Fee Agreement" referred to in paragraph 7.5.1 it would appear that the Directors of the firm could have been reasonably expected to know that the fees charged were in terms of an invalid agreement considering the judgement delivered on 13 February 2013 by the full bench of the North Gauteng High Court in the case of De La Guerre v Ronald Bobroff and Partners Inc. and Others under case number 22645/2011.

A copy of the statement of account is attached hereto as Schedule D6.

A copy of the ledger is attached hereto as Schedule D7 and D8.

The firm's fees per the bill of costs drawn on an attorney and own client scale amounted R426, 250.06 excluding VAT and prior to taxation. Thus it would appear that the firm had overreached Mr Vivian by an amount of R673, 749.04 (excluding VAT) if we presume that fees per the statement of account were based on the, "Percentage Contingency Fee Agreement".

A copy of the allocatur of the bill of costs is attached hereto as Schedule D9.

7.8 If we assume that the firm's fees were charged in terms of the contingency fee agreement signed on 27 July 2012 and referred to above in paragraph 7.5.3 the firm's fees should be the lesser of the firm's normal fees doubled up or twenty five percent (25%) of the capital award. According to the bill of costs prepared by the firm on an

attorney and own client scale, the firm's fees amounted to R426, 250.06 which when doubled up would amount to R852, 500.13. It would thus appear that the firm did not apply the fee limit as prescribed in the Contingency Fees Act.

A copy of the allocatur of the bill of costs is attached hereto as Schedule D9.

The effect is that Mr G.D Vivian was overreached by an amount of R247, 499.87 excluding VAT which would amount to R34, 649.98.

Thus in the scenario above and in paragraph 7.7 it would appear that Mr G.D Vivian was overreached which is a contravention of Rule 89.24.

7.9 The attorney and own client Bill of Costs was taxed on 7 November 2014 of which the fees component amounted to R345, 843.36 and the disbursements component amounted to R356, 168.73. The total of the bill per the allocatur is R768, 702.83. A copy of the allocatur of the bill of costs is attached hereto as Schedule D9.

The total fees and disbursements per the statement of account is a sum of R1, 615,688.79, thus an amount of R846, 985.96 had to be refunded to Mr G.D Vivian. The ledger reflects that payment in the amount of R846, 985.96 was paid to the trust account of Mr Vivian's attorney of record, Norman Berger and Partners Incorporated on 28 January 2015.

A copy of the ledger is attached hereto as Schedule D8.

7.10 The ledger reflects that the following payments were received by the firm on behalf of Mr G.D Vivian from the Road Accident Fund:

Date	Description	Amount
14/08/2012	R.A.F – Capital	R 4,400,00.00
19/06/2013	R.A.F – Costs	R 412,428.90
27/06/2013	R.A.F – Interest	R 4,903.00
<b>Total</b>		<b>R 4,817,332.85</b>

A copy of the ledger is attached hereto as Schedule D7 and D8.

7.11 The ledger reflects that the following payments were made to Mr GD Vivian and his attorney or record, Norman Berger and Partners Incorporated:

Date	Description	Amount
14/09/2012	G.D Vivian – interim	R 2,900,740.00
20/06/2013	Norman Berger & Partners Incorporated	R 296,000.00
01/07/2013	Norman Berger & Partners Incorporated	R 4,903.95
<b>Total</b>		<b>R 3,201,643.95</b>

To summarise, Mr G.D Vivian was paid according to the following time-frame in relation to the receipt of monies from the Road Accident Fund:

- Mr Vivian received an amount of R2,900,740.00 approximately one (1) month after the receipt of the capital award from the Road Accident Fund;
- Mr Vivian received a final payment in the amount of R296,00.00 four (4) days after the receipt of costs from the Road Accident Fund;
- Mr Vivian received a further payment in respect of interest in the amount of R4,903.00 approximately four (4) days after receipt of the interest payment from the Road Accident Fund;

We are thus of the opinion that Mr Vivian was paid within a reasonable period.

7.12 The following disbursements as per the statement of account were vouched to supporting documents and we noted the date on which the experts and counsel were paid by inspecting the bank stamped deposit slips:

Payee	Description	Amount	Date paid	Notes
Adv. Khan	Counsel	R 1,026.00	24/03/2014	
Dr Read	Orthopaedic Surgeon	R27,645.00	24/06/2013	
Drs Matisonn, Scott & Tobias	Radiologist	R 4,432.30	1/08/2006 & 15/4/2011 & 24/06/2013	
Adv. Khan	Counsel fees	R15,960.00	24/06/2013	N1
Dr T Bingle	Neurosurgeon	R10,920.00	18/03/2011	
Dr L Grinker	Psychiatrist	R23,370.00	30/08/2012	

R Hovsha	Clinical Psychologist	R12,000.00	17/05/2011 & 11/08/2011	
IM Ledwaba	Occupational Therapist	R7,800.00	23/03/2011 11/04/2011	
Elna May	Industrial Psychologist	R39,330.00	20/01/2010 08/03/2011 24/06/2013	
Ivan Kramer	Actuary	R10,146.00	24/06/2013	
Dr D Shevel	Psychiatrist	R4,560.00	24/06/2013	
Adv. Zidel	Counsel	R175,674.00	21/08/2012	
VLE Cost Consultants	Cost consultants	R21,246.42	24/06/2013	

As reflected in the table above the majority of payments to experts and counsel were made prior to the receipt of the party and party costs from the R.A.F or five days thereafter.

N1: The control file did not contain an invoice from Adv. Khan. Upon our request on 30 October 2015 we were provided with document which appears to be generated from Adv. Khan's billing system. The document reflects that an amount of R15, 960.00 was invoiced by Adv. Khan.

7.13 A comparison of the disbursements per the statement of account to the trust ledger revealed the following discrepancies:

Disbursement	Amount per Statement of Account	Amount per the trust ledger	Variance
Adv. Khan	R 1,026.00	R1,026.00	Nil
Dr Read	R27,645.00	R27,645.00	Nil
Drs Matisonn, Scott & Tobias	R 4,432.30	R1,670.90	R2,761.40
Adv. Khan	R15,960.00	R15,960	Nil
Dr T Bingle	R10,920.00	Nil	R10,920.00
Dr L Grinker	R23,370.00	R1,482.00	R21,888.00
R Hovsha	R12,000.00	R6,000.00	R6,000.00
IM Ledwaba	R7,800.00	Nil	R7,800.00

Elna May	R39,330.00	R17,058.00	R22,272.00
Ivan Kramer	R10,146.00	R10,146.00	Nil
Dr D Shevel	R4,560.00	R4,560.00	Nil
Adv. Zidel	R175,674.00	R175,674.00	Nil
VLE Cost Consultants	R21,246.42	R21,246.42	Nil
<b>Total</b>	<b>R354,109.72</b>	<b>R282,468.32</b>	<b>R71,641.40</b>

Due to a substantial amount disbursements which were incurred in the matter not being recorded in the trust ledger, the ledger reflected a credit balance in the amount of R72, 679.15 as at 1 July 2013 after the fees were transferred and final payment was made to the client.

A copy of the statement of account and ledger is attached hereto as Schedule D6 and D7 and D8 respectively.

7.14 The Winlaw system automatically computes a “surplus report” when it identifies fees and disbursements due to the firm (being a debit entry to the client’s accounts receivable account) which can be possibly transferred to the business bank account due to a sufficient credit balance being available to the trust creditor as explained in paragraph 3.7.2. The surplus report reflects the amounts to be transferred as a batch from the trust bank account to the business bank account. The system then records the trust transfer in the affected trust creditor account.

7.15 We reviewed the trust ledger account and noted that an amount of R299, 383.29 was transferred from the trust bank account the business bank account in respect of Mr G.D Vivian on 15 August 2012. The disbursements recorded against Mr Vivian’s accounts receivable account in the business accounting records however only amount to R226, 704.14 as at 15 August 2012. The trust transfer was thus in excess of the amount due to the firm (as recorded in the ledger). The reason for the discrepancy could possibly be due to a system error or a reallocation of entries which were previously posted to Mr Vivian’s accounts receivable account but are now not reflected thereon.

A copy of the ledger is attached hereto as Schedule D7 and D8.

At face value the trust transfer in excess of the amount due to the firm in respect of disbursements would represent a contravention of Rule 69.6.2 of the Rules in that the firm the firm did not ensure that no transfer from the trust bank account to its business

banking account shall be made in respect of fees and disbursements until the disbursement has actually been incurred by the firm or a contractual obligation has arisen on the part of the firm to pay the disbursement.

It is explained above in paragraph 7.13 that certain disbursements incurred by the firm and reflected on the statement of account are not recorded in the ledger. The capital award of R4, 400,000.00 was received by the firm on 14 August 2012. It is thus clear that the contractual obligation that the firm had to pay the experts and counsel would have existed prior to the receipt of the capital from the R.A.F and thus validating the trust transfer performed on 15 August 2015.

**8. MATTER BETWEEN:**

**R.R DE SWART (FIRST APPLICANT), R WILKINSON (SECOND APPLICANT),  
A.J HUNTER (THIRD APPLICANT), A.R NELL (FOURTH APPLICANT) AND**

**RONALD BOBROFF AND PARTNERS INC. (FIRST RESPONDENT), R BOBROFF  
(SECOND RESPONDENT), S.D BEZUIDENHOUT (THIRD RESPONDENT),  
D.R BOBROFF (FOURTH RESPONDENT), THE ROAD ACCIDENT FUND (FIFTH  
RESPONDENT), LAW SOCIETY OF THE NORTHERN PROVINCES (SIXTH  
RESPONDENT)**

The Law Society of the Northern Provinces was cited as the sixth respondent in an application launched by Mr R.R De Swart, Mr S Wilkinson, Mr A.J Hunter and Mr A.R Nell against RBP and its Directors in the High Court of South Africa, Gauteng Local Division, Johannesburg.

The applicants sought an order in the following terms:

- “1. That the fee agreements entered into between the applicants and the first respondent be declared invalid, void and of no force or effect;*
- 2. That the first respondent is ordered within three (3) days of date hereof to deliver to the applicants attorneys of record all original files and copies of the first respondents Lawplan accounting records (trust and business ledgers) relating specifically to the work done by the first respondent for the applicants in their claims against the Road Accident Fund.*

3. *That the first respondent deliver to the applicants, within fifteen (15) days of this order, a fully itemised and detailed accounting in the form of a "Bill of Costs", reflecting the reasonable fees and disbursements incurred by the first respondent in the respective High Court actions instituted by the applicants in the South Gauteng High Court between themselves and the Road Accident Fund and that the applicants are entitled to demand taxation thereof;*
4. *That the first respondent be ordered to pay into the applicants' attorneys trust account being the attorney and own client monies retained by the Respondent over and above the party and party costs recovered..."*

We have only quoted a portion of the terms listed in the applicants' notice of motion as we deemed it relevant to an understanding of the matter.

We have attached the complete document hereto as Schedule E1.

Each of the applicant's matters is addressed separately in detail below:

#### **8.1    Ryan Robert De Swardt**

- 8.1.1 According to the founding affidavit of Mr A Millar whom is the attorney of record for Mr De Swardt, Mr De Swardt was injured in a motor vehicle accident which occurred on 21 July 2006. Mr De Swardt engaged the firm (RBP) to institute a claim for damages against the Road Accident Fund, which was successfully finalised.
- 8.1.2 According to Mr Millar's founding affidavit, Mr De Swardt was not furnished with a copy of the fee agreement he signed and neither was he provided a statement of account by RBP. Furthermore Mr Millar states that Mr De Swardt was only furnished with a statement of account on 31 March 2015 when Mr De Swardt's mother visited the offices of RBP.
- 8.1.3 Mr Millar also states in his founding affidavit that Mr De Swardt had only received final payment on 29 May 2014 despite the case being settled in 2013.
- 8.1.4 Mr Millar points out in his affidavit that Mr D Bobroff had confirmed to Mr Swardt via an email dated 24/03/2015 that he had a fee agreement, "in terms of the Contingency Fees Act".

8.1.5 Mr Millar notes in his affidavit that the cost of photocopying on the statement of account appears to be duplicated as the statement of account of account reflects a separate disbursements in respect of "bundles".

8.1.6 According to Mr Millar's estimation as contained in his affidavit, Mr De Swardt has been overreached by no less than an amount of R1,600,000.00 however he notes that the exact extent of overreaching can only be determined by the taxation of an attorney and own client Bill of Costs.

8.1.7 We inspected the control file of Mr De Swardt and noted that the firm had entered in a, "Contingency Fees Agreement In Terms of the Contingency Fees Act, 1997 (Act no. 66 of 1997). The fee agreement was signed by Mr D Bobroff and Mr De Swardt on 3 April 2006.

A copy of the fee agreement is attached hereto as Schedule E2.

8.1.8 We inspected the statement of account which was signed by Mr De Swart on 29 May 2014 and noted that the firm's fee in the matter amounted to R1, 502,091.80 (excl. VAT) which amounts to exactly twenty five percent (25%) of the capital award, of R6, 008,367.20 received from the Road Accident Fund on behalf of Mr De Swardt.

A copy of the statement of account is attached hereto as Schedule E3.

8.1.8 The control file contained an attorney and own client bill of costs which had not been taxed as at the date of our inspection. The bill of costs reflects that the firm's normal fees in the matter amounted to R855, 989.23 which when doubled up would amount to R1, 711.978.46. Thus the firm's fee was limited to R1, 502,091.80 being the lesser of the 25% of the capital award and the firm's normal fees doubled up.

A copy of the bill of costs is attached hereto as Schedule E4

8.1.9 The firm's fees (excluding drawing fees and VAT) per the taxed party and party bill amounted to R88, 400.20 whereas the firm's fees per the attorney and own client bill amounts to R855, 989.23 which is almost ten (10) times more. Mr R Bobroff explained that the party and party bill of costs are prepared on the basis of attendances that could be recovered from the Road Accident Fund and thus would not include all time spent on a matter and for this reason the

taxed party and party bill of costs could not be compared to the attorney and own client bill of costs.

A copy of the taxed party and party bill of costs is attached hereto as Schedule E5.

8.1.10 Whilst we understand that the attorney's fees per the bill of costs can be manipulated by the overstating the time spent on attendances or the existence of fictitious attendances which are listed on the bill of costs, it would be beyond the scope of our expertise and mandate to perform an analysis or verification of the firm's fees as per the bill of costs. We are of the opinion that taxation of the attorney and own client bill of costs would be the appropriate forum to determine the firm's fees in the matter.

8.1.11 The ledger reflects that the following payments were received by the firm on behalf of Mr R.R De Swart from the Road Accident Fund:

Date	Description	Amount
15/11/2013	R.A.F – Capital	R6,008,367.20
16/04/2014	R.A.F – Costs	R369,992.84
<b>Total</b>		<b>R6,378,360.04</b>

A copy of the ledger is attached hereto as Schedule E6.1, E6.2 and E6.3

8.1.12 The ledger reflects that the following payments were made to Mr R.R. De Swart:

Date	Description	Amount
22/11/2013	ABSA TRUST – Interim payment	R3,999,000.00
22/05/2014	R De Swart – Final	R296,982.55
<b>Total</b>		<b>R4,295,982.55</b>

The statement of account appears to have a casting error as it reflects a total payment to the client in the amount of R4,296,981.55 which means that the client was short-paid an amount of R999.00.

8.1.13 Mr Swart received the interim payment of R3, 999,000.00, seven days after the firm received the capital award on his behalf from the R.A.F;

Mr Swart received final payment of R296, 982.55 thirty eight (38) days after the receipt of costs from the R.A.F. We are thus of the opinion that Mr Swart was paid within a reasonable time period.

8.1.14 The following disbursements as per the statement of account were vouched to supporting documents and we noted the date on which the experts and counsel were paid by inspecting the bank stamped deposit slips, bank returned cheques or statements from experts/counsel:

Payee	Description	Amount	Date paid	Notes
Adv. Khan	Counsel	R912.00		N3
Dr Read	Orthopaedic Surgeon	R20,520.00	26/05/2014	
Drs Matisonn, Scott & Tobias	Radiologist	R7,252.20	14/07/2011 & 26/05/2014	
Dr L Grinker	Psychiatrist	R31,749.00	19/11/2013	N2
Human Interaction	Industrial Psychologist	R37,914.00	1/08/2012 & 26/5/2014	
Dr L Berkowitz	Plastic and Reconstructive Surgeon	R7,200.00	26/05/2014	
Adv. Zidel	Counsel fees	R17,784.00	16/04/2013	N1
Prof. Lurie		R3,750	09/11/2012	
Dr Sulman & Partners	Radiologist	R696.20	6/09/2012	
Dr Lewer – Allen	Neurosurgeon	R18,270.00	18/09/2012 & 27/05/2013 & 26/05/2013	
Bev Van Zyl	Neuropsychologist	R8,000.00	25/03/013	
Anneke Greef	Occupational Therapist	R14,711.72	10/10/2012 & 27/05/2014	

Ivan Kramer	Actuary	R16,986.00	26/05/2014	
Ferlio Investigators	Private investigators	R4,765.43	9/11/2012	
Adv. Zidel	Counsel	R116,280.00	19/11/2013	
VLE	Cost Consultants	R22,280.60	26/05/2014	

N1: We were unable to locate the proof of payment and thus requested the same from the firm. We were provided with a copy of a bank returned cheque issued to Adv. I Zidel on 16 April 2013 for an amount of R66, 804.00. This is unusual as were specifically informed that the firm issues a separate cheque to the experts and counsel in respect of each matter. A copy of the bank returned cheque and Adv. Zidel's invoice is attached hereto as Schedule E7.

N2: Whilst reviewing the control file, we noted that the invoice number 1479, dated 28 June 2013 from Dr L Grinker was for an amount of R30, 153.00 yet the statement of account reflected a disbursement of R31,749.00. We queried the variance and was provided with a copy of invoice number 1479, dated 28 June 2013 which was issued by Dr L Grinker for an amount of R31, 749.00. It is unclear as to why there appears to be two versions of invoice number 1479 from Dr Grinker.

N3: The control file did not contain proof of payment. We requested proof of payment on 26 November 2015 and was provided with a copy of an e – mail sent from Adv. Khan to Mr Dirk Kroes (Bookkeeper at RBP) on 29 November 2015 wherein he confirms that he did receive payment. A copy of the e-mail is attached hereto as Schedule E8.

8.1.15 The statement of account reflects a disbursement in respect of, "bundles" at a cost of R13, 278.03 excluding V.A.T as well as, "copies per bill of costs" at a cost of R16, 267.50 excluding V.A.T.

A copy of the statement of account is attached hereto as Schedule E3

The control file contained a document which provides an analysis in respect of the cost of bundles as follows:

Description	Amount
Index to Pleadings 21 pages x 6 persons x R6	R756.00
Index to Employment Bundle 164 pages x 6 persons x R6	R5,904.00
Index to Plaintiff Medico – Legal Bundle 191 pages x 6 persons x R6	R6,876.00
Index to Defendants Medico – Legal Bundle 69 pages x 6 persons x R6	R2,484.00
Index to Plaintiff Medical Records 36 pages x 6 persons x R6	R1,296.00
<b>Total Disbursement for Bundles</b>	<b>R17,316.00</b>

A copy of the document entitled, "Bundles for Ryan De Swart – File Ref 9901" is attached hereto as Schedule E10.

There is thus a variance of R2, 179.05 in respect of the cost of, "bundles" per the statement of account compared to the total cost per the document providing a break-down of the cost of "bundles".

8.1.16 We reviewed the taxed party and party bill and noted that the "bundles" described above in paragraph 8.1.15 which were charged to Mr De Swart separately on the statement of account are included in the taxed party and party bill of costs as follows:

- Index to pleadings  
Item number "300" on the party and party bill refers to, "Draw index – pleadings" and item "301" refers to copies made of annexures (17 pages x 6 copies);
- Index to Employment Bundle  
Item number "285" on the party and party bill refers to, "Draw index – employment and educational documents" and item "286" refers to copies made of annexures (162 pages x 6);
- Index to Plaintiff Medico – Legal Bundle

Item number, "303" on the party and party bill refers to, "Draw index – plaintiff's medico legal reports" and item "304" refers to copies made of annexures (191 pages x 6);

- Index to Defendants Medico – Legal Bundle

Item number, "306" on the party and party bill refers to, "draw index – defendant's medico legal reports" and item, "307" refers to copies of annexures made (67 pages x 6);

- Index to Plaintiff Medical Records

Item number, "233" on the party and party bill refers to, "draw index – medical records" and items "234" refers to copies of annexures made (34 x 6).

A copy of the party and party bill of costs is attached hereto as Schedule E5.

It would thus appear that the disbursement in respect of, "bundles" on the statement of account is a duplicated charge as the cost of copying the "bundles" is already included in the disbursement, "copies per bill of costs" as reflected on the statement of account. In these circumstances it would appear that the client has been overreached by an amount of R15, 136.95. The Directors of the firm have thus contravened Rule 89.24 in that they have overreached a client.

## 8.2 Shaun Wilkinson

8.2.1 According to Mr Millar's founding affidavit, Mr Wilkinson was injured in a motor vehicle accident which occurred on 24 October 2008 and Mr Wilkinson had engaged RBP to institute an action for damaged against the Road Accident Fund on his behalf.

8.2.2 Mr Millar states in his founding affidavit (par.33) that Mr Wilkinson did not receive a copy of any fee agreement signed with RBP.

8.2.3 Mr Millar notes in his affidavit (par.82 & 83) that the cost of photocopying on the statement of account appears to be duplicated as the statement of account of account reflects a separate disbursements in respect of "bundles".

8.2.4 According to Mr Millar's estimation as contained in his affidavit (par. 85 & 86), Mr Wilkinson has been overreached by no less than an amount of R150,000.00 however he notes that the exact extent of overreaching can only be determined by the taxation of an attorney and own client Bill of Costs.

8.2.5 We inspected the firm's control file of Mr Wilkinson and noted that there was no signed fee agreement contained in the file.

We requested a copy of the signed fee agreements on 27 November 2015 and were provided with a, "Contingency Fees Agreement in terms of the Contingency Fees Act, 1997 (Act no.66 of 1997) which appears to have been signed by Mr Wilkinson on 10 January 2011.

A copy of the fee agreement is attached hereto as Schedule F1.

8.2.3 We inspected the statement of account which appears to be signed by Mr Wilkinson on 29 September 2014. The statement of account reflects that the firm's fee amounted to R331, 627.78 excluding VAT which amounts to twenty five (25%) of the capital award of received from the R.A.F.

A copy of the statement of account is attached hereto as Schedule F2.

We inspected the attorney and own client bill of costs which appears to have been prepared using the High Court Tariff as a guide. The firm's fees per the bill of costs amounts to R246, 936.25 excluding VAT which when doubled up amounts to R493, 872.5. Thus the firm's fee per the statement of account in the amount of R331, 627.78 appears to be within the fee limit prescribed in terms of the Contingency Fees Act.

A copy of the Bill of Costs is attached hereto as Schedule F3.

8.2.4 The ledger reflects that the following payments were received by the firm on behalf of Mr Wilkinson from the Road Accident Fund:

Date	Description	Amount
10/03/2014	R.A.F – Capital	R1,326,511.13
09/07/2014	R.A.F – Costs	R250,837.68
<b>Total</b>		<b>R1,577,348.81</b>

A copy of the ledger is attached hereto as Schedule F4.

8.2.5 The ledger reflects that the following payments were made to Mr S Wilkinson:

Date	Description	Amount
12/03/2014	S. Wilkinson - Interim	R790,000.00
15/09/2014	Transmed Medical Fund	R174,029.49
15/09/2014	S Wilkinson – Final	R12,373.94
<b>Total</b>		<b>R976,403.43</b>

Mr Wilkinson thus received an interim payment in the amount of R790, 000.00 two days after the receipt of the capital award from the R.A.F.

In addition the medical costs incurred by the Transmed medical aid on behalf of Mr Wilkinson as well as the final payment due to Mr Wilkinson were paid some two months following the recovery of the party and party costs from the Road Accident Fund. We are thus of the opinion that Mr Wilkinson was paid within a reasonable period.

8.2.6 The following disbursements as per the statement of account were vouched to supporting documents and we noted the date on which the experts and counsel were paid by inspecting the bank stamped deposit slips:

Payee	Description	Amount	Date paid	Notes
Adv. Darby	Counsel	R850.00		
Dr Read	Orthopaedic Surgeon	R18,240.00	18/09/2014	
Drs Matisonn, Scott & Tobias	Radiologist	R7,173.00	15/08/2011 18/09/2014	
Prof. Chait	Othodontist	R6,000.00	5/09/2013	N1
Prof. Lurie	Maxillo Facial Surgeon	R5,000.00	16/10/2013	

Thusanong Consulting	Industrial Psychologist	R16,815.00	18/09/2014	
Dr Konig	Ophthalmologist	R12,154.50	21/01/2014	
Dr Fine	Psychiatrist	R2,280.00	18/09/2014	
Hennie Scholtz	Investigators	R5,485.40	05/02/2014	
Ivan Kramer	Actuary	R10,830.00	12/3/2013	
Rose Leshika	Occupational Therapist	R19,500.00	26/02/2014 18/09/2014	
Adv. Zidel	Counsel	R85,500.00	13/03/2014	
VLE	Cost consultants	R10,571.74	18/09/2014	

The table above reflects that the bulk of the payments to the experts and counsel were done on 18 September 2014, three days after Mr Wilkinson had received final payment and some two months following the receipt of the party and party costs from the R.A.F.

N1: The control file did not contain a proof of payment. We requested proof of payment on 30 October 2015 and received a copy an e-mail dated 5 November 2015 from Prof Chait's office to Mr D Kroes confirming that the account was paid on 5 September 2013.

8.2.7 The statement of account reflects a disbursement in respect of, "bundles" at a cost of R7, 236.00 excluding V.A.T as well as, "copies per bill of costs" at a cost of R9, 860.00 excluding V.A.T.

A copy of the statement of account is attached hereto as Schedule F2.

The control file contained a document which provides an analysis in respect of the cost of bundles as follows:

Description	Amount
Index to Defendants Medico – Legal Bundle 59 Pages x 6 persons x R6 per copy	R2,124.00
Index to Plaintiff's Medico – Legal Bundle	R2,808.00
Index to Merits Bundle 44 Pages x 6 persons x R6 per copy	R1,584.00

Index to Pleadings 20 Pages x 6 persons x R6 per copy	R720.00
<b>Total Disbursement for Bundles</b>	<b>R7,236.00</b>

A copy of the document entitled, "Bundles for Shaun Wilkinson 11504" is attached hereto as Schedule F5.

8.2.8 We reviewed the taxed party and party bill and noted that the "bundles" described above in paragraph 8.2.7 which were charged to Mr Wilkinson separately on the statement of account are included in the taxed party and party bill of costs as follows:

- Index to Defendants - Medico Legal Bundle  
Item number "183" on the party and party bill refers to, "Draw index – defendants medico – legal report" and item "184" refers to copies made of annexures (57 pages x 6 copies);
- Index to Plaintiff's Medico Legal Bundle  
Item number "187" on the party and party bill refers to, "Draw index – plaintiff's medico – legal reports" and item "188" refers to copies made of annexures (76 pages x 6);
- Index to Merits Bundle  
Item number, "166" on the party and party bill refers to, "Draw index – merits" and item "167" refers to copies made of annexures (42 pages x 6);
- Index to Pleadings bundle  
Item number, "107" on the party and party bill refers to, "draw index – pleadings" and item, "108" refers to copies of annexures made (18 pages x 6);

A copy of the party and party bill of costs is attached as Schedule F6.

It would thus appear that the disbursement in respect of, "bundles" on the statement of account is a duplicated charge as the cost of copying the "bundles"

is already included in the disbursement, "copies per bill of costs" as reflected on the statement of account. In these circumstances it would appear that the client has been overreached by an amount of R7, 236.00 which is a contravention of Rule 89.24.

8.2.9 We quantified the total number of copies per the bill of costs to be an amount of 3,934 copies. The statement of account indicates that the total amount of copies per the bill of costs amount to 3,944. The variance is considered immaterial in our opinion.

### **8.3 Mr Adam Jason Hunter**

8.3.1 According to Mr Millar's founding affidavit (par.28), Mr Hunter was injured in a motor vehicle accident which occurred on 23 February 2010 and that Mr Hunter had engaged RBP to lodge a claim against the R.A.F which was successfully finalised.

8.3.2 Mr Millar notes in his founding affidavit (par. 87 & 88) that the firm did provide Mr Hunter with a copy of the contingency fee agreement which he signed as well as copy of the statement of account.

8.3.3 Mr Millar also notes in his founding affidavit (par.95) that the disbursement described as "bundles" on the statement of account appears to be duplicated as there is already a disbursement in respect of, "copies as per bill of costs" on the statement of account.

8.3.4 According to Mr Millar's estimation as contained in his affidavit (par. 97), Mr Hunter has been overreached by no less than an amount of R500,000.00 however he notes that the exact extent of overreaching can only be determined by the taxation of an attorney and own client Bill of Costs.

8.3.5 We inspected the control file of Mr Hunter and noted that the firm had entered in a, "Contingency Fees Agreement in Terms of the Contingency Fees Act, 1997 (Act no. 66 of 1997). The fee agreement was signed by Mr D Bobroff and Mr Hunter on 25 March 2010.

A copy of the fee agreement is attached hereto as Schedule G1.

8.3.6 We inspected the statement of account which was signed by Mr Hunter on 20 January 2014 and noted that the firm's fee in the matter amounted to R501, 646.98 which amounts to exactly twenty five percent (25%) of the capital award, of R2, 006,587.90 received from the Road Accident Fund on behalf of Mr Hunter

A copy of the statement of account is attached hereto as Schedule G2.

8.3.7 The control file contained an attorney and own client bill of costs which had not been taxed as at the date of our inspection. The bill of costs reflects that the firm's normal fees in the matter amounted to R322, 859.79 which when doubled up would amount to R645, 719.58. Thus the firm's fee was limited to R501, 646.98 being the lesser of the 25% of the capital award and the firm's normal fees doubled up.

A copy of the bill of costs is attached hereto as Schedule G3.

8.3.8 We inspected the bill of costs and noted that the firm's fees were based on the fee rates provided in the signed contingency fee agreement. According to the fee agreement the firm's normal fee per hour is R3, 200.00 which escalates by 10% per annum in respect of each completed period of twelve (12) months from the date of signing the agreement.

A copy of the fee agreement is attached hereto as Schedule G1 and a copy of the bill of costs is attached hereto as Schedule G3

8.3.9 The firm's fees (excluding drawing fees) per the taxed party and party bill amounted to R64, 520.80 excluding V.A.T whereas the firm's fees per the attorney and own client bill amounts to R322, 859.79 which is five (5) times more. Mr R Bobroff explained that the party and party bill of costs are prepared on the basis of attendances that could be recovered from the Road Accident Fund and thus would not include all time spent on a matter and for this reason the taxed party and party bill of costs could not be compared to the attorney and own client bill of costs.

A copy of the taxed party and party bill of costs is attached hereto as Schedule G4.

8.3.10 The ledger reflects that the following payments were received by the firm on behalf of Mr Hunter from the Road Accident Fund:

Date	Description	Amount
28/06/2013	R.A.F – Capital	R2,006,587.90
22/11/2013	R.A.F – Costs	R 337,737.80
<b>Total</b>		<b>R2,344,325.70</b>

A copy of the ledger is attached hereto as Schedule G5.

8.3.11 The ledger reflects that the following payments were made to Mr Hunter:

Date	Description	Amount
1/07/2013	A.J Hunter – Interim	R500,000.00
1/07/2013	A.J Hunter - Interim	R500,000.00
1/07/2013	A.J Hunter – Interim	R 47,000.00
10/12/2013	A.J Hunter – Final	R397,205.42
<b>Total</b>		<b>R1,444,205.42</b>

It thus appears that Mr Hunter received an interim payment in the amount of R1,047,000.00, five (5) days after the firm received the capital award from the R.A.F.

Mr Hunter then received final payment, eighteen (18) days after the firm had received the party and party costs from the Road Accident Fund. We are thus of the opinion that Mr Hunter was paid within a reasonable time period.

8.3.12 The following disbursements as per the statement of account were vouched to supporting documents and we noted the date on which the experts and counsel were paid by inspecting the bank stamped deposit slips:

Payee	Description	Amount	Date paid	Notes
Adv.Zidel	Counsel	R 2,850.00	04/08/2011	N2
Dr Read	Orthopaedic Surgeon	R44,460.00	8/01/2014	
Drs Matisonn, Scott & Tobias	Radiologist	R24,487.10	2/07/2011 9/05/2013 8/01/2014	

Human Interaction	Industrial Psychologist	R48,244.50	8/01/2014	N1
Anneke Greef	Occupational Therapist	R14,510.00	7/05/2013 8/01/2014	
Dr L Fine	Psychiatrist	R10,260.00	8/01/2014	
Ivan Kramer	Actuary	R11,286.00	8/01/2014	
Adv. Zidel	Counsel	R121,410.00	2/07/2013	
VLE	Cost Consultants	R18,203.91	11/12/2013	

N1: An amount of R39, 244.50 was paid to Ms E.A Rossouw t/a Human Interaction and an amount of R9, 000.00 was refunded to the R.A.F on 8/01/2014.

N2: The control file did not contain a proof of payment. We requested the proof of payment and was provided with a copy of a returned cheque issued in favour of Adv. Zidel for an amount of R21, 204.00. It would thus appear that the firm effected payment to Adv. Zidel via single cheque for various matters which he attended to.

8.3.13 The statement of account reflects a disbursement in respect of, "bundles" at a cost of R14, 820.00 excluding V.A.T as well as, "copies per bill of costs" at a cost of R12, 382.50 excluding V.A.T.

A copy of the statement of account is attached hereto as Schedule G2.

The control file contained a document which provides an analysis in respect of the cost of bundles as follows:

Description	Amount
Index to Defendants Medico-Legal Bundle 77 pages x 6 persons x R5 per copy	R2,310.00
Index to Plaintiff's Medico-Legal Bundle 116 pages x 6 persons x R5 per copy	R3,480.00
Index to Merits Bundle 22 pages x 6 persons x R5 per copy	R660.00
Index to Pleadings Bundle 22 pages x 6 persons x R5 per copy	R660.00

Index to Educational and Financial Bundle 228 pages x 6 persons x R5 per copy	R6,840.00
Index to Medical Records Bundle 29 pages x 6 persons x R5 per copy	R870.00
<b>Total Disbursement for Bundles</b>	<b>R14,820.00</b>

A copy of the document entitled, "Bundles for Adam Jason Hunter 11302" is attached hereto as Schedule G6.

8.3.14 We reviewed the taxed party and party bill and noted that the "bundles" described above in paragraph 8.3.13 which were charged to Mr Hunter separately on the statement of account are included in the taxed party and party bill of costs as follows:

- Index to merits bundle  
Item number "173" on the party and party bill refers to, "Draw index – merits" and item "174" refers to copies made of annexures (20 pages x 6 copies);
- Index to pleadings  
Item number "137" on the party and party bill refers to, "Draw index – pleadings" and item "138" refers to copies made of annexures (20 pages x 6);
- Index to educational and financial bundle  
Item number, "70" on the party and party bill refers to, "draw index – financial and employment document" and item, "71" refers to copies of annexures made (217 pages x 6);
- Index to medical records bundle  
Item number, "105" on the party and party bill refers to, "draw index – medical records" and items "106" refers to copies of annexures made (27 pages x 6).

A copy of the party and party bill of costs is attached hereto as Schedule G4.

The defendant's medico-legal as well as the plaintiff's medico-legal bundles did not appear on the taxed party and party bill of costs.

The disbursement in respect of the following "bundles" appear to be a duplicate charge as the cost of copying these "bundles" is already included in the disbursement, "copies per bill of costs" as reflected on the statement of account:

Description	Amount
Index to Merits Bundle 22 pages x 6 persons x R5 per copy	R660.00
Index to Pleadings Bundle 22 pages x 6 persons x R5 per copy	R660.00
Index to Educational and Financial Bundle 228 pages x 6 persons x R5 per copy	R6,840.00
Index to Medical Records Bundle 29 pages x 6 persons x R5 per copy	R870.00
<b>Total Disbursement for Bundles</b>	<b>R9,030.00</b>

In these circumstances it would appear that the client has been overreached by an amount of R9, 030.00 which represents a contravention of Rule 89.24.

8.3.15 Whilst examining the ledger we noted that various debits to Mr Hunter's accounts receivable account. This debits are described in the accounting records as, "Paid to V. Valente Glencross". Ms Valente Glencross is an employee of the firm and was the fee earner attending to Mr Hunter's claim.

Based on the information contained in the ledger it appears that an amount of R15, 000.00 was paid to Ms Valente Glencross over the period 20 February 2013 to 19 November 2013.

8.3.16 The firm's accounting system is such that once a debit is raised against a client's accounts receivable account, the system will generate a "surplus" report once it identifies that there is a sufficient credit balance in the trust creditors' account as described in paragraph 3.7.2 above. In this manner the amount an

amount of R15, 000.00 in respect of the payments to Ms Valente Glencross were transferred from the trust bank account to the business bank account.

An amount of R13, 500.00 was included in the trust transfer in the amount of R837, 620.40 on 12 July 2013 and a further amount of R1, 500.00 was transferred from the trust bank account to the business bank account on 20 November 2013.

A copy of the leger is attached hereto as Schedule G3.

8.3.17 The amounts paid to Ms Valente Glencross was not part of the firm's fee's as the firm's entire fee in the amount of R571 967.56 was raised in the accounting records on 28 June 2013 and transferred to the business bank account on 12 July 2013.

The Directors of the firm have thus contravened Rule 69.5 of the Rules in that they failed to ensure that a withdrawal from a trust bank account is only in respect of a payment to, for or on behalf of a trust creditor or as transfers to its business banking account, provided that such transfers shall be made only in respect of money claimed to be due to the firm.

8.3.18 The ledger reflects that an amount of R15,000.00 was credited to Mr Hunter's accounts receivable account on 5/12/2013 and described in the ledger as, "Rev V Valente".

The reversal of the amount of R15,000.00 in respect of the payments to Ms Valente Glencross had the effect of reducing the trust transfer on 10 December 2013 hence no reverse trust transfer was required.

8.3.19 The payments made to Ms Valente appear to be in line with the allegations made by Ms Cora Van De Merwe regarding the matter of Ms C.M Maree as described in detail in paragraph 13.6.7 below.

#### **8.4 Mr Alexander Robert Nell**

8.4.1 According to Mr Millar's founding affidavit, Mr Nell was injured in a motor vehicle accident which occurred on 5 April 2005 and had engaged Mr D Bobroff to institute an action for damaged against the Road Accident Fund.

8.4.2 Mr Millar states in his founding affidavit (par.99) that Mr Nell was not provided with a copy of the fee agreement he signed and neither was he provided with a statement of account.

8.4.3 Mr Millar notes in his affidavit that according to Mr Nell, Mrs J.C Nell and his sister, Ms J Van Der Merwe he had entered into a straight percentage fee agreement at a rate of 35% plus V.A.T with Mr D Bobroff.

8.4.4 We requested the control file and ledger account of Mr A.R Nell however we were advised that the control file had been destroyed as the matter was finalised several years ago and the firm's normal retention period for their client files was three years from the date that the statement of account is provided to the client. In addition Ms De Costa was unable to provide us with a copy of the ledger account for Mr Nell as she mentioned that the Mr Nell's file was archived on the Winlaw system more than three years ago. Ms De Costa explained that once a matter is finalised and the account has a Nil balance on the Winlaw system, the account is archived and closed. Ms De Costa further explained that once an account is archived and closed on system she would not be able to retrieve the client's ledger from the system, hence the firm prints a copy of the ledger and places it in the control file before it is archived.

8.4.5 We inspected the trust creditor listing as at 30 September 2011 and did not find a trust creditor account for Mr Nell. It would thus appear that the matter was finalised prior to 30 September 2011 which would mean that it falls outside of the five year retention period as required in terms of the Rules.

**9. MATTER BETWEEN:**

**POMBO, FILIPE MAURICIO MENDES**

**RONALD BOBROFF AND PARTNERS INC. (FIRST RESPONDENT), BOBROFF  
RONALD (SECOND RESPONDENT), BOBROFF DARREN RODNEY (THIRD  
RESPONDENT), THE LAW SOCIETY OF THE NORTHERN PROVINCES (FOURTH  
RESPONDENT), SOUTH AFRICAN REVENUE SERVICES (FIFTH RESPONDENT)**

9.1 Mr Pombo launched an application on the High Court of South Africa, Gauteng Local Division, Johannesburg seeking an order on the following terms:

- “1. That the “Percentage contingency Fee Agreement” (“Common Law Contingency Fee Agreement”) entered into between the first applicant and the first respondent, in respect of fees payable by the applicant to the first respondent in pursuance of the applicants claim against the Road Accident Fund be declared invalid, void and of no force or effect;
2. That the first respondent be ordered to pay into the applicant's attorneys trust account the sum of R1, 372, 560.01 to be held in trust by them pending the taxation referred to in paragraph 3 and 4 below and to thereafter to pay such sum/s to the applicant and the first respondent as has been determined as being due to each of the them.
3. That the first respondent be ordered to pay to the applicant the sum of R53, 061.72 being interest on the monies unlawfully deposited into the personal bank of the third respondent on 15 July 2009 and only repaid to the applicant on 15 November 2011.
4. That the first respondent is ordered to deliver to the applicant, within thirty (30) calendar days of this order, a fully itemised and detailed accounting in the form of a “Bill of costs”, supported where necessary by vouchers, reflecting the reasonable fees and disbursements incurred by the first respondent in the action between the applicant and the Road Accident Fund and that the applicant is entitled to demand taxation thereof;
5. The respondent is ordered to pay the applicant interest at a rate of 15,5% per annum from 1 November 2009 to date of payment on the sum of R1,372,560.01 less any amount due to the first respondent as determined on taxation;
6. That the respondent pays for the cost of this Applicant on the scale as between attorney and own-client.
7. That the second and third respondent are declared jointly and severally liable together with the first respondent, the one paying the others to be absolved;

8. That the matters arising from the contents of this Court file are referred to the Director of Public Prosecutions who is requested to investigate and thereafter to inform the Court within a period of thirty (30) days from the date of service of this order (together with a copy of all the papers filed of record), whether or not a criminal prosecution is indicated and whether or not the Director of Public Prosecutions intends to institute criminal proceedings against either the first or second respondent in this matter.
9. Such alternative relief as the above Honourable Court deems meet"

A copy of the index to the application is attached hereto as Schedule H1.

9.2 In Mr Pombo's founding affidavit, he states the following which is of relevance to our inspection:

- 9.2.1 He instructed Mr D Bobroff to assist with a claim against the Road Accident Fund after he was involved in a motor collision;
- 9.2.2 He signed a, "Percentage Contingency Fee Agreement" with the firm;
- 9.2.3 His case was settled for an amount of R3,637,217.89 together with an undertaking in terms of S17(4)(a) for future medical and hospital expenses as well as party and party costs;
- 9.2.4 He received various payments from the firm after the settlement and on or about 30 October 2008 a payment of R2,208,315.02 was made by the firm into the F Pombo trust, which he believed to be final payment;
- 9.2.5 He was contacted by Mr D Bobroff during November 2011 and was requested to visit the firm's offices to consult. At the said consultation which he attended he was informed by Mr R Bobroff that the practice was a family business and that they often drew money from the firm's account and that this was the reason that the balance of the money due to him and mistakenly deposited by the bookkeeper into another account had not been picked up for such a long time;
- 9.2.6 Thereafter he received a payment in the amount of R142, 660.90 in his bank account;

- 9.2.7 He had not received any statement of account from the firm and the first time he saw any form of accounting was when the report of Ms Christy De Beer, a former bookkeeper of the firm was brought to his attention on 29 August 2015;
- 9.2.8 On 26 August 2015 he was contacted by Mr Anthony Kilroy Beamish who then arranged to meet with him at his home. Mr Beamish then showed him the report of Christy De Beer;
- 9.2.9 He was not told that the error on his account was a result of Mr D Bobroff depositing a cheque made out to him into Mr D Bobroff's personal bank account;
- 9.2.10 He believed that due to the cheque which was made out to him, deposited into Mr D Bobroff's personal bank account and thereafter paid to him during November 2011 is an indication that Mr D Bobroff intended to and in fact unlawfully misappropriated money that was due to him;
- 9.2.11 He believed that the only reason Mr D Bobroff subsequently paid back the money that he stole was because he realised that this was likely to be discovered;
- 9.2.12 Despite the report of Christy De Beer being attached to the court papers in the Graham case, neither Mr R Bobroff nor Mr D Bobroff contacted him to inform him of the report or to explain that the bookkeeper had discovered a serious irregularity on his account;
- 9.2.13 Neither he, nor his wife know anyone by the name of J Kingsbury and nor was he aware the circumstances under which an attorney would ever a referral fee in the amount of R371,281.12 as indicated in the cheque annexed as "FP10";
- 9.2.14 He noted that the cheque issued in the name of, "J Kingsbury" is an uncrossed bearer cheque and the signature thereon was similar to the signature on the cheque which was made out to him and deposited in the personal bank account of Mr D Bobroff. His inference was thus that Mr D Bobroff deposited both the cheque made out him as well as the cheque made out to, "J Kingsbury" in his personal bank account;

9.2.15 According to his calculations there is an additional amount of R53, 061.72 due to him in respect of interest on the amount of R133, 599.04 which was only paid to him on 15 November 2011;

9.2.16 He calculated that the firm's fees in the matter were 18.75 times more than the party and party costs recovered.

Mr Pombo's affidavit is attached hereto as Schedule H1.

9.3 We requested the control file of Mr Pombo and were informed by Mr R Bobroff and Mr D Bobroff that the file had been destroyed as it was an old matter. We were also informed by Ms De Costa that the ledger account was not available as the matter was finalised and archived on the Winlaw system.

According to Mr Pombo's affidavit he received a payment of R2, 208,315.02 on 30 October 2008 which he believed to be final payment. The payment would have then fallen in the firm's financial year ending 30 September 2009. The firm would thus have been required to retain its accounting records in respect of the matter for five (5) years which would have ended on 30 September 2013.

The Law Society's Disciplinary Department requested Mr R Bobroff to respond to Ms B Van Wyk's allegations (as contained her in her affidavit signed on 19 October 2012) in respect of the Pombo matter via a letter dated 27 August 2013.

A copy of the letter is attached hereto as Schedule H8

The firm's legal representative, Mr D Scholtz responded to the Law Society's letter dated 27 August 2013 on 18 September 2013. In the said letter Mr Scholtz states the following:

- The affidavit of Bernadine Van Wyk was one of the founding affidavits annexed to the Notice of Motion which was issued by Jennifer and Matthew Graham against the Law Society, Ronald Bobroff and Partners Inc. and Ronald and Darren Bobroff under case no. 61790/12 in the North Gauteng High Court;
- The matter was still pending before the High Court and accordingly the issues raised in the affidavit by Ms Van Wyk form the subject of the pending proceedings

before the High Court;

- In the circumstance, it was inappropriate and premature for his clients to be required to deal with the averments in Ms Van Wyk's affidavit;
- S71 (4) of the Attorneys Act empowers the Council of the Law Society to postpone proceedings if the proceedings are the subject of civil proceedings in a Court of Law and thus requested the matter be postponed until the final determination of the High Court.

A copy of the letter is attached hereto as Schedule H9.

Considering that the Law Society had made enquiries regarding the Pombo matter from as far back as 27 August 2013 it would appear that the destruction of the client file and related accounting records was a deliberate attempt to ensure that information is no longer available.

9.3 We reviewed the report prepared by Ms Christy De Beer including the annexures thereto which was attached to Mr Pombo's founding affidavit (refer to Schedule H1) and noted the following:

9.3.1 It appears that Mr Pombo entered in a, "Percentage Contingency Fee Agreement" with the firm, in terms of which the firm was entitled to fee of 30% plus V.A.T on any monies recovered on his behalf.

A copy of the percentage fee agreement is attached hereto as Schedule H2.

9.3.2 The Law Plan ledger reveals that the firm received the following amounts on behalf of Mr Pombo:

Date	Description	Amount
06/2007	R.A.F	R394,571.60
06/09/2007	R.A.F	R126,510.98
08/2008	ABSA Bank	R3,637,217.89
01/2009	R.A.F	R97,450.50
<b>Total</b>		<b>R4,255,750.97</b>

A copy of the ledger is attached hereto as Schedule H3.

9.3.2 The Law Plan ledger reveals that the firm received the following amounts were paid to Mr Pombo and/or the F Pombo Trust:

Date	Description	Amount
3/07/2007	F.M.M Pombo – Interim	R184,000.00
10/2007	F.M.M Pombo – Interim	R55,355.66
08/02/2008	P Pombo – Interim	R30,000.00
09/2008	F Pombo	R220,000.00
10/2008	F Pombo	R2,024,315.02
<b>Total</b>		<b>R2,513,670.68</b>

In addition Mr Pombo confirms that he received a payment of R142, 660.90 on 15 November 2011

Based on the table above, it appears that the firm's made various part payments to Mr Pombo usually within two (2) months of receipt of the various payments received from the R.A.F. The exception is the last payment to Mr Pombo in the amount of R142, 660.90 on 15 November 2011 which was made more than two years after the firm received the last payment from the R.A.F.

This is a contravention of Rule 68.8 of the Rules in that the Directors of the firm failed to pay a client within a reasonable time.

9.3.3 According to Mr Pombo's founding affidavit he was informed by Mr R Bobroff that the balance of the money due to him had been mistakenly deposited by the bookkeeper into another account.

We inspected a copy of the cheque which was included in the report of Christy De Beer. The cheque is dated on 9 July 2009 and was issued in the name of, "F Pombo" for an amount of R115, 599.04. The back of the cheque is signed however we are unaware of whom had signed the cheque.

Considering that the payment of R115, 599.04 would have been the final payment to Mr Pombo, a final statement of account would have been prepared and the firm's would have followed its processes and procedures to ensure that

all experts have been paid and that all disbursements reflected on the ledger have been included on the statement of account. This is confirmed in Ms De Beer's report to Andre Van Der Merwe.

A copy of the cheque is attached hereto as Schedule H4.

In addition, it is the firm's normal process that a cheque requisition be prepared and authorised before a cheque is signed by the Directors of the firm. It is thus unusual that a business cheque was utilised to pay a trust creditor and furthermore it would also seem unusual that the bookkeeper made such an error by depositing the cheque into Mr D Bobroff's personal account considering that the cheque would have required Mr Bobroff's personal bank account details as well as having the back of the cheque signed by Mr Pombo to authorise the bank to cash the cheque in favour of Mr D Bobroff.

It is also unusual why the payment of the "surplus" amount of R133, 599.00 which would be due to Mr Pombo would have to be split between a trust cheque in the amount of R18, 000.00 and a business cheque in the amount of R115, 599.04.

Even if it is accepted that the cheque in the amount of R115, 599.04 was deposited in Mr D Bobroff's account was due to an error, it is highly unusual that Mr D Bobroff did not notice that an amount of R115, 599.04 was deposited into his personal bank account.

In addition if the Directors firmly believed that the cheque in the amount of R115, 599.04 was actually deposited in Mr Pombo's account, such a payment would have reflected on Mr Pombo's final statement of account. In the event that Mr Pombo had received such a statement of account he would have identified that he had not received a payment of R115, 599.04 as reflected on the statement of account and made the necessary enquiries. It would thus appear that Mr Pombo was not provided a statement of account which he confirms is the case in his affidavit.

In our view the evidence suggests that the depositing of the cheque issued in the name of Mr Pombo into Mr D Bobroff's account was done intentionally.

9.3.4 The ledger reflects a payment made from the business account in the amount of R371, 281.25 on 29 August 2008. The narration for this payment is, "J Kingsbury – referral fee". The draft statement of account reflects the payment of R371, 281.25 as a disbursement, however according the analysis of disbursements prepared by Legal Billing Systems (legal cost consultants), the payment to "J Kingsbury" is not reflected therein.

A copy of the ledger is attached hereto as Schedule H3.

We have attached copy of the draft statement of account as well as the analysis of disbursements prepared by Legal Billing Systems as Schedule H5 and H6 respectively.

Included in Ms De Beer's report was a copy of the cheque issued in the name of, "J Kingsbury". The cheque is dated 29 August 2008 and was issued from the firm's business bank account. The cheque appears to be signed by Mr R Bobroff as we were advised that all cheques require the signature of two directors however Mr R Bobroff could sign a trust and business cheque alone.

A copy of the cheque is attached hereto as Schedule H7.

9.3.5 The ledger reflects that the firm raised fees as follows:

Date	Description	Amount
06/2007	Fees + 14% VAT – NETCARE	R134,943.28
08/2008	Fees + 14% VAT – NETCARE	R866,335.21
<b>Total</b>		<b>R1,001,278.49</b>

We were informed by Mr R Bobroff during a discussion with him that reference to "Netcare" in the ledger was merely intended for the Directors of the firm's to identify fees raised as a result of the firm's contract with Netcare. Mr Bobroff explained that the firm had an agreement with Netcare whereby they would provide pamphlets relating the process of claiming damages from the Road Accident Fund in four hospital in Gauteng.

9.3.6 The draft statement of account reflects that the fees inclusive of VAT is an amount of R1, 001,278.48 which is the same as the total fees per the ledger.

9.3.7 According to the fee agreement signed by Mr Pombo the firm's fees would be calculated as follows:

Capital received from the Road Accident Fund:	R 394, 571.60
Capital received from the Road Accident Fund:	R 3, 637,217.89
<b>Total:</b>	<b>R 4,031,789.49</b>

**Fees:**

30% x R4, 031,789.49:	R 1,209,536.85
VAT @ 14%:	R 169,335.16
<b>Total fee including VAT:</b>	<b>R 1,378,872.01</b>

The difference between the firm's fees calculated in terms of the fee agreement and the fees per the ledger and statement of account is an amount of R377, 593.52.

The payment to "J Kingsbury" in the amount of R371, 281.25 was not a payment to, for or on behalf of Mr Pombo and neither was the payment a disbursement as confirmed in paragraph 9.3.4 above. The inference that we have drawn is that the payment was in respect of the firm's fees which were not raised in the accounting records. The effect of such practice is that the firm's income would be understated with the consequent understatement of the firm's Income Tax and VAT liabilities.

The Law Society's report dated 12 December 2014 describes how the fee in the De La Guerre matter was not raised in full (see par. 6.5.13) and that the fee entry in the accounting records was replaced (in part) by a so called, "referral fee" paid to Ms L Berman.

A copy of the Law Society's report dated 12 December 2014 is attached hereto as Schedule I1.

In the firm's response to the Law Society's report dated 12 December 2014, they explain that the former bookkeeper was given a clear instruction to debit a fee in the normal way and thereafter draw a cheque in this amount which was to be deposited into the account of Ms L Berman. The payment to Ms L Berman was to be debited to Mr D.R Bobroff's drawings account.

A copy of the firm's reponse dated 10 April 2015 is attached hereto as Schedule I2.

It would thus appear that such an incident was not an isolated case as the same issue has been identified in the account of Mr Pombo.

9.3.8 Mr Reddy met with the Directors of the firm on 26 January 2016 to address queries which we had regarding the account of Mr Pombo. Mr R Bobroff advised that the matter was sub judice and the Directors would thus not respond to the queries at that stage.

**10. J.N Setshogoe**

10.1 The Law Society received a complaint from Mr J.N Setshogoe on 9 September 2014. In his complaint to the Law Society Mr J.N Setshogoe states that he was involved in an accident which occurred on 8 April 2010 and thereafter engaged the firm to assist with his claim. Mr Setshogoe alleges that the agreed upon fee was 25% of the capital amount of R1, 000,000 however the firm had taken a fee of R285, 000.00.

A copy of the complaint is attached hereto as Schedule J1.

10.2 The fee earner which attending to this matter was Ms P Farraj.

10.3 The control file contained following fee agreements which were signed by Mr Setshogoe on 21 May 2010:

- A "Percentage Contingency Fee Agreement"

In terms of the agreement the firm is entitled to a fee amounting to thirty percent (30%) plus VAT of any monies recovered on behalf of the client.

A copy of the agreement is attached hereto as Schedule J2.

- A "No Win – No Fee Mandate"

In terms of the agreement the firm is entitled to a fee amounting to R2, 200.00 per hour with respect to any work done by professional staff and R400.00 per hour in respect of non-professional services. According to the fee agreement the hourly rate would increase by 15% per annum compounded at the end of each completed period of 12 months from the date of instruction.

A copy of the agreement is attached hereto as Schedule J3.

- A "Contingency Fees Agreement in terms of the Contingency Fees Act, 1997"

In terms of this agreement the firm is entitled to a fee on the following basis:

- “5.1 In respect of monetary damages claimed less than R100, 000.00 (One Hundred Thousand Rand) a rate of R1, 500.00 (One Thousand Five Hundred Rand) per hour in respect of each and every attendance;
- 5.2 In respect of monetary damages in excess of R100, 000.00 (One Hundred Thousand Rand) a rate of R2, 000.00 (Two Thousand Rand) per hour in respect of each and every attendance;
- 6. The aforesaid success amount of over and under R100, 00.00 (One Hundred Thousand Rand) respectively shall be on a gross amount prior to any apportionment. The time charge rate and 25% (Twenty Five Percent) maximum fee shall be calculated on the gross amount of any agreed or proven damages prior to any apportionment deduction calculated in accordance with 4.1 hereof.”  
A copy of the agreement is attached hereto as Schedule J4.

10.4 The ledger reflects that the following payments were received by the firm on behalf of Mr Setshogoe from the Road Accident Fund:

Date	Description	Amount
18/02/2014	R.A.F – Capital	R1,000,000.00
04/08/2014	R.A.F – Costs	R 106,962.07
<b>Total</b>		<b>R1,106,962.07</b>

A copy of the ledger is attached hereto as Schedule J5 and J6.

10.5 The ledger reveals that the following payments were made to Mr J.N Setshogoe:

Date	Description	Amount
10/03/2014	J.N Setshogoe – Interim	R500,000.00
03/09/2014	J.N Setshogoe – Further payment	R215,000.00
17/09/2014	J. Setshogoe – Final	R 10,671.65
10/12/2014	J Setshogoe – Final	R 65,300.00
<b>Total</b>		<b>R790,971.65</b>

A copy of the ledger is attached hereto as Schedule J5 and J6.

10.6 Whilst reviewing the ledger we noted that the firm had initially raised a fee of R285, 000.00 including VAT on 20 February 2014. The transaction is described in the ledger as, "to our 25% fee + 14% VAT.

It would thus appear that the firm had raised a fee in terms of the "Contingency Fees Agreement in terms of the Contingency Fees Act, 1997" as described in paragraph 10.3 above.

The ledger then indicates that the firm had reversed a portion of its fee including VAT in the amount of R66, 600.00 on 10 December 2014. The reversal of the fee was necessary in order for the firm to effect the final payment to Mr Setshogoe in the amount of R65, 300.00 on 11 December 2014.

10.7 The firm's fee's per the ledger thus amount to R218, 400.00 inclusive of VAT whereas the firm's fee as per the statement of account amounts to R234, 700.00 inclusive of VAT. Thus the firm's fees per the accounting records are understated by an amount of R16, 300.00. Whilst the variance does not have an effect on the amounts paid to Mr Setshogoe it would have an effect of the firm's VAT and income tax liabilities.

A copy of the ledger and statement of account is attached hereto as Schedule J6 and J7 respectively.

10.8 On 28 January 2015 the Law Society received a letter from Ms P Farraj stating that Mr Bezuidenhout has attended to the final accounting to the client in terms of an hourly fees mandate and that Mr Setshogoe is satisfied with the fees charged.

A copy of the letter is attached hereto as Schedule J8

10.9 The following disbursements as per the statement of account were vouched to supporting documents and we noted the date on which the experts and counsel were paid by inspecting the bank stamped deposit slips:

Payee	Description	Amount	Date paid	Notes
Adv. Darby	Counsel	R900.00	04/04/2012	
Dr Domingo	Neurosurgeon	R12,680.00	23/09/2014	
B Mendelowitz	Industrial Psychologist	R15,500.00	30/01/2014 23/09/2014	

Ferlio Accident Investigators	Private Investigators	R3,771.12	23/09/2014	
Ivan Kramer	Actuary	R10,830.00	14/08/2014	
Dawie Scholtz	Cost consultant	R5,971.90	23/09/2014	
Adv. J Erasmus	Counsel	R22,572.00	04/03/2014	

The majority of the payments to experts were made within two months after the firm had received the party and party costs from the Road Accident Fund.

10.10 The statement of account reflects a disbursement of R3, 127.06 excluding VAT in respect of, "copies and bundles made for trial purposes. We inspected the printing costs to the taxed party and party bill of costs and found the printing costs to reasonable.

**11. Matter between:**

**Yasmin Motara (Applicant) and**

**Ronald Bobroff and Partners Inc. (First Respondent) and Six Others**

The Law Society of the Northern Provinces was cited as the seventh respondent in an application launched by Ms Y Motara against RBP and its Directors in the High Court of South Africa, Gauteng Local Division, Johannesburg under case number 995/2015.

The applicants sought an order in the following terms:

*"1. That the "Contingency Fee Agreement" entered into between the applicant's father, Ebrahim Motara on her behalf and the first respondent on 15 January 201, be declared invalid, void and of no force or effect;*

2.

*2.1 That the first respondent be ordered to pay into the applicant's attorneys trust account the sum of R1, 872,757.52*

*Alternatively*

- 2.1 *That the first respondent be ordered to pay into the applicant's attorneys trust account the sum of R1, 147,169.72*
3. *That the first respondent deliver to the applicants, within thirty (30) days of this order, a fully itemised and detailed accounting in the form of a "Bill of Costs", reflecting the reasonable fees and disbursements incurred by the first respondent in the respective High Court actions instituted by the applicants in the South Gauteng High Court between themselves and the Road Accident Fund and that the applicants are entitled to demand taxation thereof;"*

We have only quoted a portion of the terms listed in the applicants' notice of motion as we deemed it relevant to an understanding of the matter.

We have attached the complete document hereto as Schedule L1

11.1 In Ms Motara's founding affidavit the following is stated:

11.1.1 She was involved in a motor vehicle accident on 21 December 2009. On or about 15 January 2010, representatives of the firm visited her whilst she was at the Kensington Rehabilitation Centre and consulted with her father, Mr Ebrahim Motara and various documents were signed by him. He father informed her that the firm's fee for representing her would be limited to twenty five percent (25%) however they were not provided with a copy of the documents signed by her father on 15 January 2010;

11.1.2 She did not sign any fee agreements personally;

11.1.3 The claim against the Road Accident Fund was settled on 17 February 2014;

11.1.4 The only document that she was provided was the, settlement instructions and/or a confirmation in respect of a fee agreement in terms of the Contingency Fees Act which she was given to sign on 17 February 2014;

11.1.5 She was requested to sign an affidavit on 17 February 2014 wherein it confirmed that she had been properly notified in writing of the terms of the settlement and confirmed that her attorney and client fee agreement is in terms of the Contingency Fees Act;

11.1.6 Mr D Bobroff whom had attended to her matter at trial stage also deposed an affidavit on 17 February 2014 which states that the firm had entered into a contingency fee agreement in terms of which she will pay a maximum of 25% plus VAT of the capital amount received as a consequence of the action or double their normal fees (whichever is the lesser);

11.1.7 The claim was settled in the amount of R6, 571,079.00. In terms of the Court Order, a trust had to be established for her benefit and the nett proceeds had to be paid into the trust. The said trust was created and is currently being administered by Absa Trust;

11.1.8 An amount of R4, 449,898.77 was paid to Absa Trust by the firm on 18 June 2014. She subsequently received a statement of account, which shows that the final payment paid to Absa Trust after recovery of the party and party costs from the RAF was R4,710,802.00;

11.1.9 The party and party costs recovered from the RAF amounted to R372,609.14 made up of R272,063.00 for disbursements and R100,546.14 in respect of attorney fees including VAT;

11.1.10 The firm's fees amounted to R1, 872,757.52 which equated to a 25% contingency fee and VAT at a rate of 14% thereon. This represented 28.5% of the capital amount recovered. She is advised that the 25% cap is the absolute maximum as set out by the Contingency Fee Act and no VAT is provided for by the Act.

11.1.11 The attorney and own client bill of costs prepared by Ms Cora van der Merwe, a candidate attorney at the firm, amounted to R362 793.90. If this amount is doubled, it amounts to R725 587.80. The bill was also subject to taxation.

11.1.12 The difference between the fees she was charged and the fees per the attorney and own client bill of costs is an amount of R1, 147,169.72.

11.1.13 The firm had thus misappropriated not less than R1, 147,169.72 of the proceeds of her claim which was supposed to be paid into her trust;

11.1.14 Regarding the disbursements set out in the statement of account, attention was drawn on what appears to be a deliberate manipulation of the disbursements as follows:

- Item 4 – an amount of R14, 158.80 for photocopies of bundles appears to be a duplicate in item 5 which shows an amount of R16, 116.75 resulting in a total charge amount to R30, 275.55 for photocopying.
- Item 8 – Dr Domingo was reflected as R21, 834.40 but the final statement of account from the Doctor reflected an amount of R18, 834.40. There is thus a discrepancy of R3,000.00
- Item 10 – Dr L Grinker reflection an amount of R25, 526.00 on the statement of account whilst the party and party bill of costs reflects an amount of R23 940.00 resulting in a discrepancy of R1 566.00.
- Item 11 – Ms B van Zyl reflected R12 000.00, but party and party bill of costs and her statement of accounts account reflects R10 000.00. There is thus a discrepancy of R2,000.00
- Item 16 – Mr I Kramer reflected as R25 878.00 whilst the party and party bill of costs substantiated by his account reflect an amount of R11 286.00. There is thus a discrepancy of R14,592.00

The discrepancies noted above amounts to R51 433.55.

A copy of Ms Motara's founding affidavit is attached hereto as Schedule L1.

11.2 We were presented with a ledger account which shows that the following amounts were received by the firm on behalf of Ms Motara:

Date	Description	Amount
3/03/2014	RAF - Capital	R6,571,079.00
29/10/2014	RAF - Costs	R372,609.14
16/03/2015	Rontgen & Rontgen - Interest	R12,532.58
<b>Total</b>		<b>R6,956,220.72</b>

A copy of the ledger is attached hereto as Schedule L2.

11.3 The ledger reflects that the following amounts were paid to, for or on behalf of Ms Motara:

Date	Description	Amount
13/03/2014	EFT Y Motara Interim	R4,449,850.00
27/02/2014	Unisa Student Deposits	R4 465.00
06/11/2014	Absa Trust - Final	R339,444.52
09/04/2015	Absa Trust	R11,962.58
<b>Total</b>		<b>R4,805,722.00</b>

A copy of the ledger is attached hereto as Schedule L2.

As can be seen above, the firm made the interim payment within a period of 10 days from receipt of the capital amount from RAF. The final amount was also paid within 10 days of receipt of party and party costs from the RAF. We are of the view that Ms Motara was paid within a reasonable period.

11.4 The following disbursements as per the statement of account were vouched to supporting documents and we noted the date on which the experts and counsel were paid by inspecting the bank stamped deposit slips:

Payee	Description	Amount	Date paid	Notes
Adv Zidel	Counsel	R3,420.00	07/07/2014	
Adv Zidel	Counsel	R2,850.00	07/07/2014	
Dr Z Domingo	Neurosurgeon	R3,000.00	01/11/2013	
Dr Z Domingo	Neurosurgeon	R18,834.40	7/11/2014	
Megan Spavins	Occupational Therapist	R3,300.00	25/09/2014	
Megan Spavins	Occupational Therapist	R7,900.00	14/01/2013	
Dr L Grinker	Psychiatrist	R25,536.00	11/03/2014	
Bev Van Zyl	Neuropsychologist	R10,000.00	13/01/2014	
Bev Van Zyl	Neuropsychologist	R2,000.00	10/03/2014	

Joy Saffer	Speech Therapist	R9,000.00	08/07/2014	
Hennie Scholtz	Investigator	R9,216.00	7/11/2014	
Human Interaction	Psychologist	R50,969.40	7/11/2014	
Adv Zidel	Counsel	R139,650.00	04/03/2014	
Ivan Kramer	Actuary	R25,878.00	12/03/2014	
VI Efthimiades	Cost Consultants	R11,873.70	07/11/2014	
VI Efthimiades	Cost Consultants	R570.00	13/03/2015	

A copy of the statement of account is attached hereto as Schedule L3

As indicated in the table above, the majority of payments to experts and counsel were made prior to the receipt of the party and party costs from the R.A.F.

11.5 Mr Darren Bobroff indicated that the firm had omitted invoices in respect of the following disbursements when preparing the bill of costs on a party and party scale:

Description	Amount
Dr Domingo	R3,000.00
Dr Grinker	R1,596.00
B Van Zyl	R2,000.00
I Kramer	R14,592.00
<b>Total</b>	<b>R21,188.00</b>

Mr D Bobroff stated that an addendum was done to the party and party bill of costs in order to claim for the above-mentioned amounts. Mr D Bobroff further advised that the amount has not yet been received from the R.A.F however once the monies are received it will be paid over to ABSA Trust for the benefit of Ms Motara.

The addendum to the bill of costs on a party and party scale was taxed and the bill was settled for an amount of R21, 188.00.

A copy of the bill of costs which is supported by the relevant invoices from the medical experts is attached hereto as Schedule L4.

11.6 The ledger reflects the following entries in respect of the firm's fees in the matter:

Date	Description	Amount
7/03/2014	"to our 25% fee + 14% VAT"	R1,872,757.52
6/11/2014	"to our reverse fee + 14% VA"	(R82,957.52)
<b>Total</b>		<b>R1,789,800.00</b>

A copy of the ledger is attached hereto as Schedule L2.

The firm's fees per the statement of account however, is an amount of R1, 872,757.52 including VAT. The firms fees have thus been understated in the accounting records by an amount of R82, 957.52 including VAT. The effect of such understatement is that the firm's liability in respect of income tax and VAT would also be understated.

The statement of account is attached hereto as Schedule L3.

The fact that the information per the statement of account and the accounting records do not agree represents a contravention of S78 (4) of the Act read together with Rule 68.1 in that the firm's trust accounting records do not represent fully and accurately the state of affairs and business of the firm.

11.7 Mr D Bobroff informed us that the Ms Motara had signed a fee agreement in accordance with the Contingency Fee Act dated 28 March 2012.

A copy of the fee agreement is attached hereto as Schedule L5.

Mr D Bobroff indicated that the firm was awaiting the court's decision on the matter of the validity of the agreement signed by Ms Motara.

11.8 Ms Motara's allegation was that she was charged a fee in the amount of R1,872,757.52 despite the fact that firm's fees per the bill of costs prepared by Ms Cora Van De Merwe only amounted to R362,793.90 which when doubled up would amount to R725,587.80. She was thus of the opinion that she was overreached by an amount of R1, 147,169.72.

11.9 We discussed the matter with Mr D Bobroff on 22 October 2015. He advised that an attorney and own client bill of cost was prepared by Ms Cora Van Der Merwe but was never approved by the firm. He advised that the firm had prepared an attorney and

own client bill of costs and same was utilised for the pending litigation against the firm. The firm's fees per the bill of costs are as follows

Description	Amount
Fees total	R719,419.06
Plus: 100% Surcharge i.t.o CFA	R718,419.06
Total fees	R1,438,838.12
Plus Drawing fees	R152,516.84
Plus 14% VAT	R222,789.70
<b>Total including VAT</b>	<b>R1,814,144.65</b>

A copy of the bill of costs drawn on attorney and client scale is attached hereto as Schedule L6.

The firm's fees per the statement of account was an amount of R1, 872,757.52, it would thus appear that the firm has overreached Ms Motara by an amount of R58, 612.87.00.

In our opinion the Directors of the firm are guilty of unprofessional conduct in that they have overreached a client.

11.10 The statement of account reflects a disbursement in respect of, "bundles" at a cost of R12, 420.00 excluding V.A.T as well as, "copies per bill of costs" at a cost of R14, 137.50 excluding V.A.T.

A copy of the statement of account is attached hereto as Schedule L3.

The control file contained a document which provides an analysis in respect of the cost of bundles as follows:

Description	Amount
Index to Defendants Medico-Legal Bundle 132 pages x 6 persons x R5 per copy	R3,960.00
Index to Plaintiff's Medico Legal Bundle 160 pages x 6 persons x R5 per copy	R4,800.00
Index to Merits Bundle 46 pages x 6 persons x R5 per copy	R1,380.00
Index to Pleadings Bundle	R630.00

21 pages x 6 persons x R5 per copy	
Index to Financial Bundle	R210.00
7 pages x 6 persons x R5 per copy	
Index to Educational Bundle	R1,440.00
48 pages x 6 persons x R5 per copy	
<b>Total Disbursement for Bundles</b>	<b>R12,420.00</b>

A copy of the document entitled, "Bundles for: Yasmin Motara 11233" is attached hereto as Schedule L7.

We reviewed the taxed party and party bill and noted that the "bundles" described above which were charged to Ms Motara separately on the statement of account are infact included in the taxed party and party bill of costs as follows:

- Index to Defendants Medico – Legal Bundle  
Item number "300" on the party and party bill refers to, "Draw index – medico – legal reports" and item "301" refers to copies made of annexures (138 pages x 6 copies);
- Index to Plaintiff's Medico – Legal Bundle  
Item number "283" on the party and party bill refers to, "Draw index – medico – legal bundle" and item "284" refers to copies made of annexures (158 pages x 6);
- Index to Pleadings  
Item number, "215" on the party and party bill refers to, "draw index – pleadings" and item, "216" refers to copies of annexures made (19 pages x 6);
- Index to Educational Bundle  
Item number, "160" on the party and party bill refers to, "draw index – educational bundle" and items "161" refers to copies of annexures made (48 pages x 6).

A copy of the party and party bill of costs is attached hereto as Schedule L8.

The index to merits bundle and index to financial bundle did not appear on the taxed party and party bill of costs.

The disbursement in respect of the following "bundles" appear to be a duplicate charge as the cost of copying these "bundles" is already included in the disbursement, "copies per bill of costs" as reflected on the statement of account:

Description	Amount
Index to Defendants Medico-Legal Bundle 132 pages x 6 persons x R5 per copy	R3,960.00
Index to Plaintiff's Medico Legal Bundle 160 pages x 6 persons x R5 per copy	R4,800.00
Index to Pleadings Bundle 21 pages x 6 persons x R5 per copy	R630.00
Index to Educational Bundle 48 pages x 6 persons x R5 per copy	R1,440.00
<b>Total Disbursement for Bundles</b>	<b>R10,830.00</b>

It would appear that the client has been overreached by an amount of R10, 830.00 which represents a contravention of Rule 89.24.

## 12. Other Matters

We have selected the following matters from the trial balance for further inspection.

### 12.1 MS MB COMBRINK

12.1.1 The fee earner attending to this matter was Ms P Farraj;

12.1.2 The control file contained following fee agreements which were signed by the Ms Combrink on 3 December 2008:

- A "Percentage Contingency Fee Agreement"  
In terms of the agreement the firm is entitled to a fee amounting to thirty percent (30%) plus VAT of any monies recovered on behalf of the client;  
A copy of the agreement is attached hereto as Schedule M1.
- A "Mandate"

In terms of the agreement the firm is entitled to a fee amounting to R2, 200.00 per hour with respect to any work done by professional staff and R400.00 per hour in respect of non-professional services. According to the fee agreement the hourly rate would increase by 15% per annum compounded at the end of each completed period of 12 months from the date of instruction.

A copy of the agreement is attached hereto as Schedule M2.

- A "Contingency Fees Agreement in terms of the Contingency Fees Act, 1997"

In terms of this agreement the firm is entitled to a fee on the following basis:

"5.1 In respect of monetary damages claimed less than R100, 000.00 (One Hundred Thousand Rand) a rate of R1, 500.00 (One Thousand Five Hundred Rand) per hour in respect of each and every attendance;

5.2 In respect of monetary damages in excess of R100, 000.00 (One Hundred Thousand Rand) a rate of R2, 000.00 (One Thousand Rand) per hour in respect of each and every attendance;

6. The aforesaid success amount of over and under R100, 00.00 (One Hundred Thousand Rand) respectively shall be on a gross amount prior to any apportionment. The time charge rate and 25% (Twenty Five Percent) maximum fee shall be calculated on the gross amount of any agreed or proven damages prior to any apportionment deduction calculated in accordance with 4.1 hereof."

A copy of the fee agreement is attached hereto as Schedule M3.

12.1.3 The ledger reflects that the firm received the following amounts on behalf of Ms Combrink:

Date	Description	Amount
06/07/2012	R.A.F - Capital	R1,880,000.00
23/01/2013	R.A.F – Costs	R 186,005.79
<b>Total</b>		<b>R2,066,005.79</b>

A copy of the ledger is attached hereto as Schedule M4 and M5.

12.1.4 The ledger reflects that the firm received the following amounts were paid to Ms Combrink:

Date	Description	Amount
14/08/2012	M.B Combrink – Interim	R1,000,000.00
16/10/2012	M.B Combrink – Med Aid	R 229,129.05
07/03/2013	M.B Combrink – Final	R 143,369.90
<b>Total</b>		<b>R1,372,498.95</b>

It thus appears that Ms M.B Combrink had received an interim payment and a final payment within two months of the firm receiving the capital and party and party costs from the R.A.F respectively. We are thus of the opinion that Ms Combrink was paid within a reasonable period.

A copy of the ledger is attached hereto as Schedule M4 and M5.

12.1.5 The statement of account reflects that the firm's fees amounts R470, 000.00 excluding VAT. This amounts to twenty five percent (25%) of the capital received from the Road Accident Fund.

A copy of the statement of account is attached hereto as Schedule M6.

The control file did not contain a time ledger or other record of time spent on the matter. We requested a copy of the time ledger via a letter sent to the firm on 26 November 2015. We received a response stating that they were unable to provide a time ledger. We were thus not in a position to determine if the fees charged by the firm were subject to the fee limits prescribed by the Contingency Fees Act.

12.1.6 The ledger reflects that the firm did not raise a fee in the matter but rather transferred an amount of R535, 800.00 (fee + VAT) via a journal entry to account 11521. The entry is described in the ledger as, "fee trf 11521". This practice is described in further detail in paragraph 14.8 below.

12.1.7 The following disbursements as per the statement of account were vouched to supporting documents and we noted the date on which the experts and counsel were paid by inspecting the bank stamped deposit slips:

Payee	Description	Amount	Date paid	Notes
Adv. Anderson	Counsel	R855		N1
Dr Edelingh	Neurosurgeon	R11,400.00	17/10/2011 24/05/2011	
Dr Percy Miller	Neurosurgeon	R22,500.00	3/4/2013	
MM Botha	Psychiatrist	R8,500.00	23/07/2012	
B Van Zyl	Neuropsychologist	R9,800.00	27/06/2012	N2
Rose Leshika	Occupational Therapist	R18,700.00	18/05/2013 3/04/2013	
Bradley Mendelowitz	Industrial Psychologist	R24,000.00	3/04/2013	
I Kramer	Actuary	R9,234.00	03/4/2013	
Dr L Fine	Psychiatrist	R10,830.00	03/4/2013	
Dawie Scholtz	Cost consultant	R9,203.05	07/03/2013	
Adv. Josie Nell	Counsel	R17,000.00	09/07/2012	

N1: The control file did not contain a proof of payment.

N2: The control file did not contain proof of payment. We were provided with a copy of bank returned cheque issued in favour of B Van Zyl dated 27 June 2012 for an amount of R76, 700.00 upon our request. A copy of the business cheque requisition accompanied the cheque. The requisition lists the various matter for which Ms Van Zyl was paid for which totalled an amount of R76, 700.00.

This is a departure from the firm's normal practice of issuing a separate cheque to each expert/counsel per matter on which they received instructions.

The majority of the payments to experts and counsel were done on 30 April 2013, some three months after receipt of the party and party costs from the Road Accident Fund.

12.1.8 The statement of account included an amount of R15, 684.75 in respect of "Sundry disbursements, including photocopies, letters, revenue stamps, postage, deputy sheriff, travelling charges".

The control file contained a schedule reflecting the break-down of the sundry disbursements. The schedule reflects that an amount of R13, 702.80 was in respect of "Bundles" and that the cost per page was R5.70. The total pages thus copied per the schedule amounts to 2,404 copies.

We inspected the taxed party and party bill of costs and totalled the number of copies made to be an amount of 2,403 copies.

It should be noted that in this instance the cost of printing per the bill of costs and, "bundles" were not separate disbursement as in the case of the Hunter and Wilkinson matter as mention in paragraph 8.1 and 8.2 above.

## 12.2 MORRIS HENNINGS

12.2.1 The fee earner that attended to this matter was Mr S Bezuidenhout.

12.2.2 The control file contained following fee agreements which were signed by the Mr Hennings:

- A "Percentage Contingency Fee Agreement"  
In terms of the agreement the firm is entitled to a fee amounting to twenty five percent (25%) plus VAT of any monies recovered on behalf of the client;  
A copy of the agreement is attached hereto as Schedule N1.
- A "No Win – No Fee Mandate"  
In terms of the fee agreement, the firm is entitled to a fee amounting to R2, 000.00 per hour with respect to any work done by professional staff and R350.00 per hour in respect of non-professional services. According to the fee agreement the hourly rate would increase by 15% per annum

compounded at the end of each completed period of 12 months from the date of instruction.

A copy of the agreement is attached hereto as Schedule N2.

12.2.3 The ledger reflects that the firm received the following amounts on behalf of Mr Hennings:

Date	Description	Amount
14/09/2011	R.A.F	R671,698.52
17/04/2012	R.A.F	R146,742.67
17/04/2012	R.A.F	R 8,412.58
<b>Total</b>		<b>R826,853.77</b>

A copy of the ledger is attached hereto as Schedule N3.

12.2.4 The ledger reveals that the firm received the following amounts were paid to, for or on behalf of Mr Hennings:

Date	Description	Amount
19/09/2011	Roestoff & Krause Attorneys	R200,000.00
19/09/2011	M.F Hennings - Final	R280,000.00
22/02/2012	M.F Hennings – Final	R28,375.15
09/05/2012	M.F Hennings – Final	R8,412.58
<b>Total</b>		<b>R516,787.73</b>

To summarise, Mr Hennings was paid according to the following time-frame in relation to the receipt of monies from the Road Accident Fund:

- Mr Hennings received an amount of R280,000.00, five (5) days after receipt of the capital award from the Road Accident Fund;
- An amount of R200,000.00 was paid to Roestoff & Krause Attorneys on Mr Hennings instruction, five (5) days after receipt of the capital award from the Road Accident Fund;
- A final payment of R28,375.15 was made to Mr Hennings, more than six (months) after the receipt of the capital award from the R.A.F and almost two (months) before the firm received the party and party costs from the

R.A.F;

- A final payment of R8,412.58 in respect of interest was made to Mr Hennings some three (3) weeks after the firm received the interest payment from the R.A.F

It is worth noting that in this matter the client was paid the entire amount due to him from the capital received from the R.A.F, i.e the firm did not wait until the party and party costs were received to effect "final" payment to the client.

12.2.5 The statement of account reflects that the firm's fees amounts R167, 924.63 excluding VAT. This amounts to twenty five percent (25%) of the capital received from the Road Accident Fund. The total fee inclusive of VAT amounts to, R191, 434.08

A copy of the statement of account is attached hereto as Schedule N4.

The ledger however reflects that the firm had raised a fee in the amount of R177, 634.09. The firm's fees were thus under-stated in the accounting records by an amount of R13, 799.99. This understatement of fee income would result in a reduction of the firm's VAT and Income Tax liabilities.

12.2.6 The ledger indicates that the firm had raised the fee in the amount of R177, 634.09 on 10 September 2014 more than two (2) years after final payment was made to Mr Hennings.

In our opinion this represents a contravention of Rule 68.6.1 in that trust money was not kept separate from other money.

We queried the reason for the delay and was advised that Mr Bezuidenhout had prepared a draft statement of account which reflected the fees to raise however Ms Van Wyk (former bookkeeper) failed to follow the instruction to raise the fee. We were further advised that once it was ascertained that the account had a trust credit balance on the matter, a fee was debited.

12.2.7 The control file did contain a handwritten record of time spent on the matter. The handwriting appears to be that of Mr Bezuidenhout and the document reflects that he had spent a total of 77.5 hours on the matter.

A copy of the time records is attached hereto as Schedule N5.

12.2.8 The following disbursements as per the statement of account were vouched to supporting documents and we noted the date on which the experts and counsel were paid by inspecting the bank stamped deposit slips:

Payee	Description	Amount	Date paid	Notes
Adv. Anderson	Counsel	R855.00		N1
Dr G Marus	Neurosurgeon	R9,804.00	06/01/2012	
Sunninghill Radiology	Radiologist	R9,224.20	10/5/2012	
Eleanor Bubb	Educational Psychologist	R22,729.32	10/5/2012	
Dr L Fine	Psychiatrist	R10,488.00	10/5/2012	
Essop - Dollinschek	Occupational Therapist	R8,212.97	10/05/2012 20/06/2011	
Thusanong Consulting	Industrial Psychologist	R8,550.00	23/08/2011 10/05/2012	
Cleman, Murfin and Rolland	Actuaries	R5,700.00	10/05/2012	
Adv Anderson	Counsel	R16,416.00	10/5/2012	
Friedland Hart	Correspondents	R6,311.46	05/04/2012	N2
D Scholtz	Cost consultant	R8,350.99	10/5/2012	

N1: The control file did not contain proof of payment. We requested the same and was provided with a copy of an e-mail dated 7 December 2015 from Adv. Anderson to Mr Kroes (bookkeeper at RBP) wherein he confirms that he had received payment towards invoice no.219 for an amount of R855.

N2: The control file did not contain proof of payment. We requested the same and was provided with a copy of a returned cheque dated 5 April 2012 issued in favour of Friedland Hart Solomon Nicolson for an amount of

R20, 859.75. It would thus appear that cheque was issued in respect of various matters which is a departure from the firm's practice of issuing a separate cheque per matter.

As indicated in the table above, the majority of payments to experts and counsel were on 10 May 2012, which is within a month of the firm receiving the party and party costs from the Road Accident Fund.

### **12.3 MR W AJAM**

12.3.1 The fee earner which attending to this matter was Mr D Bobroff according to the fee earner code on the ledger.

12.3.2 We inspected the control file and noted that the following fee agreements were signed by Mr GR Ajam on behalf of his son Mr W Ajam:

#### **12.3.2.1 A "percentage contingency fee agreement"**

In terms of the agreement the firm is entitled to a fee amounting to 30% plus VAT of any monies recovered on behalf of the client. The agreement was not dated.

A copy of the agreement is attached hereto as Schedule O1.

12.3.2.2 A "contingency fees agreement in terms of the Contingency Fees Act, 1997" was signed by Mr G.R Ajam on 15 August 2011 and by Adv. Khan (Curator Ad Litem) on 28 February 2013. In terms of this agreement the firm is entitled to a fee on the following basis:

- a) Fees in respect of all time spent at the agreed rate of R3,200.00 per hour plus VAT or part thereof pro rata, escalating at 10% per annum compounded from the date on which the work was done until date of payment;
- b) A success fee equal to double the normal fee in respect of all time spent at the rate referred above.

Provided that the attorney's fee charged to the client will either be as calculated in terms of a) and b) above and doubled or will

be equal to an amount of 25% of the monetary award recovered on the client's behalf, whichever is the lesser.

A copy of the fee agreement is attached hereto as Schedule O2.

12.3.3 We inspected the ledger and noted that the firm had received the following payments from the R.A.F on behalf of Mr W Ajam:

Date	Description	Amount
29/05/2013	R.A.F - Capital	R6,678,827.18
16/10/2013	R.A.F - Costs	R 338,596.70
28/01/2014	R.A.F – Costs	R 26,241.00
<b>Total</b>		<b>R7,043,664.68</b>

A copy of the ledger is attached hereto as Schedule O3.

12.3.4 The ledger reflects that the following payments were made to ABSA trust on behalf of Mr Ajam:

Date	Description	Amount
01/07/2013	ABSA TRUST	R4,363,500.00
10/07/2013	ABSA TRUST	R 210,447.96
21/10/2013	ABSA TRUST	R 200,000.00
17/02/2014	G.R AJAM	R 15,432.47
<b>Total</b>		<b>R4,789,380.43</b>

As indicated in the table above, the first two payments were made to ABSA Trust on behalf of Mr Ajam within two months of the firm receiving the capital award from the R.A.F. The third payment to ABSA trust was made within five days of receiving the party and party costs from the Road Accident Fund and a final payment was made to ABSA Trust within a month after the firm received the party and party costs from the R.A.F in respect of the addendum bill of costs.

12.3.5 The firm's fees according to the statement of account is an amount of R1, 669,706.79 excluding VAT which amounts to 25% of the capital award

received from the Road Accident Fund. It thus appears that the fee was raised in terms of the contingency fees agreement in terms of the Contingency Fees Act as mentioned in paragraph 12.3.2.2 above.

A copy of the statement of account is attached hereto as Schedule O4

The ledger reflects that the fee in the amount of R1, 903.465.74 inclusive of VAT was raised on 30 May 2013 a day after the firm had received the capital award from the R.A.F. The entire fee was transferred to the business bank account on 3 June 2013 as indicated in the ledger.

A copy of the ledger is attached hereto as Schedule O3.

12.3.6 The control file contained a time ledger which indicates that the total time spent on the matter is 313.6 hours. According to the signed contingency fee agreement in terms of the Contingency Fees Act, the firm's normal fees are based on an hourly rate of R3, 200.00 per hour. The firm's normal fees in the matter would thus amount to R1, 003,520 excluding VAT if we exclude the effect of the 10% annual escalation. The firm's normal fees doubled up in terms of the Contingency Fees Act would thus amount to R 2,007,040 excluding VAT which is higher than the firm's fees calculated at 25% of the monies recovered on behalf of the client.

A copy of the time ledger is attached hereto as Schedule O5.

12.3.7 The following disbursements as per the statement of account were vouched to supporting documents and we noted the date on which the experts and counsel were paid by inspecting the bank stamped deposit slips:

Payee	Description	Amount	Date paid	Notes
Adv Zidel	Counsel	R2,850.00	01/11/2011	N1
Dr Read	Orthopaedic Surgeon	R41,460.00	4/09/2012 24/10/2013	
Dr Z Domingo	Neurosurgeon	R19,799.00	18/02/2014	
Adv. Zidel	Counsel	R9,690.00	5/06/2013	
Megan Spavins	Occupational Therapist	R11,853.33	21/11/2012 23/05/2013	

Adv. S Georgiou	Counsel	R1,368.00	Query pop	
Dr L Fine	Psychiatrist	R13,680.00	24/10/2013	
Bradley Mendelowitz	Industrial Psychologist	R18,000.00	25/4/2013 24/10/2013	
Clemens, Murfin & Rolland	Actuary	R6,270.00	24/10/2013	
Bev Van Zyl	Neuropsychologist	R19,800.00	8/5/2013 7/08/2013 18/02/2014	
Adv. J Khan	Counsel	R19,800.00	5/6/2013	
Elna Rossouw	Industrial Psychologist	R24,054.00	24/10/2013	
Adv Zidel	Counsel	R94,050.00	5/6/2013	
VLE	Cost consultants	R15,095.39	24/10/2013	
VLE	Cost consultants	R570	18/02/2014	

N1: The control file did not contain proof of payment. We requested the proof of payment and was provided with a copy of a returned cheque dated 1 November 2011 issued in favour of Adv. Zidel for an amount of R9, 952.00. It would thus appear that Adv. Zidel was paid by way of a single cheque for multiple matters.

The bulk of the payments to the experts and counsel were made on 24 October 2013, eight (8) days after the firm received the party and party costs from the Road Accident Fund.

Bev Van Zyl and VLE Cost Consultants were paid on 18 February 2014, within a month after the firm had taxed their addendum party and party bill and recovered the costs from the R.A.F on 28 January 2014.

12.3.8 The statement of account reflects a disbursement in respect of, "bundles" at a cost of R15, 300.00 excluding V.A.T as well as, "copies per bill of costs" at a cost of R24, 677.50 excluding V.A.T.

A copy of the statement of account is attached hereto as Schedule O4.

The control file contained a document which provides a break-down in respect of the cost of bundles as follows:

Description	Amount
Index to Defendants Medico-Legal Bundle 40 pages x 6 persons x R5 per copy	R1,200.00
Index to Plaintiff's Medico Legal Bundle 73 pages x 6 persons x R5 per copy	R2,190.00
Index to Merits Bundle 28 pages x 6 persons x R5 per copy	R840.00
Index to Pleadings Bundle 22 pages x 6 persons x R5 per copy	R660.00
Index to Application 30 pages x 6 persons x R5 per copy	R900.00
Index to Medical Records Bundle 317 pages x 6 persons x R5 per copy	R9,510.00
<b>Total Disbursement for Bundles</b>	<b>R15,300.00</b>

A copy of the document entitled, "Bundles for Gamat Ajam OBO Waseem 11295" is attached hereto as Schedule O6.

12.3.9 We reviewed the taxed party and party bill and noted that the "bundles" described above in paragraph 12.3.8 which were charged to Mr Ajam separately on the statement of account are included in the taxed party and party bill of costs as follows:

- Index to Defendants Medico – Legal bundle  
Item number "240" on the party and party bill refers to, "Draw index – defendants medico legal reports" and item "241" refers to copies made of annexures (38 pages x 6 copies);
- Index to Plaintiff's Medico Legal Bundle  
Item number "237" on the party and party bill refers to, "Draw index – plaintiff's medico legal reports" and item "238" refers to copies made of annexures (71 pages x 6);

- Index to Merits Bundle  
Item number, "96" on the party and party bill refers to, "draw index – merits" and item, "97" refers to copies of annexures made (26 pages x 6);
- Index to Pleadings Bundle  
Item number, "90" on the party and party bill refers to, "draw index – pleadings" and item number "91" refers to copies of annexures made (20 pages x 6);
- Index to Medical Records Bundle  
Item number, "93" on the party and party bill refers to, "draw index – medical and hospital records" and item number "94" refers to copies of annexures made (317 pages x 6).

A copy of the party and party bill of costs is attached hereto as Schedule O7

The "index to application" bundle not appear on the taxed party and party bill of costs.

The disbursement in respect of the following "bundles" appear to be a duplicate charge as the cost of copying these "bundles" is already included in the disbursement, "copies per bill of costs" as reflected on the statement of account:

Description	Amount
Index to Defendants Medico-Legal Bundle 40 pages x 6 persons x R5 per copy	R1,200.00
Index to Plaintiff's Medico Legal Bundle 73 pages x 6 persons x R5 per copy	R2,190.00
Index to Merits Bundle 28 pages x 6 persons x R5 per copy	R840.00
Index to Pleadings Bundle 22 pages x 6 persons x R5 per copy	R660.00
Index to Medical Records Bundle 317 pages x 6 persons x R5 per copy	R9,510.00

<b>Total Disbursement for Bundles</b>	<b>R14,400.00</b>
---------------------------------------	-------------------

In these circumstances it would appear that the client has been overreached by an amount of R14, 400.00 which is a contravention of Rule 89.24

#### **12.4 MS KM SETATI**

12.4.1 According to the fee earner code per the Winlaw records, the fee earner attending to this matter was Mr D Bobroff.

12.4.2 The control file contained a, "No Win No Fee Attorney and Client Agreement and Mandate". The fee agreement appears to be signed by Ms Setati however the date on which it was signed was not completed on the fee agreement.

In terms of the agreement, the firm is entitled to fees on the basis of R850, 00 per hour with respect to any work of whatsoever nature done on her behalf. The agreement also states that the hourly rate of R850.00 will increase by 15% per annum compound at the end of each completed period of twelve (12) months from date of instruction.

A copy of the agreement is attached hereto as Schedule P1.

12.4.3 According to the statement of account which appears to be signed by the client on 14 January 2014, the firm's fees in the matter amounted to R48, 107.20 excluding VAT. The ledger reflects that the firm's fees including VAT were correctly recorded.

A copy of the statement of account is attached hereto as Schedule P2.

A copy of the ledger is attached hereto as Schedule P3

The control file did not contain a copy of the time ledger or any other record of time spent on the matter. We requested the same and were advised that the firm was unable to provide such a record.

12.4.4 The statement of account reflects that the client was paid an amount of R92, 950.00 which amounts to 71.5% of the capital received from the R.A.F.

A copy of the statement of account is attached hereto as Schedule P2.

12.4.5 The following disbursements as per the statement of account were vouchered to supporting documents and we noted the date on which the experts and counsel were paid by inspecting the bank stamped deposit slips:

Payee	Description	Amount	Date paid	Notes
Adv. Khan	Counsel fees	R700.00		N1
Dr Read	Orthopaedic Surgeon	R7,980.00	7/10/2013	
Drs Matisonn, Scott & Tobias	Radiologist	R1,642.40	5/02/2008 7/10/2013	
Essop – Dollinschek	Occupational Therapist	R1,259.53	5/03/2009	
Adv. Khan	Counsel	R1,140.00	7/10/2013	
Dawie Scholtz	Cost consultant	R2,973.21	16/09/2011	
Dawie Scholtz	Cost consultant	R 598.05	7/10/2013	

N1: The control file did not contain proof of payment. We requested the same and was provided with a copy of an e-mail dated 30 November 2015 from Adv. Z Khan to Mr Kroes (bookkeeper at RBP) wherein he confirmed that he had received payment towards his invoice for the amount of R700.

N2: The control file did not contain proof of payment. We requested the same and was provided with a copy of a returned cheque issued in favour of Mr D Scholtz on 16 September 2011 for an amount of R13, 346.31.

It would thus appear that Mr Scholtz received a single cheque towards payment in respect of various matters attended to him. This is a departure from the firm's practice to issue a separate cheque to the experts and counsel per the matters which they had attended to.

12.4.6 The statement of account and the fee agreement were apparently signed by Ms Setati however in our view the signatures on these documents appear to

differ. Whilst we are not experts in the analysis of handwriting, we are obliged to report identified irregularities as explained in paragraph 2.1.3 above.

## 12.5 MS T BERTRAMS

12.5.1 The fee earner attending to this matter was Ms G Tognocchi.

12.5.2 The control file contained the following fee agreements which appear to be signed by Ms Bertrams on 22 August 2002:

12.5.2.1 A "No Win No Fee Attorney and Client Agreement and Mandate"

In terms of the agreement, the firm is entitled to fees on the basis of R850, 00 per hour with respect to any work of whatsoever nature done on her behalf. The agreement also states that the hourly rate of R850.00 will increase by 15% per annum compound at the end of each completed period of twelve (12) months from date of instruction.

A copy of the agreement is attached hereto as Schedule Q1.

12.5.2.2 A "contingency fees agreement in terms of the Contingency Fees Act, 1997". In terms of this agreement the firm is entitled to a fee on the following basis:

- a) Fees in respect of all time spent at the agreed rate of R3,200.00 per hour plus VAT or part thereof pro rata, escalating at 10% per annum compounded from the date on which the work was done until date of payment;
- b) A success fee equal to double the normal fee in respect of all time spent at the rate referred above.

Provided that the attorney's fee charged to the client will either be as calculated in terms of a) and b) above and doubled or will be equal to an amount of 25% of the monetary award recovered on the client's behalf, whichever is the lesser.

A copy of the fee agreement is attached hereto as Schedule Q2.

12.5.3 We inspected the ledger and noted that the firm had received the following payments from the R.A.F on behalf of Ms T Bertrams:

Date	Description	Amount
21/12/2012	R.A.F - Capital	R150,000.00
23/10/2013	R.A.F - Costs	R104,218.30
25/07/2008	R.A.F – Costs	R 40,561.96
<b>Total</b>		<b>R294.780.26</b>

A copy of the ledger is attached hereto as Schedule Q3.

12.5.4 The ledger reflects that the following payments were made to Ms T Bertrams:

Date	Description	Amount
18/01/2013	T Bertrams	R80,000.00
06/12/2013	T Van Gund Final	R58,069.22
<b>Total</b>		<b>R138,069.22</b>

A copy of the ledger is attached hereto as Schedule Q3.

We were advised that "Van Gund" is Ms Bertrams, married surname.

As indicated in the table above, it appears that Ms Bertrams received an interim payment within one months of the receipt of the capital recovered from the R.A.F and received a final payment within two months after the firm received the party and party costs from the Road Accident Fund. We are of the opinion that Ms Bertrams was paid within a reasonable time.

12.5.5 The control file did not contain a signed statement of account, we thus requested the same and was advised that Ms Bertrams had not come into the office to sign the statement of account and that the fee earner in the matter, Ms G Tognocchi was no longer employed at the firm. We were thus unable to determine if the firm had accounted to Ms Bertrams.

12.5.6 The statement of account on file reflects that the firm's fees in the matter amounted to R37, 500.00 excluding VAT which amounts to twenty five (25%) percent of the capital award received from the R.A.F. The ledger reflects that the fee in the amount of R42, 750.00 including VAT was correctly raised in the accounting records on 9 December 2013. The fee was transferred to the business bank account on 10 December 2013 after Ms Bertrams was paid the final amount due to her.

A copy of the ledger and statement of account is attached hereto as Schedule Q3 and Q4 respectively.

We requested a time ledger or any other record of time spent on the matter to determine if the firm had complied with the fee limits as described in paragraph 12.5.2.2 above. The response to our request was that the firm was unable to provide a time ledger.

We were thus not in a position to determine if the fees charged by the firm were subject to the fee limit imposed by the Contingency Fees Act.

12.5.7 The following disbursements as per the statement of account were vouched to supporting documents and we noted the date on which the experts and counsel were paid by inspecting the bank stamped deposit slips:

Payee	Description	Amount	Date paid	Notes
Dr Read	Orthopaedic Surgeon	R28,500.00	1/11/2013	
Drs Matisonn, Scott & Tobias	Radiologist	R3,495.20	5/02/2008 22/10/2009 6/08/2012 1/11/2013	
Adv. Khan	Counsel	R10,260.00	1/11/2013	
Dr Lewer – Allen	Neurosurgeon	R6,840.00	1/11/2013	
Dr Fine	Psychiatrist	R7,296.00	1/11/2013	
Anneke Greeff	Occupational Therapist	R16,869.26	1/11/2013	
Adv. Botha	Counsel	R7,410.00		N1

Adv. Makopo	Counsel	R20,520	1/11/2013	
Dawie Scholtz	Cost consultant	R2,182.88	1/11/2013	
Dawie Scholtz	Cost consultant	R4,999.35	1/11/2013	

N1: The control file did not contain proof of payment, we thus requested the same. The proof of payment could not be provided and were advised that attempted to contact Adv. Botha to confirm that she had indeed received payment was unsuccessful as they were unable to reach her.

The ledger reflects a reversal of the disbursement in respect of Adv. Botha for an amount of R7, 410.00 on 1 November 2013. Based on the entries in the ledger it does not appear that Adv. Botha was paid.

A copy of the ledger is attached hereto as Schedule Q3.

In the absence of any proof of payment, we are of the opinion that the directors of the firm have contravened Rule 68.9 of the Rules by failing to pay another legal practitioner within a reasonable time.

12.5.8 The statement of account reflects a disbursement in respect of "bundles" for an amount of R744 excl VAT. We reviewed the bill of costs and noted that the copies in respect of "bundles" were not included thereon.

Annexed to the statement of account was a break-down of the cost of the, "bundles".

A copy of the document, "Bundles – Annexure A" is attached hereto as Schedule Q5.

12.5.9 The statement of account also includes a disbursement in respect of, "Copies per Bill of Costs" for an amount of R2, 850.00 excl VAT. We reviewed the quantity of copies per the bill of costs and found the disbursement to be reasonable.

12.5.10 The control file contained a deposit slips reflecting a payment made to Adv. Tanya Eichner – Visser for an amount of R20,520.00 on 20 February 2014 as well as a payment in the amount of R12,474.00 to Ms Elna May on

29 September 2013. These payments were not reflected on the statement of account, we thus queried their omission and were advised that the file handler did not furnish these accounts to the cost consultant and was thus not recovered in the bill. This resulted in a loss to the practice as the firm had incurred the cost and not debited the client.

It was also noted that the above-mentioned payments were not recorded in the ledger. The firm's normal practice is to record all payments or liability to experts and counsel in the ledger.

12.5.11 The ledger indicates that the firm had raised a business debit in respect of "Disbursement recovery" on 25 July 2008 for an amount of R23,095.03. The amount of R23, 095.03 is exactly the difference between the amount of R40, 561.96 received from the R.A.F on 27 July 2008 and the sum of the business debits for the period 28 April 2004 up until 25 July 2008, which amounted to R17, 466.93.

The result of the entry in respect of, "Disbursement recovery" is that the firm transferred the entire amount of R40, 561.96 received from the R.A.F on behalf of Ms Bertrams on 25 July 2008 to its business bank account.

The ledger does reflect an entry in respect of, "Copies of Court Bundles" for an amount of R848.16 as well as an entry in respect of, "Copies per Bill of Costs" for an amount of R3, 249.00. These entries were raised in the ledger on 27 October 2013 and match the entries on the statement of account.

Similarly the total of all prints, telephone calls, travel charges, postage and amounts paid to the sheriff etc. were recorded on the ledger and the total of such disbursements which amounted to R2, 923.50 were included on the statement of account as, "sundry disbursements".

Based on the information contained in the ledger and control file there appears to be no rationale for raising a business debit in the amount of R23, 095.03 on 25 July 2008 other than as a means for the firm to justify a trust transfer for the amount of R40, 561.96.

This is further confirmed as the ledger reflects reversals of disbursement recovery in the amount of R19, 904.88 on 8 December 2008 as well as a further entry on 27 October 2013 for an amount of R4, 622.45.

The trust transfer in the amount of R40, 561.96 on 25 July 2008 represents a transfer in excess of the amount due to the firm as at the said date. We thus of the opinion that the directors of the firm have contravened Rule 68.6.2 of the Rules by failing to ensure that the amount transferred from the trust bank account to the business bank account does not exceed the amount due to it.

## 12.6 MS A KNOWLES

12.6.1 The fee earner code on the Winlaw accounting records indicate that the fee earner that attended to the matter was Mr D Bobroff.

12.6.2 It appears that Ms Knowles signed a fee mandate on 24 October 2007. In terms of the fee agreement the firm was entitled to a fee on the basis of R1, 800.00 per hour exclusive of VAT in respect of any work of whatsoever nature done on her behalf.

A copy of the fee agreement is attached hereto as Schedule R1.

12.6.3 We inspected the ledger and noted that the firm had received the following payments from the R.A.F on behalf of Ms A Knowles:

Date	Description	Amount
10/04/2013	R.A.F - Capital	R220,000.00
30/09/2013	R.A.F - Costs	R187,691.29
<b>Total</b>		<b>R407,691.28</b>

A copy of the ledger is attached hereto as Schedule R2.

12.6.4 The ledger reflects that the following payments were made to Ms A Knowles:

Date	Description	Amount
22/04/2013	A.M Knowles	R94,000.00
09/10/2013	A.M Knowles – Final	R86,000.00

<b>Total</b>	<b>R180,000.00</b>
--------------	--------------------

As indicated in the table above, it appears that Ms Knowles received an interim payment within two (2) weeks of the receipt of the capital recovered from the R.A.F and received a final payment within two (2) weeks after the firm received the party and party costs from the Road Accident Fund. We are thus of the opinion that Ms Knowles was paid within a reasonable period.

12.6.5 The statement of account which appears to have been signed by Ms Knowles on 29 October 2013 reflects that the firm's fees in the matter amounted to R75, 335.49 **excluding VAT** which amounts to **34.24%** of the settlement amount recovered from the R.A.F on behalf of Ms Knowles.

A copy of the statement of account is attached hereto as Schedule R3.

12.6.6 The ledger indicates that a fee in the amount of R62, 700.00 including VAT was raised on 12 April 2013. The entry is described in the ledger as, "to our 25% fee +14% VAT". The fee of R62, 700.00 amounts to twenty five (25%) percent of the capital award plus VAT at a rate of 14%. It is uncertain why a fee was raised on the basis of a percentage of the capital award when the fee agreement specified that the firm's fees would be based on the hours worked on the matter.

The ledger reflects a second entry in respect of fees. An amount of R23, 174.65 was raised as a fee on 9 October 2013.

A copy of the ledger is attached hereto as Schedule R2.

The total fees per the ledger is thus an amount of R85, 874, 65 including VAT. The total fees inclusive of VAT per the statement of account is an amount of R85, 882.45. There is thus a variance of R7.80.

In this case the firm's fees calculated based on the hours spent on the matter would exceed the fees that could have been charged either in terms of a Contingency Fees Agreement in terms of the Contingency Fees Act or the firm's Percentage Contingency Fee Agreement which was usually on a 25% or 30% basis.

12.6.7 We requested a time ledger or any other record of time spent on the matter to determine if the fees were calculated correctly however we were advised that this could not be provided.

12.6.8 The following disbursements as per the statement of account were vouched to supporting documents and we noted the date on which the experts and counsel were paid by inspecting the bank stamped deposit slips:

Payee	Description	Amount	Date paid	Notes
Adv. Anderson	Counsel	R855.00		N1
Dr Read	Orthopaedic Surgeon	R24,510.00	8/10/2013	
Drs Matisonn, Scott & Tobias	Radiologist	R4,966.10	8/10/2013	
Megan Spavins	Occupational Therapist	R9,400.00	5/10/2012 27/05/2013	
Elna Rossouw	Industrial Psychologist	R36,508.50	21/01/2013 8/10/2013	
Ivan Kramer	Actuary	R9,804.00	8/10/2013	
Adv. Khan	Counsel	R30,780.00	8/10/2013	
Dawie Scholtz	Cost Consultant	R10,11.97	8/10/2013	

N1: The control file did not contain proof of payment. We requested the same and was provided with a copy of an e-mail dated 7 December 2015 from Adv. Anderson to Mr Kroes (Bookkeeper at RBP) confirming that he had received payment towards invoice no.000372 for an amount of R855.

A copy of the statement of account is attached hereto as Schedule R3.

12.6.9 The statement of account contained a disbursement in respect of "Bundles" for an amount of R10, 344.00 excluding VAT. "Annexure A" of the statement of account provided a detailed break-down of the various bundles. On inspection

of "Annexure A" it appears that the various bundles were printed for six (6) persons and that the cost of printing per page was an amount of R4.00 which is according to the rate provided in the signed fee agreement.

We were able to match the "bundles" to the entries in respect of copies on the taxed party and party bill of costs. We have noted that in this instance the statement of account did not reflect separate charges in respect of "bundles" and "printing per the bill of costs" as per such instances identified in paragraph 8.1.16, 8.2.8, 8.3.14 and 12.3.9 above.

A copy of the statement of account and document titled, "Bundles – Annexure A" is attached hereto as Schedule R3 and R4 respectively.

## **12.7 M MCBRIDE**

12.7.1 According to the fee earner code on the Winlaw accounting records, the fee earner that attended to the matter was Mr D Bobroff.

12.7.2 The control file contained the following fee agreements which appear to be signed by Mr M McBride on 5 March 2007:

### **10.7.2.1 A "Percentage Contingency Fee Agreement"**

In terms of the agreement, the firm is entitled to fees of thirty percent (30%) plus VAT of any monies recovered;

A copy of the agreement is attached hereto as Schedule S1

### **12.7.2.2 A "Mandate"**

In terms of the fee agreement the firm was entitled to a fee on the basis of R1, 500.00 per hour exclusive of VAT in respect of any work of whatsoever nature done on her behalf.

A copy of the agreement is attached hereto as Schedule S2.

12.7.3 We inspected the ledger and noted that the firm had received the following payments from the R.A.F on behalf of Mr McBride:

Date	Description	Amount
29/06/2011	R.A.F	R171,000.00
27/07/2011	R.A.F	R4,647.45
31/10/2011	R.A.F	R100,041.45
06/06/2012	R.A.F – Capital	R1,638,252.00
10/10/2012	R.A.F - Costs	R359,644.72
<b>Total</b>		<b>R2,273,585.62</b>

A copy of the ledger is attached hereto as Schedule S3.

12.7.4 The ledger reflects that the following payments were made to Mr McBride:

Date	Description	Amount
30/06/2011	M McBride - Advance	R 50,000.00
01/11/2011	M McBride – Advance	R 72,000.00
25/05/2012	M McBride – Advance	R 50,000.00
12/06/2012	M. McBride – Interim	R1,048,000.00
27/11/2012	M McBride Final	R 144,372.00
<b>Total</b>		<b>R1,364,372.00</b>

As indicated in the table above, it appears that Mr McBride was paid according to the following time – frame:

- The first payment to Mr McBride was effected a day after the firm had received the amount of R171,000.00 in terms of an interim settlement agreement;
- The second payment to Mr McBride was effected some four months after the firm had received the amount of R171,000.00 in terms of an interim settlement agreement;
- The third payment to Mr McBride was effected some eleven months after the firm had received the amount of R171,000.00 in terms of an interim settlement agreement;
- The fourth payment to Mr McBride was effected, six days after the firm had received the amount of R1,638,252 in respect of the settlement agreement with the R.A.F
- The final payment to Mr McBride was was effected within two months after

the firm had the party and party costs.

12.7.5 Based on the information contained in the ledger and statement of account, it appears that Mr McBride received a total amount of R1, 364,372.00 out of the amount of R171, 000.00 and R1, 638,252.00 which was received by the firm in respect of the settlement agreement. The amount received by Mr McBride equates to 75.41% of the settlement received.

A copy of the ledger and statement of account is attached hereto as Schedule S3 and S4 respectively.

12.7.6 The firm's fees per the statement of account amounted to R452, 313.00 excluding VAT which equates to 25.06% of the settlement amount received by the firm on behalf of Mr McBride. It would thus appear that the firm's fees were based on the "mandate" as described in paragraph 12.7.2.2 above.

The control file did not contain any time ledger, bill of costs on an attorney and own client scale or other record of time spent on the matter. We were thus not able determine whether the fees charges were in accordance with the time spent on the matter.

12.7.7 The firm's fees inclusive of VAT per the statement of account amounts to R515, 636.82 whereas the firm's fees per the ledger amounts to R513, 836.82. There is thus a variance of R1, 800.00. In addition an amount of R466, 901.82 was not correctly raised as a fee in the accounting records, but was merely transferred to account number 11521 via a journal entry recorded on 12 June 2012. This practice is discussed in further detail in paragraph 14.8 below.

A copy of the ledger and statement of account is attached hereto as Schedule S3 and S4 respectively.

12.7.8 The following disbursements as per the statement of account were vouched to supporting documents and we noted the date on which the experts and counsel were paid by inspecting the bank stamped deposit slips:

Payee	Description	Amount	Date paid	Notes
Adv. Khan	Counsel	R912.00		N1

Adv. Zidel	Counsel	R64,410.00	12/6/2012	
Dr Biddulph	Hand Surgeon	R9,690.00	13/11/2012	
Anneke Greeff	Occupational Therapist	R15,878.61	13/11/2012 07/02/2011 14/03/2011	N2
	Psychiatrist	R25,650.00	1/11/2011 12/11/2012	
Dr Miller	Neurosurgeon	R20,500.00	12/11/2012	
Bev Van Zyl	Neuropsychologist	R8,800.00	04/04/2011 05/07/2012	N3
Elna May	Industrial Psychologist	R39,102.00	13/11/2012 07/02/2011	N4
Dr Read	Orthopaedic Surgeon	R33,630.00	12/11/2012	
Drs Matisonn, Scott and Tobias	Radiologist	R5,276.00	11/01/2011 13/11/2012	N5
Ivan Kramer	Actuary	R15,162.00	12/11/2012 27/11/2012	
Adv. Anderson	Counsel	R855.00		N6
Adv. Chaitowitz	Counsel	R112,575.00	9/07/2012	N7
Legal Billing Systems	Cost consultant	R8,879.39	23/08/2011	
Dawie Scholtz	Cost consultant	R16,839.94	12/11/2012	

N1: The control file did not contain proof of payment. We requested the proof of payment and was advised that Adv Khan was paid via a cheque issued in 2009 and that due to the age of the cheque it was no longer available.

N2: The control file not contain proof of payment for all payments made to Ms A Greeff. We requested the same and was provided with copies of two bank returned cheques.

N3: The control file did not contain proof of payment. We requested the same and was provided with copies of two bank returned cheques issued in favour of B Van Zyl

N4: The control file did not contain a proof of payment to Ms Elna May for an amount of R8, 000.00. We requested the same and were provided with a copy of bank returned cheque issued in favour of Elna May.

N5: The control file did not contain proof of all payments. We requested the same and was provided with a copy of a statement issued by Drs Matissonn Scott Tobias Inc. which reflects that the account had been settled in full.

N6: The control file did not contain proof of payment. We requested the same and was provided with a copy of an e-mail dated 7 December 2012 from Adv. Anderson to Mr Kroes (Bookkeeper at RBP) wherein he confirms that he had received full payment towards his invoice dated 5 October 2010 for an amount of R855.00.

N7: The invoice from Adv. Chaitowitz dated 1 May 2012 was for an amount of R156, 750.00. The control file did not contain any proof of payment and the same was requested. We were provided with a returned cheque issued in favour of Adv. Chaitowitz for an amount of R112, 725.00. We were advised that Adv. Chaitowitz had granted a discount of 28% on his invoice. We noted the disbursement in respect of Adv. Chaitowitz's fees were not recorded in the ledger. This is unusual as the firm's normal process is to record all payments to or liabilities to experts and counsel in the ledger. A copy of the ledger is attached hereto as Schedule S3.

### **13. COMPLAINT FROM MS C.S VAN DER MERWE**

13.1 The Law Society received a copy of Ms C.S. Van Der Merwe's affidavit made as a "whistleblower" in terms of the Protected Disclosure Act No. 20 of 2000.

13.2 In her affidavit Ms Van Der Merwe states that she is a candidate attorney and was employed by Ronald Bobroff and Partners Inc. since 1 June 2012.

13.3 According to Ms Van Der Merwe's affidavit she previously worked for her own account as a legal cost consultant and had been a cost consultant for ten years.

13.4 The affidavit contains the following allegations:

13.4.1 During her period of articles at the firm she became aware of issues relating to the overreaching of clients as well as other serious issues;

13.4.2 Her principal, Mr Ronald Bobroff did not accept that the firm's billing procedures were unlawful even after the judgement by the Constitutional Court against the firm in the De La Guerre matter;

13.4.3 Mr Ronald Bobroff had directed the staff to continue with billing practices that flew in the face of the Contingency Fees Act.

13.5 The affidavit contained accounting documentation relating to the following matters:

13.5.1 Chistine Marie Maree;

13.5.2 Michael Daniel Khan;

13.5.3 Desmond Steenkamp

We have summarised Ms Van Der Merwe's allegations in each matter as well as our findings separately below:

#### **13.6 CM MAREE**

In Ms Van Der Merwe's affidavit the following is alleged:

13.6.1 The ledger and the final accounting to the client do not tally;

13.6.2 The client ledger reflects that a fee of 30% plus VAT was debited in an amount of R239, 400 on 29 January 2013 and a further fee of 25% plus VAT was debited in an amount of R758, 100.00 on 12 February 2014. The total fees thus amount to R1, 009,050.00. The final accounting to Ms Maree on 20 August 2014 however indicated a total fee of R780, 754.23, thus the amount that Ms Maree believed she was paying was in fact an incorrect fee;

13.6.3 She drafted the attorney and own client bill of costs which came to a total amount of R458, 195.89;

13.6.4 She had advised Mr Ronald Bobroff and Ms Valente whom was attending to the matter that they were not entitled to "double-up" in terms of the Contingency Fees Act as the client had signed a Percentage Common Law Contingency fee Agreement in 2009. She had drew their attention to the fact that the new fee agreement which Ms Maree has signed in 2014 after the merits were settled was in valid in terms of the judgement by Boruchowitz J as set out in the case of Tjatji and Others vs the Road Accident Fund.

13.6.5 The subsequent fee agreement was signed by Ms Maree before the trial in February 2014 and she was present when it was signed;

13.6.6 Ms Valente had presented her with a Costs Certificate which she was requested to sign however she did not do so as she felt it was the attorney's duty to personally sign the Costs Certificate;

13.6.7 The ledger indicates that there were seven commission payments to Ms Valente totalling, R11, 550.00;

A copy of Ms Van Der Merwe's affidavit is attached as Schedule T1.

We inspected the control file of Ms C.M Maree and noted the following:

13.6.8 According to the fee earner code per the Winlaw accounting records, the fee earner attending to the matter was Ms V Valente Glencross.

13.6.9 The control file contained a, "No Win – No Fee Mandate" which appears to be signed by Ms C.M Maree on 26 August 2009. In terms of the fee agreement the firm is entitled to fees at a rate of R2, 200.00 per hour in respect of any work performed on her behalf. The agreement further states that the hourly rate of R2, 200 per hour will increase by 15% per annum compounded at the end of each completed period of 12 months from the date of instruction.

A copy of the fee agreement is attached hereto as Schedule T2.

The control file did not contain any other fee agreements.

13.6.10 We requested the signed fee agreement from the firm via a letter on 30 October 2015 and was then provided with a copy of a, "Contingency Fee Agreement in terms of the Contingency Fees Act, 1997 (Act no 66. Of 1997)" which appears to be signed by Ms CM Maree on 28 September 2010.

A copy of the fee agreement is attached hereto as Schedule T3.

13.6.11 The ledger reflects the following entries in respect of fees:

Date	Details	Amount
29/01/2013	"To our 30% interim fee + 14"	R239,400.00
12/02/2014	"To our 25% Bal Fee"	R758,100.00
28/07/2014	"To our reverse fee +14% VA"	(R11,550.00)
19/08/2014	"To our reverse fee +14% VA"	(R126,745.77)
<b>Total</b>		<b>R859,204.23</b>

The capital amount received by the firm on behalf of Ms Maree is an amount of R3, 500,000.00. The firm's fees inclusive of VAT in the matter thus equate to 24.55% of the monies recovered on behalf of the client.

A copy of the ledger is attached hereto as Schedule T4.

13.6.12 The ledger reflects that the initial fee entry was raised on 29 January 2013 after the firm had received an amount of R700, 000.00 from defendant's attorneys, MacRoberts Attorneys on 8 January 2013. The fee in the amount of R239, 400.00 inclusive of VAT equates to 30% plus VAT at a rate of 14% on the capital amount of R700, 000.00. It is uncertain why the firm had raised a fee based on 30% of the capital received. Such a fee entry together with the description on the ledger would indicate the existence of Percentage Contingency Fee Agreement.

The fee was transferred to the business bank account on 29 January 2013.

13.6.13 The second fee entry in respect of the amount of R758, 100.00 was raised on the same day that the firm had received an amount of R2, 800,000.00 from

Macroberts Attorneys. The fee of R758, 100.00 equates to 25% plus VAT at a rate of 14% on the capital amount of R2, 800,000.00.

The fee was transferred to the business bank account on 18 February 2014.

The total fees inclusive of VAT per the statement of account amounted to R870, 754.23 whereas the total fees inclusive of VAT transferred from the trust bank account to the business bank account as at 18 February 2014 amounted to R997, 500.00.

A copy of the statement of account is attached hereto as Schedule T5.

It is thus apparent that as at 18 February 2014 the firm had transferred fees in excess of the amount due to the firm which is a contravention of Rule 68.6.2.

13.6.14 The ledger reflected the following business debits in respect of payments to or amounts due to Ms Valente Glencross whom was the fee earner attending to the matter:

Date	Details	Amount
14/10/2011	Due V Valente – Glencross	R 700.00
26/11/2012	Paid to V. Valente Glencross	R1,600.00
19/11/2013	Paid to V. Valente Glencross	R1,500.00
9/12/2013	Paid to V. Valente Glencross	R1,000.00
9/12/2013	Paid to V Valente Glencross	R1,000.00
9/12/2013	Paid to V Valente Glencross	R 500.00
24/01/2014	Paid to V Valente Glencross	R1,500.00
12/03/2014	Paid to V Valente Glencross	R3,750.00
<b>Total</b>		<b>R11,550.00</b>

A copy of the ledger is attached hereto as Schedule T4.

The above-mentioned entries confirm, Ms Cora Van Merwe's allegations contained in her affidavit.

It should be noted that once the above-mentioned entries were raised as a business debit it would be transferred to the business bank account upon receipt of monies in the trust bank account.

The Directors of the firm have thus contravened Rule 69.5 in that they failed to ensure that withdrawals from the trust bank account were only in respect of payments to, for or on behalf of a trust creditor or in respect of a transfer to the business bank account in respect of fees or disbursements due to the firm.

It appears that the entry described in the ledger on 28 July 2014 for an amount of R11, 550.00 and described as, "To our reverse fee +14% VA" relates to the reversal of the business debits in respect of the payments to Ms Valente Glencross.

13.6.15 The firm's fees per the statement of account, is an amount of R870, 754.23 including VAT which equates to 24.88% of the capital amount. If we excluded the amount of R11, 550.00, referred to above from the total per the table in paragraph 13.6.11, the fees per the ledger would amount to R870, 754.23. A copy of the statement of account is attached hereto as Schedule T5.

13.6.16 The following disbursements as per the statement of account were vouched to supporting documents and we noted the date on which the experts and counsel were paid by inspecting the bank stamped deposit slips:

Payee	Description	Amount	Date paid	Notes
Dr Pantanowitz	Specialist Surgeon	R23,000.00	15/5/2010 5/05/2010 28/11/2010	N1
Adv. Zidel	Counsel	R172,368.00	11/03/2014	N2
Dr G Promnitz	Specialist Surgeon	R5,000.00	24/04/2010	N3
Essop – Dolinschek	Occupational Therapist	R8,208.74	11/03/2014 21/08/2014	
Dr Read	Orthopaedic Surgeon	R18,240.00	5/07/2013 21/08/2014	

Human Interaction	Industrial Psychologist	R27,474.00	10/07/2013 21/08/2014	
Brenda Human	Physiotherapist	R10,000.00	24/07/2014	
James Brummer	Architect	R43,467.06	4/12/2013 27/01/2014 26/02/2011	
Ivan Kramer	Actuary	R37,962.00	21/08/2014	
Roger Wolfson	Orthotist	R6,000.00	21/08/2014	
Dr L Fine	Psychiatrist	R12,540.00	21/08/2014	
Friedland Hart	Correspondents	R41,951.19	11/03/2014 8/04/2014 12/05/2014 27/05/2014 08/08/2014	

N1: The control file only contained an invoice from Dr Pantanowitz dated 5 May 2010 for an amount of R6, 000.00 as well as deposit slip confirming payment to Dr Pantanowitz in the amount of R6,000.00 on 12 May 2010. We requested the all the invoices and proof of payments in respect of Dr Pantanowitz via our letter dated 30 October 2015. Copies of the bank returned cheques issued to Dr Pantanowitz were provided, which indicates that a total amount of R23, 000.00 was paid to Dr Pantanowitz. A copy of our letter dated 30 October 2015 is attached hereto as Schedule T6.

It is interesting to note that despite our request to provide copies of the actual invoice from Dr Pantanowitz, the e-mail correspondence between Mr D Kroes (Bookkeeper at RBP) to Ms Pravika Doman (Receptionist at the Sessional Doctor Rooms at Netcare Rosebank Hospital) on 11 November 2015 merely requests her to, "only acknowledge" that an invoice was issued by her in May 2010 for the amount of R1, 000.00 and a further invoice in the amount of R16, 000.00 on 11 November 2012.

In Ms Doman's response via e-mail on 12 November 2015 she confirms that two invoices were issued for the, Ms C Maree.

A copy of the e-mail correspondence between Mr D Kroes and Ms Doman is attached hereto as Schedule T7.

It thus appears that there was some reluctance to providing the invoices issued by Dr Pantanowitz. We were thus only able to verify an amount of R6, 000.00 in respect of the disbursement to Dr Pantanowitz.

N2: The deposit slip in the control file confirmed that Adv. Zidel was paid an amount of R102, 714.00 on 11 March 2014. We requested proof of payment in respect of the balance in the amount of R69, 651.00 via a letter dated 26 November 2015, however as at the date of the report we had yet to receive the requisite proof of payment.

N3: The control file contained Dr Promnitz account dated 3 July 2010 for an amount of R4, 000.00. The control file also contained proof of payment to Dr Promnitz for an amount of R4, 000.00 on 24/04/2010. Following our query via a letter dated 30 October 2015, we were provided a copy of an invoice dated 4 December 2013 from Dr Promnitz for an amount of R5, 000.00.

A copy of the invoice is attached hereto as Schedule T8.

The ledger reflects a payment to Dr Promnitz for an amount of R5, 000.00 on 13 March 2014 however the control file did not contain any proof of such payment. We queried the discrepancy again via a letter to the firm dated 26 November 2015. In particular we noted the statement from Dr Promnitz dated 3 July 2010 for an amount of R4, 000.00 and referred to the entry on the ledger in respect of Dr Promnitz for an amount of R5, 000.00. The response to our enquiry was that Dr Promnitz was over-paid. In the circumstances the invoice from Dr Promnitz dated 4 December 2013 for an amount of R5, 000.00 is questionable. Furthermore considering the response that Dr Promnitz was over-paid it would seem that the client bore the financial prejudice of the over-payment in the amount of R1, 000.00.

13.6.17 Annexure A to the statement of account issued by the firm contained a break-down of the various "bundles". We inspected the party and party bill of costs and could not conclusively determine whether the "bundles" were included in the photocopying costs per the party and party bill of costs. The break-down of the "bundles" (Annexure A of the Statement of Account) indicates that bundles were prepared for 6 persons whereas the copies per the bill of costs indicate that copies were made for 3 persons.

A copy of the document, "Bundles – Annexure A" is attached hereto as Schedule T9

### **13.7 MR DESMOND STEENKAMP**

In Ms Van Der Merwe's affidavit the following is alleged:

13.7.1 She had drafted the party and party bill of costs and the fees per the taxed party and party bill of costs amounted to R54, 393.20;

13.7.2 She was requested by Ms Joan Burger whom is the Secretary to Mr D Bobroff to draft a cost consulting invoice in the name of the firm in order to charge the client a drafting fee. She prepared the invoice which amounted to R12, 021.79 including VAT;

13.7.3 The "interim statement of account/ tax invoice" for Mr Steenkamp reflected the fee for drafting the bill of costs as a disbursement;

13.7.4 Mr Steenkamp had been overreached and there were irregularities in the firm's accounting to Mr Steenkamp;

A copy of Ms Van Der Merwe affidavit is attached hereto as Schedule T1.

We inspected the matter and noted the following:

13.7.5 The ledger indicates that the following amounts were received in the firm's trust bank account from the R.A.F on behalf of Mr Steenkamp:

Date	Description	Amount
------	-------------	--------

22/10/2013	R.A.F – Capital	R500,000.00
02/05/2014	R.A.F – Costs	R205,133.67
26/11/2014	R.A.F – Capital	R2,500,000.00
19/05/2015	R.A.F – Costs	R155,821.80
<b>Total</b>		<b>R3,360,955.47</b>

A copy of the ledger is attached hereto as Schedule T10.

13.7.6 The ledger indicates that Mr Steenkamp was paid as follows:

Date	Description	Amount
30/10/2013	D.W Steenkamp – Interim	R140,000.00
08/05/2014	D. Steenkamp – Interim	R174,924.00
02/12/2014	Eft: D Steenkamp – Interim	R1,694,282.85
11/08/2015	D Steenkamp- Final	R33,751.10
<b>Total</b>		<b>R2,042,957.95</b>

A copy of the ledger is attached hereto as Schedule T10.

Mr Steenkamp thus received a total payment which equates to 68.1% of the capital received from the R.A.F

13.7.7 The statement of account and ledger reflect that the firm's fees in the matter amounted to R855, 00.00 inclusive of VAT. The fee thus equates to 25% of the capital sum of R3, 000,000 plus VAT at a rate of 14%.

A copy of the ledger and statement of account is attached hereto as Schedule T10 and T11 respectively.

13.7.8 We requested the signed fee agreement and was provided with a copy a, "Contingency Fee Agreement in terms of the Contingency Fees Act, 1997" which was signed by Mr Steenkamp. The fee agreement did not state the date on which it was signed by Mr Steenkamp.

A copy of the fee agreement is attached hereto as Schedule T12.

13.7.9 We requested a record of the time spent on the matter and was provided with a summary of the time spent on the matter. The schedule reflects that the firm's

normal fees in the matter amount to R598, 070.00 excluding VAT which when doubled up would amount to R1, 196,140.00. It would thus appear that the firm limited their fees in the matter to 25% of the monies recovered on behalf of Mr Steenkamp.

The schedule reflecting the time spent on the matter is attached hereto as Schedule T13.

13.7.10 The statement of account does reflect a disbursement of R12, 021.79 in respect of, "Cost consultant". Included in Ms Van Der Merwe's affidavit was a copy of the invoice which she had prepared in respect of drafting the party and party bill of costs. A copy of the invoice is attached hereto as Schedule T14.

13.7.11 Included in Ms Van Der Merwe's affidavit was a copy of an e-mail sent to Ms Van Der Merwe from Ms Joan Burger whom was the Secretary of Mr Darren Bobroff. The said e-mail is dated 21 July 2014 and requests Ms Van Der Merwe to send Ms Burger the cost consultants' fee.

A copy of the e-mail is attached hereto as Schedule T15.

It is not clear why Ms Van Der Merwe was requested to draft a cost consulting invoice as the invoice should have been raised on the firm's Winlaw accounting system. It also not clear why the firm's fee in respect of drafting the bill of costs reflects as a disbursement on the statement of account and not as a fee charged by the firm.

13.7.12 The ledger reflects the following business debits raised in respect of payments to Ms V. Valente Glencross whom were advised was the fee earner attending to the matter:

Date	Description	Amount
20/06/2013	Paid to V. Valente Glencross	R2,000.00
22/07/2013	Paid to V. Valente Glencross	R4,000.00
26/08/2013	Paid to V. Valente Glencross	R6,750.00
17/09/2013	Paid to V. Valente Glencross	R2,000.00
23/10/2013	Paid to V. Valente Glencross	R 500.00
19/11/2013	Paid to V. Valente Glencross	R 500.00
9/12/2013	Paid to V. Valente Glencross	R1,000.00

9/12/2013	Paid to V. Valente Glencross	R 250.00
9/12/2013	Paid to V. Valente Glencross	R 500.00
9/12/2013	Paid to V. Valente Glencross	R 650.00
<b>Total</b>		<b>R18,150.00</b>

A copy of the ledger is attached hereto as Schedule T10.

As a result of the above-mentioned business debits raised, a total amount of R18, 150.00 was included in the transfers from the firm's trust bank account to the business bank account.

The total amount of R18, 150.00 paid to Ms Valente Glencross did not form part of the firm's fees as the full fee was raised separately and transferred to the business bank account.

The Directors of the firm have thus contravened Rule 69.5 of the Rules in that they failed to ensure that a withdrawal from the trust bank account is only in respect of a payment to, for or on behalf of a trust creditor or as a transfer to its business bank account, provided that such transfers shall be made only in respect of money claimed to be due to the firm.

The ledger reflects a reversal of the payments to Ms Valente Glencross in the amount of R18, 150.00 on 6 June 2015.

### **13.8 MR MICHAEL DANIEL KHAN**

In Ms Van Der Merwe's affidavit the following is alleged:

- 13.8.1 The ledger and the final accounting to the client do not tally;
- 13.8.2 The Khan matter was settled on 30 May 2014 in an amount of R3, 957,160.48;
- 13.8.3 The total fees per the ledger was an amount of R1, 652,810.06;
- 13.8.4 She was requested by Mr D Bobroff to prepare an attorney and client bill of costs as he expected problems due to the fact that Mr Khan was a Discovery Health member;

13.8.5 On 30 May 2014, Mr D Bobroff consulted with Mr Khan and prepared a letter of instruction for Mr Khan to sign. The letter confirms Mr Khan's instructions to the firm not to make any payment to Discovery Health Medical Aid out of the proceeds of his claim but to retain the amount claimed by the medical aid in a S78 (2A) investment account.

13.8.6 The final account to Mr Khan on 12 August 2014 indicates that the firm's total fees amounted to R1, 653,000.00;

13.8.7 She had a conversation with Mr D Bobroff and advised him that even if one was to double the amount per the attorney and client bill of costs, the firm could not justify a fee of anywhere near 25%. Nevertheless Mr Khan was charged a fee of 25% plus VAT;

13.8.8 Mr Khan had been overreached and there are irregularities in the firm's accounting to Mr Khan.

We inspected the matter and noted the following:

13.8.9 The ledger indicates that the following amounts were received in the firm's trust bank account from the R.A.F on behalf of Mr Khan:

Date	Description	Amount
15/05/2013	R.A.F – Capital	R1,879,333.59
29/10/2013	R.A.F – Costs	R 373,681.73
26/06/2014	R.A.F – Capital	R3,957,160.48
29/01/2015	Rontgen Inc. – Costs	R 168,350.84
<b>Total</b>		<b>R6,378,526.64</b>

A copy of the ledger is attached hereto as Schedule T16

13.8.10 The ledger indicates that Mr Khan was paid as follows:

Date	Description	Amount
22/05/2013	M.D Khan - Interim	R 500,000.00

22/5/2013	M.D Khan – Interim	R 461,000.00
31/10/2013	M.D Khan – Final	R 405,207.70
1/11/2013	Dr. J Retter	R 18,493.56
03/07/2014	M.D Khan	R2,704,000.00
09/02/2015	M.D Khan	R 209,579.89
<b>Total</b>		<b>R4,298,281.15</b>

A copy of the ledger is attached hereto as Schedule T16.

Mr Khan thus received a total payment which equates to 73.64% of the capital received from the R.A.F

13.8.11 The statement of account indicates that the firm's fees in the matter amounted to R1, 360,000.00 excluding VAT. The firm's fees in the matter thus amounted to 23.30% of the capital received from the R.A.F.

13.8.11 The ledger reflects the following entries in respect of fees:

Date	Description	Amount
16/05/2013	To our 25% Fee + 14% VAT	R 535,610.06
27/06/2014	To our 25% Fee + 14% VAT	R1,117,200.00
05/02/2015	To our reverse fee + 14% VAT	(R 209,967.49)
05/02/2015	To correct of fee reversal err	R 209,967.49
05/02/2015	To our 25% Fee+ 14% VAT	R 102,633.94
<b>Total fees including VAT</b>		<b>R1,550,176.12</b>

A copy of the ledger is attached hereto as Schedule T16.

The fees (incl. VAT) per the statement of account amounts to R1, 550,400.00. There is thus a variance in the amount of R223.88 between the fees per the statement of account and the fees per the ledger.

A copy of the statement of account is attached hereto as Schedule T17.

As indicated in the table above the firm raised a fee in the amount of R535, 610.06 on 16 May 2013. The ledger indicates that the fee was transferred to the business bank account on 20 May 2013.

The table above also indicates that the firm raised a fee in the amount of R1, 117,200.00 on 27 June 2014 which was transferred to the business bank account on the same day.

The result is that a cumulative amount of R1,652,810.06 in respect of the firm's fees was transferred to the firm's business bank account as at 27 June 2014 despite the fact that the firm's total fees in the matter amounted to R1,550,176.12. The firm had thus transferred an amount in excess of the amount due to it, which is a contravention of Rule 68.6.2.

13.8.12 As a result of the firm raising a fee in excess of the amount due it to, a reversal of the firm's fees was necessary in order to effect the final payment to Mr Khan in the amount of R209, 579.89 on 9 February 2015.

A copy of the ledger is attached hereto as Schedule T16.

13.8.13 We were provided with a copy of the, "Contingency Fees Agreement in terms of the Contingency Fees Act, 1997) which was signed by Mr Khan on 6 January 2010. In terms of the fee agreement the firm is entitled to a fee at a rate of R3, 200.00 per hour in respect of each and every attendance as well as a success fee equal to double the normal fee, provided that the success fee will not exceed 25% of the monetary result obtained, whichever is the lesser.

A copy of the fee agreement is attached hereto as Schedule T18.

13.8.14 We requested a record of time spent on Mr Khan's matter and we were provided with a memorandum of fees and disbursements due to the firm. The document reflects that that firm's normal fees in the matter amounted to R681, 003.60 which when doubled up amounts to R1, 362,007.19 excluding VAT.

A copy of the memorandum of fees and disbursements is attached hereto as Schedule T19.

The firm's fees per the statement of account is an amount of R1,360,000.00 excluding VAT which is less than fees per the memorandum of fees and disbursements.

#### **14. AFFIDAVIT OF MS BERNADINE VAN WYK**

- 14.1 The Law Society is in possession of an affidavit deposed by Ms Van Wyk as a "whistle blower" as defined in the Protected Disclosures Act No.26 of 2000, which was signed by Ms Van Wyk on 19 October 2012.
- 14.2 In her affidavit, Ms Van Wyk states that she was employed as a bookkeeper at the firm and was employed by the firm since 16 September 2010. In addition she states that she had been a legal bookkeeper for the past 25 years both in full time employ and in a freelance capacity.
- 14.3 According to the affidavit, the criminal conduct which she witnessed at the firm was reported by her to the relevant authorities on 15 May 2012. Once Mr Ronald Bobroff became aware that someone in the firm had disclosed their wrongdoing, the staff were subjected to two rounds of compulsory polygraph testing which resulted in her suspension on 27 September 2012 and subsequent disciplinary hearing on 17 October 2012.
- 14.4 In her affidavit, Ms Van Wyk states the following:
  - 14.4.1 Mr Ronald Bobroff deflects the blame away from himself by suggesting the firm's bookkeepers are at fault, when infact he is responsible for the accounting transgressions;
  - 14.4.2 The firm was able to conceal its unlawful activities by either employing very junior bookkeepers or by changing bookkeepers every 18 months to a year;
  - 14.4.3 She commenced employment at the firm on 16 September 2010 and had replaced the previous bookkeeper, Ms Christy De Beer;
  - 14.4.4 When she joined the firm, Natasha De Costa was the internal bookkeeper and her name was reflected on the firm's letterhead as the "internal accountant" despite her lack of bookkeeping/accounting qualifications;

14.4.5 When she joined the firm, the financial records were in a mess. In particular the creditors were in arrears. The Advocates that the Johannesburg Bar were also in arrears;

14.4.6 The cost consultant, Legal Billing Solutions (Pty) Ltd owned by Mr Joubert was owed approximately R800, 000.00;

14.4.7 There was no proper filing system in place and creditors were paid long after payment was due to them. Once the capital and costs were received by the firm from the Road Accident Fund there was no reason why the creditors on that particular matter could not or should not be paid however that does not happen at the firm;

14.7.8 Business cheques were drawn for all creditors however these were never signed. The liabilities were posted and the monies recovered as though those liabilities were going to be paid but neither Mr R Bobroff nor Mr D Bobroff would sign the cheques. The business bank statements comprise between 40 to 60 pages per month because of the practice of issuing a separate cheque for every expert and/or advocate.

14.7.9 The firm does not raise a fee and account for VAT and Income Tax once a matter is settled and they receive payment from the Road Accident Fund.

14.7.10 The heart of the issue between Discovery and the firm is that the firm took a fee equivalent to 40% of the damages. She was requested by Mr Ronald Bobroff to compile a list of all Discovery members who were clients of the firm over the preceding five years and had identified approximately 300 clients;

14.7.11 She was requested to determine when each client had been paid by the firm following the receipt of damages from the Road Accident Fund. The particular files had to be retrieved from offsite archive facilities;

14.7.12 She ascertained that most of the files did not have final accounts to clients even though they were archived. She found that there were trust monies on the files which had not been used to settle outstanding creditors, fees had not been debited and in some cases clients had not even been paid;

14.7.13 Mr D Bobroff took the 70 files of the members who had been identified by Discovery and worked on them;

14.7.14 In respect of the 70 files which were in respect of Discovery members, she had identified that: creditors and even clients had not been paid; incorrect fees were taken by the firm and fictitious disbursements were created and deducted;

14.7.15 It was clear to her that Mr D Bobroff worked though the 70 files relating to the Discovery members and manufactured false final accounts for clients in order to bring the files up to date and to hide the incorrect accounting on the files;

14.7.16 She was instructed by Mr D Bobroff to pass the relevant journal entries so that the ledger would correlate with the account that was going to be provided to the client. The exercise necessitated countless reversals of fictitious disbursements;

14.7.17 It is general practice of the firm to deduct fictitious disbursements typically in an amount of R15, 000.00 on which no VAT is paid. These "disbursements" were purportedly in respect of postage and petties but the deductions were not warranted because the Lawplan electronic billing system faithfully recorded disbursements such as postage, telephone calls, and photocopies etc. which were all charged to clients. The actual claims were reflected on the N-TRAC system and in any event the postage and petties seldom exceeded a few thousand Rands;

14.7.18 Chantelle Jansen had left the practice after a dispute with Mr D Bobroff regarding the non-payment of the fees due to Adv. Zubair Khan;

14.7.19 Juanne De La Guerre was a client of the firm and her matter was settled on 30 April 2009. She sued the firm for overreaching her and the matter was reported in the Sunday Times newspaper on 30 October 2011. Subsequent to the article being published, Adv. Zubair whom acted for Ms De La Guerre on instruction from the firm was paid an amount of R24, 000.00 which had been due to him.

14.7.20 Mr D Bobroff had requested her issue a cheque in favour of Adv. Khan and to backdate the cheque and to advise Adv. Khan that the first cheque had gone stale, which was a lie;

14.7.21 Adv. Khan had contacted her after he had received payment to query the payment as he had been advised that he should write off the amount as the firm had not made a full recovery;

14.7.22 She viewed the De La Guerre file and noticed the final account which did not contain any mention of a R24, 000.00 cash advance which was allegedly paid to the client and is reflected in the ledger as such. The ledger also reflected a payment to L Berman, which she believed was the wife of Mr D Bobroff and noted that the payment was not reflected on the client's final account;

14.7.23 In all the firm's matters relating to Discovery members which amounted to 300 files, new final accounts to clients were created. She heard that the clients that were still alive and that were still in South Africa were contacted and issued with final accounts so as to prevent any complaints;

14.7.24 Mr R Bobroff invited the clients of the firm, whom were Discovery members to meet with him. She was of the opinion that he explained to them that in the process of "cleaning up" the practice it was discovered that they were short paid. The clients were thus issued cheques in various amounts and were invited to lodge complaints against Discovery for its insistence on recovering hospital and medical expenses paid to clients by the Road Accident Fund;

14.7.25 She was perturbed by the manner in which Mr R Bobroff and Mr D Bobroff conducted the accounting of the practice and she tendered her resignation in January 2012. Mr R Bobroff persuaded her to withdraw her resignation and she received a salary increase;

14.7.26 A VAT issue arose when Mr Van Niekerk requested proof that VAT had indeed been raised and paid on the fee in the Graham matter;

14.7.27 Mr R Bobroff instructed her to pay VAT to SARS which he advised her had not been paid due to an oversight by Chantelle Jansen. The ledger records of the

firm however indicate that the fee was not formally raised but had been taken by the firm and paid in full into a Bidvest account;

14.7.28 She was unaware of whom the account holder of the Bidvest account is but was aware that the money was not returned from the Bidvest account to the firm's business bank account;

14.7.29 She refused to post the VAT entry when Mr R Bobroff insisted as such an entry without raising a corresponding fee and without a corresponding trust to business transfer would have resulted in the books of the firm not balancing.

14.7.30 The fee has still not been raised in the Graham matter and the VAT has still not been paid;

14.7.31 Until March 2011, monies received from the Road Accident Fund was held in the trust bank account and she noted that fees were seldom debited even after matters were finalised. She had also noted the firm had frequently issued cash cheques or fictitious disbursements to enable the partners to take out money from the practice;

14.7.32 During the latter part of 2011 she received a copy of a report prepared by Christy De Beer for the auditor of the firm, Mr Andre Van Der Merwe from Natasha De Costa following a fight she had with Mr R Bobroff;

14.7.33 Christy De Beer's report sets out how Mr F Pombo had been defrauded by Mr D Bobroff who had deposited the money due to Mr F Pombo into her personal bank account. Natasha De Costa had advised that she had the original cheque which indicated that Mr D Bobroff had forged Mr R Bobroff's signature and that Mr D Bobroff had deposited the money due to Mr Pombo in his personal bank account;

14.7.34 The report of Christy De Beer contained copies of the following uncrossed cheques:

- Cheque number 114486 issued in favour of "E.Robinson" in the amount of R42,000.00;
- Cheque number 113300 issued as a cash cheque in the amount of

R55,000.00;

- Cheque number 113213 issued in favour of "J Kingsbury" in the amount of R157,280.00;
- Cheque number 112256 issued in favour of A Lubbe in the amount of R11,410.05;
- Cheque number 114499 issued in favour of F Pombo in the amount of R133,599.03;
- Cheque number 114475 issued in favour of CP Ndlovu in the amount of R1,000.00;
- Cheque number 114459 issued in favour of GJ Chaitowitz in the amount of R30,000.00;
- Cheque number 113167 issued in favour of J Kingsbury in the amount of R371,281.52;

14.7.35 During March 2011 she was instructed by Mr R Bobroff to open a trust ledger suspense account, the account number being, "11521". All fees were to be channelled to this account specifically from four matters which had been settled previously. This was to be the manner in which the old accounts could be squared off and deleted but the money which was in them could still be accessed. The account always had between R15 – 35 million in it;

14.7.36 She enquired from Mr R Bobroff as to why he was not raising the fees and paying the VAT thereon and Mr Bobroff had told her, "I am not getting any benefit" and that he had no obligation to raise the fees or pay the VAT;

14.7.37 From time to time fees were debited to account "11521" and money was transferred from the trust bank account to the business bank account. Mr R Bobroff had explained to her that the idea with account "11521" was to stagger the debiting of fees over a number of years as he expected the income of the practice would taper off with the introduction of the Road Accident Fund Amendment Act;

14.7.38 Trust cheques were only ever used to pay clients and medical aid schemes. All other payments such as experts and counsel were made by way of business cheques. The result is that the business bank statements ran to between 40 and 60 pages per month with a myriad of payments which she

suspected was deliberately designed to obfuscate surreptitious payments cashed in by the Bobroff;

14.7.39 She noted that the business cheques were not crossed and thus could be cashed in at the bank duly endorsed.

14.7.40 Prior to SARS conducting an audit at the firm in July 2012, she was instructed by Mr R Bobroff to manufacture VAT invoices for clients, so as to account for fees and VAT. This related to cases that had been settled in previous financial years and VAT periods where the books of the practice had already been closed;

14.7.41 Once Mr R Bobroff was notified that SARS intended to conduct an audit at the practice he engaged income tax experts and she was then informed that the problem that the firm had was that the VAT returns were submitted but no VAT invoices were issued to clients. Some of the other accounting issues identified were:

- VAT was not charged on disbursements;
- Monies were retained in account number, "11521" in matters which should have been paid to creditors or debited as fees;
- Fees were taken from trust to business long after the matter had been finalised

14.7.42 Once SARS had commenced an audit of the practice, she overheard a conversation wherein Mr Dr Bobroff had advised Mr R Bobroff that SARS had told him that there was an amount of R98 million to be accounted for and that he was worried that they were going to be arrested.

14.7.43 She was aware of the existence of a trust account by the name of, "Zunelle" which was apparently used to launder money. The "Zunelle" account is not part of the books of the business and she personally never had anything to do with it. Natasha De Costa had disclosed to her the bank statements of the "Zunelle" account after her fight with Mr R Bobroff;

14.7.44 Natasha De Costa had informed her that an amount of R40 million was transferred from the "Zunelle" account to the firm, Andre Van Der Merwe

because she believed that Mr R Bobroff and Mr D Bobroff were getting ready to leave the country;

14.7.45 The "Zunelle" account purports to be a Section 78 (2A) investment account but there is no trust creditor in the books of the practice by the name of Zunelle or a person by the name of Zunelle who has ever been a client of the firm;

14.7.46 None of the monies from the "Zunelle" account was ever transferred to the trust or business bank accounts of the practice and her assumption was that the interest that was earned on that money was retained by Mr R Bobroff and Mr D Bobroff;

14.7.47 Account number "11521" bears no relation to the "Zunelle" account. The money for account number "11521" his held in the firm's trust bank account;

14.7.48 Natasha advised that there were infact three "Zunelle" bank accounts, two of which were held with Investec and one at Standard Bank;

14.7.49 There was no client by the name of "Zunelle" and she was sure that the account had not been approved in terms in terms of the Financial Intelligence Centre Act;

14.7.50 She had informed Mr R Bobroff during her first interview in May 2010 of her prior conviction. Thereafter she took up employment at Fair City Hotels and in August 2010 Mr R Bobroff contacted her to enquire if should be interested in working for him. At the end of August 2010 she was offered a position and commenced work at the firm on 16 September 2010.

14.7.51 Despite making full disclosure of her past it appeared to her that she was employed because of her past as Mr R Bobroff and Mr D Bobroff would have someone to blame for what they have done. Her past was also used as an excuse to terminate her employment.

A copy of the full affidavit of Ms Van Wyk is attached hereto as Schedule U1.

14.8 We inspected the trust trial balances at various dates and noted the existence of an account described as "00011521 – RBP Suspense Account". On further investigation

we found that the fees in various matters over the period 10 June 2011 up until 22 November 2012 were not raised in the accounting records but were merely transferred by way of journal entries to this “suspense” account.

The ledger reflects that the account had an opening credit balance in the amount of R28, 324,976.02 as at 6 June 2011. The credit balance was brought forward from the previous Lawplan accounting system which the firm had utilised. It is thus apparent that the firm had retained a substantial portion of its fee income over a period proper to 6 June 2011.

A copy of the ledger account is attached hereto as Schedule U2.

We are of the opinion that the retention of the firm’s fees in the trust account is a contravention of Rule 68.6.1 in that trust monies were not kept separate from other monies. Rule 68.6.1 requires that monies other than trust monies should be transferred to the business banking account without undue delay.

14.9 We were advised by the firm’s bookkeeper, Ms N De Costa that the credit entries on the “suspense” ledger account relate to fees transferred from various trust creditor account via journal entries. We were further advised that fees were debited to the “suspense account” and a trust transfer is then effected.

14.10 The ledger reflects that the firm effected various trust transfers from account, “11521 – RBP Suspense account” over the period 10 June 2011 up until 11 December 2012 at which point the account balance was reduced to nil.

A copy of the ledger is attached hereto as Schedule U2.

14.11 We discussed the matter with Mr R Bobroff at his offices on 19 October 2015 and he advised that he had been approached by Ms Van Wyk whom had advised him that their VAT output fluctuated significantly between each VAT period which then red flags the practice for a VAT audit from SARS. Mr R Bobroff further stated that Ms Van Wyk proposed that the fees be transferred to a suspense account and thereafter she will request the Directors of the firm to advise her on the funds required to cover the firm’s overheads at month end. Fees would thus be raised for the amount required by the firm and a trust transfer would be performed.

Mr R Bobroff confirmed that the fees were retained in the trust bank account and that the firm had lost a substantial amount of interest due to the firm's monies being retained in the trust bank account.

14.12 The ledger of account 11521 indicates that at certain periods the account had a credit balance in excess of R38 million in respect of the firm fee's which were retained in the trust bank account. The interest earned on the firm's monies were thus paid over to the Law Society, ultimately for the benefit of the Attorneys Fidelity Fund. It would thus seem unusual that the Directors of the firm whom are experienced and educated individuals would enter into a practice that results in a loss of potential interest income and capital growth unless it was done intentionally in order to avoid or unlawfully reduce its income tax and VAT liabilities.

14.13 During a meeting with the Directors of the firm on 26 January 2016, Mr Reddy enquired about the "Zunelle" account. Mr R Bobroff explained that the firm's monies were invested in account which was called, "Zunelle". Mr Reddy queried why the monies were invested a S78 (2A) investment account and Mr R Bobroff advised that the firm had invested the money for the possible purchase of a property for the firm. Mr R Bobroff further explained that the firm was an incorporated company and was thus a separate entity to the trust, the Directors were thus of the opinion that it was appropriate for the firm to invest its monies in its own trust bank account.

During the meeting on 26 January 2016 Mr R Bobroff explained that the money's invested in the "Zunelle" account were the firm's monies which had been subjected to taxation and that the interest earned on the monies invested were declared to SARS.

We inspected the trust trial balances as at 30 September 2011, 30 September 2012, 30 September 2013, 30 September 2014 and 30 September 2015 and noted that none of the trial balances reflect a trust creditor account by the name of, "Zunelle".

14.14 Mr Reddy contacted Ms N De Costa (Bookkeeper at RBP) on 27 January 2016 to enquire as to how the account of, "Zunelle" is recorded in the firm's accounting records. Ms De Costa advised as follows:

- The "Zunelle" account is recorded as a practice investment and the ledger account numbers are, "INV00003" and "INV00002";
- The "Zunelle" account is not reflected on the list of trust creditors;

Mr Reddy queried how it was possible that the "Zunelle" account did not form part of the trust accounting records as the monies would have to flow through the firm's S78 (1) trust bank account. Ms De Costa advised that monies were paid into the "Zunelle" account directly from the firm's business bank account.

14.15 We requested a balance certificate from Investec Bank for the "Zunelle" account on 25 January 2016. The balance certificate provided by Investec Bank was in respect of the bank account numbers we had requested however the name of the account reflects as, "Ronald Bobroff and Partners Inc.". It would thus appear that the name of the account was changed. The balance certificate indicates that the "Zunelle" account actually comprises of two "Call Deposit" accounts, a "Private Money Fund" account and a, "30 Day Notice" account.

A copy of our request for a balance certificate is attached hereto as Schedule U3

The account held the following balances:

	Account number			
Date	1100-427009-500	1100-427009-540	1100-427009-570	1100-427009-590
30/09/2012	R4,508,325.05	-	R13,264,842.99	-
30/09/2013	R 16,010.13	-	-	-
30/09/2014	R 16,810.07	-	-	-
30/09/2015	-	-	-	-

A copy of the balance certificates are attached hereto as Schedule U4, U5, U6 and U7.

The investment of the firm's monies in a S78 (2A) investment account is a contravention of Rule 68.6.1 in that trust monies were not kept separate from other monies.

Furthermore it is highly unusual the so-called, "Zunelle" account did not form part of the trust accounting records. The omission of the "Zunelle" account from the trust accounting records would appear to be a deliberate attempt to conceal the existence of such an account. The Directors would have or ought to have been fully aware that that if the firm was its own trust creditor, then it should be reflected on the firm's trust creditor listing.

14.16 Mr Reddy contacted Ms Kim Janse Van Rensburg whom is a Corporate Cash Manager Consultant at Investec Bank on 26 January 2016. Ms Van Rensburg advised that attorneys who are their clients utilise the Corporate Cash Manager system to facilitate and manage investments made on behalf of attorney's trust creditors. Ms Van Rensburg further advised that the interest offered on the call accounts is dependent on the cumulative monies invested. Thus the higher the amount invested, the higher the interest rate on the call accounts. Ms Van Rensburg also informed me that the attorney would also benefit as the interest rate would also be applicable to business monies invested in a call account.

Considering that the firm would have still qualified for the preferential interest rate had they invested their business monies in a call account in the firm's name, it is unusual that the firm's monies were invested a S78 (2A) account.

The only incentive (in our opinion) for a firm to invest its monies in its own trust bank account under a name that differs from the name of the firm is to avoid being taxed on interest earned on the monies invested.

14.16 In paragraph 14.4.7 it is highlighted that Ms Van Wyk alleged that creditors were paid long after a matter was settled.

Whilst reviewing the account of Ms UY Fourie we identified that payment was made to certain experts and counsel more than 14 months after receipt of the party and party costs and more than 8 months after final payment was made to the client. The detailed particulars are contained in paragraph 6.7 above.

Whilst reviewing the account of Ms T Bertams we noted that there was no proof of payment to expert despite the fact that the matter was settled. Further details thereon are contained in paragraph 12.5.7 above.

Considering that we only reviewed a sample of the trust creditor accounts, we are of the opinion that the instances delayed/non-payment substantiate Ms Van Wyk's allegation.

14.17 In paragraph 14.7.9 we highlight Ms Van Wyk's allegation that the firm does not raise a fee and account for VAT and Income Tax once payment is received from the Road Accident Fund.

Whilst reviewing the trust creditor account of Mr Morris Hennings we identified that the fee in the matter was raised more than two years after the matter was finalised. Further particulars are contained in paragraph 12.2.6 above.

In the matter of Ms M.B Combrink and M McBride we identified that fees were not raised but was merely transferred to account 11521 as indicated in paragraph 12.1.6 and 12.7.7 respectively.

In addition, the ledger account of 11521 – RBP Suspense Account, contains full particulars of all matters wherein fees were not raised but merely transferred to account 11521 – RBP Suspense account as stated in paragraph 14.8 above.

We believe the above-mentioned instances substantiate Ms Van Wyk's allegations.

14.18 In paragraph 14.7.17 it is highlighted that Ms Van Wyk alleged that it was common practice of the firm to deduct fictitious disbursements.

We identified numerous instances wherein the firm had duplicated the cost of printing "bundles" on the statement of account. The statement of account would contain a disbursement in respect of printing per the bill of costs and then a further disbursement in respect of the cost of printing bundles. On further investigation we found that the cost of printing the bundles were already included in the disbursement in respect of "copies per the bill of costs". The complete details regarding this practice is contained in paragraph 8.1.16, 8.2.8, 8.3.14, and 12.3.9 above.

We are thus of the view that Ms Van Wyk's allegations in this regard are valid.

14.19 In paragraph 14.7.31, it is highlighted that Ms Van Wyk alleges that the firm had frequently issued cash cheques or fictitious disbursements to enable the partners to take out money from the practice.

Whilst reviewing the account of Mr Pombo we noted that the firm had not raised its fees in the accounting records completely. The ledger reflected a cheque payment in the amount of R371,281.25 to a, "J Kingsbury" however such cheque was not issued as a payment to, for or on behalf of Mr Pombo and neither was the payment a disbursement. It would appear that the firm had not raised a portion of its fees and

issued an uncrossed cheque in favour of, "J Kingsbury". The accounting records thus reflect a fictitious disbursement as indicated in paragraph 9.3.7 above.

The same practice was identified in the matter of De La Guerre wherein the fee entry in the accounting records was replaced by a so-called, "referral fee" paid to Ms L Berman. Full detail are contained in paragraph 6.5.13 of the Law Society's report dated 12 December 2014 and attached hereto as Schedule I1.

## **15. SUMMARY**

Based on my instructions received from the Law Society of the Northern Provinces and my findings thereon set out previously, I am of the opinion that the firm Ronald Bobroff and Partners Inc. has contravened the following provisions of the Attorneys Act 53 of the 1979 and/or the Rules of the Law Society of the Northern Provinces:

- 15.1 Rule 68.6.1 of the Rules in that the firm failed to ensure that trust money are kept separate from other money as highlighted in paragraph 12.2.6 and 14.8 above;
- 15.2 Rule 68.6.2 of the Rules in that the firm failed to ensure that when making a transfer from its trust banking account to its business banking account, the amount transferred is identifiable and does not exceed the amount due to it as described in paragraph 12.5.11, 13.6.13 and 13.8.11 above;
- 15.3 Rule 68.8 of the Rules in that the firm failed to pay an amount due to a client within a reasonable time as highlighted in paragraph 5.2.5, 6.6 and 9.3.2 above;
- 15.4 Rule 68.9 of the Rules in that the firm failed to pay reasonable fees and disbursements of other practitioners, medical practitioners and other experts within a reasonable time as highlighted in paragraph 5.3.3, 6.7, 7.5 and 12.5.7 above;
- 15.5 Rule 69.5 of the Rules in that the firm failed to ensure that withdrawals from the trust bank account are made only in respect of payment to, for or on behalf of a trust creditor or as transfers to its business bank account in respect of fees or disbursements due to the firm as highlighted in paragraph 8.3.17, 13.7.12 and 13.6.14 above;

15.6 Rule 89.24 of the Rules in that the practitioners are guilty of unprofessional or dishonourable conduct by overreaching a client as described in paragraph 7.8, 8.3.14, 8.2.8, 8.3.14, 11.9, 11.10 and 12.3.9 above.

15.7 Rule 68.4 of the Rules in that the accounting records were not retained for a period of five years.

## 16. CONCLUSION

16.1 It is clear that the firm retained a substantial amount of its fees in the trust bank account during the period prior to 11 December 2012. It is important to note that fees were not raised in various matters upon finalisation but were rather transferred to suspense account via journal entries. The fact that interest earned on the firm's monies retained in the trust bank account would be for the ultimate benefit of the Attorneys Fidelity Fund would generally prevent such practice considering the loss of interest income and capital growth. Mr R Bobroff has advised that such practice was deployed by the firm upon the advice of the firm's former bookkeeper, Ms Van Wyk in order to avoid an audit from the South African Revenue Services (SARS) due to the fluctuating VAT output figures.

It would stand to reason that if there firm's tax affairs were in order there would be no reason to engage in a practice to smooth the firm's income in order to avoid an audit from SARS. It would also seem unusual that the Directors of the firm whom have a substantial amount of experience in running a practice and administering a trust account would merely rely and act on the advice of their bookkeeper whom is not a tax specialist.

16.2 In addition to the fees that were retained in the trust bank account, the firm had invested a substantial amount of its own monies in a S78 (2A) account under the name of "Zunelle". The "Zunelle" account however did not reflect as a trust creditor account in the firm's trust accounting records. Considering that monies invested in a S78 (2A) account would first have to flow through the firm's S78 (1) trust bank account, the omission of the "Zunelle" account from the trust accounting records is highly unusual and would indicate an intention by the Directors of the firm to conceal the existence of such an account.

It is not clear what motive the firm would have for investing its own monies in a S78 (2A) account and why they would do so under the name of, "Zunelle". In our opinion it is possible that the monies were invested in terms of S78 (2A) under the name of "Zunelle" in order to avoid the taxation of the interest earned on the monies invested.

Furthermore retention of the firm's fees and the firm's monies in the trust bank accounts defeats the primary purpose of an attorneys trust bank account which is to keep trust monies separate from business monies. In the circumstances it can be argued that the trust has lost its identity.

- 16.3 In the matter of Mr Pombo and Ms De La Guerre it was identified that the firm's fees in these matters were not completely recorded in the accounting records. The accounting records however do reflect entries in respect of payments to J Kingsbury in the case of Mr Pombo's account and a payment to Ms L Berman in the case of the De La Guerre account. It would thus seem that these payments are in respect of the firm's fees which were not recorded against the respective trust creditor accounts. The result of such practice is that the firm's income is understated with the consequent understatement of the firm's VAT and income tax liabilities.

Considering the circumstances mentioned in paragraph 16.1 – 16.3 above holistically, it would appear that the Directors of the firm employed various tactics to unlawfully reduce its income tax and VAT liabilities.

- 16.4 In the various matters we examined, we identified that the firm had entered into multiple fee agreements with clients.

In the case of Mr G.D Vivian the firm had entered into a common law contingency fee agreement as well as well as contingency fee agreement in terms of the Act. In this matter we identified that irrespective of which agreement formed the basis on which fees were charged, Mr G.D. Vivian had still been overreached to a greater or lesser extent.

In the case of Ms Y Motara the firm had entered into a Contingency Fee Agreement in terms of the Act. In this matter it was identified that fee charged to the client exceeded the firm's normal fees doubled up in terms of the act.

The firm thus did not comply with the fee limit imposed by the Contingency Fees Act. The result is that Ms Motara had been overreached.

- 16.5 In certain matters which we examined we noted the existence of signed contingency fee agreements in terms of the Contingency Fees Act. The fees in certain matters amounted to the maximum fee of 25% of the monies recovered. In certain instances however the control files did not contain a record of time spent on the matter or a bill of costs drawn on an attorney and own client scale. It was thus not clear to us how the firm ensured compliance with the fee limit prescribed in the Contingency Fees Act.
- 16.6 In numerous instances we identified that the clients had been charged a disbursement on their statement of accounts in respect of the cost of printing, "bundles" as well as a separate disbursement in respect of, "copies per bill of costs". On further investigation we noted that the cost of printing the "bundles" were included on the bill of costs drawn on a party and party scale and were thus included in the disbursement in respect of, "copies per bill of costs". In this manner the clients were overreached as a result of the duplication the disbursement in respect of the cost of printing "bundles".
- 16.7 In the matter of Mr De Pontes, Ms Fourie and Mr Pombo we noted that there was a substantial delay in effecting final payment to the client. Both Mr De Pontes and Mr Pombo allege that the firm did not provide them with a final statement of account. The delay in the payment to the clients are of great concern as the clients would have been financially prejudiced.
- 16.8 In the matter of Mr Pombo, it was discovered that the firm issued a business cheque in favour of Mr Pombo however the said cheque was deposited into the account of Mr D Bobroff. The report of the firm's former bookkeeper Ms Christy De Beer describe her findings in the matter. The findings per Ms De Beer's report was that Mr D Bobroff forged Mr R Bobroff's signature on the business cheque issued in favour of Mr Pombo. Her findings further indicate that the said cheque was deposited into Mr D Bobroff's personal account.

In light of the information and evidence available to us, we are of the opinion that the depositing of the cheque issued in the name of Mr Pombo into Mr D Bobroff's account was intentional. The monies due to Mr Pombo were

repaid two years later however in our view that does not negate the initial misappropriation of the monies due to a trust creditor.

16.9 A full inspection of the Pombo account was not possible as we were advised that the file had been destroyed in terms of the firm's policy regarding the retention of records. The accounting records were also not available as we were informed that the matter was older than 5 years and no records were available.

The Disciplinary Department of the Law Society had requested Mr R Bobroff's comments regarding certain allegations made by Ms B Van Wyk in an affidavit deposited by her in respect of the Pombo Matter during August 2013. The firm's legal representatives responded in September 2013 by requesting that the proceedings be postponed as the matter was subject to civil proceedings in a Court of Law. The Directors of the firm were aware that the Law Society wished to query various matters relating to the Pombo account from as far back as August 2013 yet still destroyed the file. This can only be viewed as a deliberate act to ensure that the Pombo file is not available for inspection.

16.10 During our inspection we had requested the ledger accounts of certain trust creditors which the firm was unable to provide. We were advised that once an account had a nil balance and had been archived on the Winlaw system, the ledger account could not be provided. We had identified matters where the complete ledger should have been available as it was within a period of five years however the firm was unable to provide a complete ledger. Whilst these instances may appear insignificant, it should be noted that our inspection was only carried out on a sample of matters selected. In our opinion it does have an impact on the scope of our inspection and in these circumstances we cannot express an opinion on the trust accounting records.

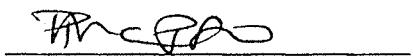
16.11 In light of the findings regarding overreaching of clients, we are of the opinion that the firm does pose a risk to trust creditors of the firm.

16.12 In light of the contraventions highlighted in paragraph 15 above, we recommend that our report be referred to the Council for further consideration.



A. Reddy

Auditor – Monitoring Unit  
Chartered Accountant (SA)



P. Mapfumo  
Auditor – Monitoring Unit  
Chartered Accountant (SA)