"No other medical scheme has such adverse publicity than these fraudsters." [18 March 2015]

"RONALD BOBROFF EXPOSES DISCOVERY HEALTH'S LONGSTANDING FRAUD in A SHOCKING DISCOVERY FOR DISCOVERY HEALTH MEMBERS at www.bobroff.co.za" [11 March 2015]

"Never mind a bad reputation, what about their longstanding defrauding of vulnerable accident victims!" [8 March 2015]

"These fraudsters have been getting away with their criminal conduct for way too long." [6 March 2015]

"This is probably one of SA's most corrupt corporates." [13 February 2015]

"Medical aids 'dictate treatment' to doctors - Times LIVE. And the biggest culprit is.....[link to photograph of Dr Broomberg; 11 February 2015]

"Fraudsters" [link to Facebook group titled "How I was messed around by Discovery Health Medial Aid; 10 February 2015]

"It appears that Broomberg believes that by repeatedly lying, the public will believe Discovery. The law is clear and Discovery do not comply with it. Has anyone ever heard of Discovery's rule 15.6 and annexure c? Read the rule and then refer to Section 30(2) of the Medical Schemes Act. Read A shocking

Discovery for Discovery Members at www.bobroff.co.za and view the annexures. You will note an undertaking which forces members to claim all medical expenses from a wrongdoer at their own risk and cost and reimburse Discovery. If Broomberg was being honest why does he not refer to the case of Mark Bellon whose membership Discovery terminated and sued for repayment of medical expenses. Of course Discovery pulled out just before the trial date but RBP are going to apply for a new trial date and expose Discovery in court." [9 February 2015]

"The truth is that the media are generally afraid of Discovery or rely on their advertising spend. We have uncovered the most shocking fraud and have resorted to social media which has gone viral. This is something that Discovery cannot prevent or buy their way out of." [7 February 2015]

203 I annex a collection of screenshots from Darren's Facebook page as "**GvN 52**". The only conclusion to be drawn from Darren's recent activity on social media is that he has absolutely no intention to abide by the express undertaking furnished to the Law Society.

204 Darren must be aware that his conduct on Facebook is unbecoming of an attorney and in breach of his undertaking, which ought to carry severe consequences. I say so because he actively attempted to destroy the evidence of his conduct by deleting his Facebook account sometime in late March or early April 2015. I submit that doing so constitutes a brazen attempt to defeat the disciplinary authority of the Law Society and the administration of justice, and an adverse inference ought to be drawn against him for doing so.

205 In respect of RBP's website, the following was stated by the Bobroffs' counsel, Advocate Cassim SC, before the Disciplinary Committee:

> "Mr Chairman, that is the web page not of Mr Darren Bobroffs, that is the web page of the firm. *What I have said to Mr Bobroff senior is that he must look at that web page, if it is offending any of the people, then it should be removed...I want to make it very clear to this Committee that to the extend [sic] that it is offensive it must be attended to*." (emphasis added)

206 The Chairman of the Committee also notes, at page 8 of the transcript, that Ronald nodded when that was said, indicating his agreement.

207 The Bobroffs have not only ignored the undertaking to remove offensive material on RBP's website, they have recently added *more* offensive content, including (emphasis added throughout):

> "Ronald also informed Ms. Govender [presenter of Carte Blanche] that Discovery's so called panel attorneys also used virtual identical agreements to that used by RBP, apparently at the insistence of Discovery's *in house road accident fund cost debt collector Mr. Jeffrey Katz*."

> "Ms. Govender was also handed a copy of the now unlawful common law contingency fee agreement utilized by *Attorney Anthony Millar, in respect of the poor black road accident victims he touts / solicits* via his tout Mr. Jabu Goxwa from Natalspruit Hospital. Carte Blanche were also provided with a copy of just one of *Millar's accounts to one of these poor black clients on*

whose behalf he only recovered R37,000 but demanded payment of R78,768.77 from the client."

"Carte Blanche was furnished with affidavits by some RBP clients deposing as to how *Discovery's Jeffrey Katz, had allegedly tried to bribe them into assisting him and his employer in the vendetta against Ronald Bobroff and RBP*, because Ronald while standing up for practice clients against Katz's bullying had exposed Discovery's longstanding and flagrant disregard for the Medical Schemes Act. Read "A shocking Discovery for Discovery Members" on this website."

"RBP clients should therefore be *extremely cautious in respect of any attempt to tout them by Millar* – we have affidavits from a number of clients, including some telephoned by Millar early on Monday morning the 23rd March 2015, in which Millar gloated as to the attack on RBP by Carte Blanche, and sought to portray himself *not as the shady attorney preying upon poor black road accident victims as deposed to in dozens of affidavits by clients, but as some sort of legal champion!*"

"DISHONEST "JOURNALIST" TONY KILROY BEAMISH WHO IS AN ACCOMPLICE TO THEFT OF CONFIDENTIAL RBP DOCUMENTATION STOLEN BY FORMER STAFF MEMBER CORA VAN DER MERWE"

208 Screenshots from RBP's website are annexed as "**GvN 53**". The references to Carte Blanche mean that the content must have been published on the website at some stage

after 22 March 2015, being the date that a feature on the Bobroffs' conduct was aired on Carte Blanche.

209 Like Darren's Facebook page, the Bobroffs seem intent on destroying evidence of their misconduct. At some point in April 2015, defamatory material was removed from RBP's website.

210 The Bobroffs have also been active on Twitter under the pseudonym of "@truereport81". Screenshots are annexed as "**GvN 54**", and include:

> "@coravdmerwe Are u in the tub with elephant man you *filthy psycho*"
>
> "…@TonyBeamish Pity beamish didn't report his *accomplice Millar touts and uses common law gee agreements*"
>
> "…@Discovery_SA…@Jeffkatz10…Discovery actually believe their own lies. Its in their blood."
>
> "@Bobroffronald Discovery's Broomberg is an *absolute fraudster*. He should be jailed for life for stealing victims compensation."
>
> "@coravdmerwe…Van der Merwe have you *disclosed that after you sex change from Cobus you are bald and wear a wig?*"

"…@coravdmwerw @TonyBeamish a pic is worth a thousand words. *Pic emphasis how hideous and repulsive these deformed thieves are* [with link to photographs of Van der Merwe and Beamish]

The Carte Blanche insert

211 The public interest in this matter and the need for decisive action to be taken against the Bobroffs are further illustrated by a recent television feature about their misconduct produced by Carte Blanche, which aired on 22 March 2015. A full transcript of the feature – and a video thereof – will be made available at the hearing, should it be necessary to have regard thereto.

212 As part of the insert, Ronald was interviewed by Carte Blanche presenter, Ms Devi Sankaree Govender. The following aspects of the interview are telling.

213 First, Ronald simply dismissed the report of the De La Guerre and De Pontes Investigating Committee on the basis that the Committee "lacked any understanding whatsoever of the rule of the Law Society" (referring to the Law Society's historic, and unlawful, endorsement of common-law contingency fee agreements). Tellingly, Ronald did not think it was necessary to admit that the Committee found *prima facie* evidence of overreaching by Darren and himself.

214 Second, the extent of Ronald's desperate attempts to distract attention from the true issue in this matter (the egregious, pervasive misconduct of the Bobroffs) knows no bounds: he went as far as to accuse Ms Cora van der Merwe, a past employee of RBP (and whistle-blower of the Bobroffs' misconduct), of being a Russian spy.

215 Third, the Bobroffs are entirely unrepentant. Despite repeated censure by this Court, despite this Court ordering them to repay hundreds of thousands of Rands illegally retained, and despite every level of the South African judiciary outright rejecting the illusion of common-law contingency fee agreements with punitive costs orders, Ronald stated that he feels "proud of what we have done".

216 Fourth, the harm caused by the Law Society's inactivity is demonstrated by Ronald admitting that his firm would have continued to use common-law contingency fee agreements were it not for the *De La Guerre* judgment. In other words, had it not been for a past client of the Bobroffs taking it upon herself to litigate – *with no assistance from the Law Society* – the Bobroffs would have continued to retain illegal fees from unsuspecting members of the public, causing immeasurable harm to the public and the administration of justice.

217 Fifth, the interview confirms the need for a firm-wide inspection of RBP in order to ascertain the true extent of the Bobroffs' misconduct. The ultimate effect of the raft of litigation against the Bobroffs is that they must account to their past clients. In light of the Bobroffs' *modus operandi*, every client that was persuaded to conclude an illegal common-law contingency fee agreement probably has a claim against the Bobroffs. One would expect that the Bobroffs would on their own accord approach their past clients, prepare bills of costs, and account to them for any amounts retained over and above their fees justified in terms of those bills of costs. No less is required of them by the special relationship of trust and fidelity between attorney and client. At the very least, one would expect that the Bobroffs would volunteer the details of their past clients so that the Law Society could engage with those clients, and bring to their attention any possible claims against the Bobroffs.

218 However, when Ronald was asked in the interview with Carte Blanche whether he would be approaching his past clients for this purpose, he was defiant and obstinate. He stated that he would "*definitely not*". Ms Govender then asked him whether he shouldn't do so from a moral point of view. He coldly answered:

> "*I can't begin to understand why you would say that.*"

THE LAW SOCIETY'S STATUTORY DUTIES

219 Section 58 of the Attorneys' Act 57 of 1979 sets out the objects of the Law Society. The section states:

> "The objects of a society shall be-
>
> (a) *to maintain and enhance the prestige, status and dignity of the profession*;
>
> (b) *to regulate the exercise of the profession*;
>
> (c) *to encourage and promote efficiency in and responsibility in relation to the profession*;
>
> (d) *to deal with all matters relating to the interests of the profession and to protect those interests*;
>
> (e) *to uphold the integrity of practitioners*;
>
> (f) *to uphold and improve the standards of professional conduct* and qualifications of practitioners;

(g) *to provide for the effective control of the professional conduct of practitioners*;

(h) to promote uniform practice and *discipline among practitioners*;

(i) to encourage the study of the law;

(j) to initiate and promote reforms and improvements in any branch of the law, the administration of justice, the practice of the law and in draft legislation;

(k) to represent generally the views of the profession;

(l) in the interests of the profession in the Republic, to co-operate with such other societies or bodies of persons as it may deem fit." (emphasis added)

220 The failure by the Law Society to meaningfully take action against the Bobroffs is inexplicable in light of the well-recognised duty upon an attorney not to play possum in the face of serious allegations of impropriety. An attorney faced with a complaint is not in the same position as a defendant/respondent in litigation or an accused in a criminal prosecution. He may not sit back and require his client to prove her case with what little she may have at her disposal. The attorney has a professional obligation to disclose the facts so that the Law Society may make an informed decision whether there is substance to the complaint.

221 That duty is made a nullity if it is not enforced by the Law Society. The Law Society is empowered to conduct a firm-wide inspection of the Bobroffs' practice in order to

ascertain the extent of their misconduct and to seek the suspension of offending attorneys as an interim measure. It inexplicably refuses to do so, abdicating its responsibility as custodian of the legal profession to erstwhile clients. It has refused to do so even now, despite its own evidence in the Law Society's application confirming that the Bobroffs are refusing to allow the Law Society's inspectors access to accounts beyond the Grahams' and De la Guerre accounts.

222 The Law Society is equipped with a range of mechanisms to discharge its function as the watchdog of the legal profession. Under the Attorneys Act, for example, the Law Society's Council may "do anything which is required for the proper and effective carrying out of its duties, the performance of its functions or the exercise of its powers."

223 In terms of section 70(1) of the Attorneys Act, for the purposes of an enquiry into professional misconduct under section 71 of the Attorneys Act or in order to enable it to decide whether or not such an enquiry should be held, the Law Society may direct any practitioner to produce for inspection, either by the Council itself or by any person authorised thereto by the Council, any book, document, record or thing which is in the possession or custody or under the control of such practitioner and which relates to his or her practice or former practice.

224 Furthermore, a separate form of misconduct on its own, and worthy of removal from the roll or suspension from practice, is the failure by an attorney to offer an explanation to a law society for alleged misconduct. Courts take a very serious view of the fact that an officer of the court, when called upon by his law society to give an explanation of what appears to be misconduct on his part, fails to give any such explanation or plays possum with the law society and/or the complainant.

225 I am also advised that in terms of Rule 95.2.1 of the Law Society's Rules, the Council may furnish the practitioner with particulars of a complaint and call upon him or her to furnish the Council in writing with his or her explanation in answer to the complaint, "*and may require such explanation to be verified by affidavit*".

226 In light of these legal principles and rules, I submit that the Law Society's apparent apathy towards the egregious conduct of the Bobroffs is manifestly in violation of its duties as the statutory custodian of the attorneys' profession. I am constrained respectfully to submit that it is inexplicable – given the evidence of firm-wide malpractice by the Bobroffs now confirmed by the Law Society's own inspectors flowing from the Faris report; given the Law Society's own evidence that the Bobroffs' are refusing to comply with Mothle J's order; given the Law Society's knowledge that the Bobroffs have been found by Matojane J to be in breach of Mothle J's order; given the wide publicity afforded to the allegations of widespread misconduct by the Bobroffs – that the Law Society has not itself brought contempt proceedings against the Bobroffs, and has not sought the suspension of the Bobroffs from practice pending the finalisation of those contempt proceedings and/or the firm-wide inspections that it is empowered to institute under the Attorneys Act.

RECENT (BUT INSUFFICIENT) ACTIVITY BY THE LAW SOCIETY

227 On 26 March 2015, I sent a letter to the Law Society on behalf of the Grahams and my firm, ENS, requesting a comprehensive response to the various queries previously raised but ignored, and setting a deadline for response of 30 March 2015 (annexed **"GvN 55"**). In particular, I requested that the Law Society provide its views on how it plans to respond to, and meaningfully deal with *each* of the following:

227.1 the disciplinary enquiry flowing from the Grahams' complaint;

227.2 compliance with the orders of Judge Mothle, including the appointment of an independent expert to conduct an IT inspection of the Bobroffs' computer network

227.3 the contents of the first report of the Monitoring Unit;

227.4 the promised second report of the Monitoring Unit;

227.5 the judgment of the Investigative Committee into the complaints of Ms De La Guerre and Mr De Pontes;

227.6 the order of Judge Weiner requiring the Law Society to investigate the Bobroffs' manipulated bill of costs

227.7 the judgments in the *De La Guerre*, *De Pontes*, *Vivian*, and *Fourie* matters;

227.8 hitherto unidentified past clients of the Bobroffs who ostensibly concluded common-law contingency fee agreements with the Bobroffs and who were, therefore, likely overreached;

227.9 the defamatory document distributed by the Bobroffs and them flagrantly breaching an undertaking given to the Law Society's Disciplinary Committee in regard to such conduct.

228 I further stated:

> "These questions are asked by us in the *interests of the public and in necessary vindication of the administration of justice*. *Should we not receive a comprehensive response from you to all of the issues raised and an*

> *unequivocal assurance as to how you intend to deal with these matters going forward, we shall return to court for relief.* In this regard we advise that such approach to court will not be limited to our clients, the Grahams, but will be joined by all applicants who have an interest in the abovementioned matters, including the practitioners and law firms implicated in the defamatory publication by Ronald Bobroff & Partners." (emphasis added)

229 On 31 March 2015, Mr Fourie of the Law Society's Disciplinary Department responded (annexed as "**GvN 56**"). Mr Fourie unhelpfully stated that he was no longer dealing with the Bobroffs' misconduct, but only with the complaint of defamation. Mr Fourie stated that a response to the complaint had yet to be received from Ronald, and that the Law Society had set a "final due date" for Ronald's response, being 10 April 2015. We have yet to receive a copy of Ronald's response, if it has even been submitted to the Law Society at all.

230 Mr Fourie further stated in his letter that the Law Society would be referring the defamation complaint to "a Committee" for consideration on 21 April 2015. No further information was provided.

231 The following day, on 1 April 2015, the Law Society sent a letter to Mr Millar, requesting that he and Mr Katz attend a Disciplinary Committee meeting on 28 April 2015 (annexed as "**GvN 57**").

232 After receiving those letters from the Law Society, it became apparent that the Law Society was intent on treating the Bobroffs' defamatory conduct as isolated instances. We submit that is inappropriate, as a consolidated hearting ought to be held canvassing

all of the Bobroffs' conduct on social media. Be that as it may, we hope that appropriate disciplinary action will be taken against the Bobroffs at the Disciplinary Committee meeting on 28 April 2015.

233 Also on 1 April 2015, I received a letter from Mr Grobler of the Law Society requiring the attendance of the Grahams and myself at a Disciplinary Committee meeting on 18 and 19 June 2015 (annexed as "**GvN 58**").

234 The Law Society's letter was unacceptably vague as to what the purpose of that meeting would be, and did not address the legitimate issues raised in my letter dated 26 March 2015. Accordingly, I wrote to the Law Society on 2 April 2015 (annexed as "**GvN 59**"). In that letter, I stated that, *inter alia*:

234.1 numerous aspects of the meeting of the Disciplinary Committee on 18 and 19 June 2015 remained unclear, which inhibited our ability to properly prepare for that hearing;

234.2 the Law Society had failed to timeously comply with the orders of Judge Mothle;

234.3 in order to ensure that the Grahams' complaint is properly prosecuted, we required a detailed response to the following questions:

"17.1. Is the meeting scheduled for 18 and 19 June 2015 a sitting of a Disciplinary Enquiry against the Bobroffs?

17.2. What is the intended format of the proceedings to take place on 18 and 19 June 2015?

17.3. Why was a sitting of a Disciplinary Enquiry not scheduled sooner, so as to comply with Judge Mothle's order and why is it only scheduled for June 2015?

17.4. Who will be sitting on the Disciplinary Committee at the meeting scheduled for 18 and 19 June 2015?

17.5. Who has been appointed as the pro forma prosecutor?

17.6. Has the second report referred to in Mr Fourie's letter dated 15 January 2015 been compiled?

17.7. If so, please furnish us with a copy, as required by Judge Mothle's order.

17.8. If not, when do you expect the second report to be compiled?

17.9. If not, why has the second report not been compiled sooner, so as to comply with Judge Mothle's order?

17.10. Does the Law Society intend to proceed with a meeting of a Disciplinary Committee and/or proceedings before a Disciplinary Enquiry in the absence of the second report?

17.11. Has the Law Society appointed an IT expert to conduct an inspection of the Bobroffs' IT network?

17.12. If so, who is that expert, and has he or she conducted the inspection required by Judge Matojane's order?

17.13. If the expert has completed the required inspection, please furnish us with his or her report as required by Judge Matojane's order

17.14. If not, when will the Law Society be appointing an IT expert, and when will he or she conduct the required inspection?

17.15. Does the Law Society intend to proceed with a meeting of a Disciplinary Committee and/or proceedings before a Disciplinary Enquiry in the absence of the report from an IT expert required by Judge Matojane's order?"

235 I further stated that:

> "Without the answers to these legitimate queries we are left with the clear impression that your letter of 1 April 2015 is little more than an obvious effort by the Law Society to posture at taking steps to discipline the Bobroffs but without doing the necessary preliminary work to make such an inquiry meaningful and without properly complying with the orders of Mothle and Matojane JJ. In those circumstances, your letter of 1 April 2015 – coupled with a failure by the Law Society to answer the queries we have raised – appears as confirmation that our clients' rights, and the orders of the High Court, are not being taken seriously by the Law Society."

236 The Law Society only replied on 7 April 2015 (annexed as "**GvN 60**"), requesting an extension of time to respond until 13 April 2015. No response has been forthcoming.

237 It seems that in anticipation of the Grahams being forced to approach this Court for relief based on its inaction, the Law Society launched its application on 9 April 2015 (although dated 27 March 2015). I turn to consider that in detail.

ANSWER TO THE LAW SOCIETY'S APPLICATION

238 The Law Society's application is based on the inspection of RBP's books of account ordered in terms of paragraph 3 of Judge Mothle's order. It is apparent from the founding affidavit, and common cause between the Law Society and the applicants, that:

238.1 the Law Society is of the view that the Faris report suggests pervasive misconduct by the Bobroffs (and not isolated misconduct in respect of the Grahams and Ms De La Guerre);

238.2 Judge Mothle did <u>not</u> intend to limit the inspection of RBP's books of account to the Graham and De La Guerre accounts;

238.3 the Bobroffs now contend that the inspection ordered by Judge Mothle must be limited to the Graham and De La Guerre accounts;

238.4 the Bobroffs are incorrect, as the inspection ordered by Judge Mothle is unlimited; and

238.5 the Bobroffs have failed to cooperate with the Law Society and are frustrating the finalisation of disciplinary proceedings against them.

239 I deal more fully with the Law Society's founding affidavit in my *ad seriatim* response. However, there are three themes arising from the founding affidavit that should be dealt with at this stage.

240 First, the account of events in the founding affidavit, and the correspondence annexed thereto, is case in point of the contemptuous attitude of the Bobroffs. The Bobroffs have arrogated to themselves the right to limit the clear wording of Judge Mothle's order. As rightly noted by the Law Society, the inspection ordered by Judge Mothle is not limited to the Graham and De La Guerre accounts. That is rightly so, given that there is overwhelming evidence that the Bobroffs adopted a *modus operandi* affecting all of their clients. To limit the inspection to the Graham and De La Guerre accounts is myopic, and also a clear effort at avoiding confirming evidence being uncovered about other malpractices within the firm.

241 Worse still, the Bobroffs (and their legal representatives) know full well that Judge Mothle's order was not intended to be limited to the Graham and De La Guerre accounts. In fact, astonishingly in advancing their grounds for leave to appeal they emphatically confirmed that Judge Mothle's order is *not* so limited. The Bobroffs now attempt to reinterpret Judge Mothle's order in a manner which is entirely irreconcilable with the previous stance in their numerous applications for leave to appeal.

242 In paragraphs 6.9 and 6.10 of their application for leave to appeal (annexed as "**GvN 61**"), the Bobroffs argued that Judge Mothle erred in ordering an inspection of RBP's books of account because, *inter alia*:

> "6.9 The order was *not confined to the Grahams matter* and is unreasonably wide and unspecific with reference to the Faris report.
>
> 6.10. Whereas the order contemplates that the inspection should be conducted and concluded within 30 calendar days i.e. before the

> continuation of the Disciplinary Enquiry convened by the Council of the Law Society, *the ambit of the inspection ordered by the Court is much wider than the complaints of the applicants and the formulated charges which are pending against the respondents*." (emphasis added)

243 In an affidavit that I deposed to on behalf of the Grahams resisting leave to appeal (annexed as "**GvN 62**"), I stated as follows:

> "It is convenient at this juncture to dispose of the sub-grounds of appeal in paragraphs 6.9 and 6.10 of the application for leave to appeal, that being that the Court's order was not confined to the Grahams' matter or the complaints levelled against RBP and the Bobroffs by the Grahams. *The obvious retort to this is that the allegations raised by the Grahams, and supported by the Faris report, reasonably suggest a practice of impropriety by RBP and the Bobroffs*. This is particularly so given the fervent stance taken by RBP and the Bobroffs in defending the common-law contingency to its death (I use 'death' guardedly, as it presupposes that there was any life in the concept to begin with), which suggests that it was the *modus operandi* of the firm to use (and abuse) these agreements. *In short, the investigation ought not be limited to the Grahams as it is likely that the Grahams were not the only victims to this scheme*.
>
> Furthermore, the Grahams, and erstwhile clients of RBP, are at present working from limited information. There is a reasonable possibility that an inspection of RBP's books of account will reveal further impropriety and misconduct, or at least flesh out aspects of the complaints which have already

been levelled against RBP and the Bobroffs. A general inspection of RBP's books of account, not necessarily limited to the Grahams complaints, is eminently sensible and justifiable – and serves the administration of justice." (emphasis added)

244 It will be recalled that the Bobroffs' application for leave to appeal was dismissed by Judge Mothle. In respect of the Bobroffs' contention that the ordered inspection was unduly broad (a contention which confirms that they understood that to be the extent of his order, i.e., as going beyond the Grahams and De la Guerre accounts), Judge Mothle stated as follows in his judgment dismissing leave to appeal:

"The [Bobroffs] argues that paragraph 3 is *wide and authorises that all accounts including business accounts must be inspected*. That, it is contended, is contrary to the practice of the Law Society. Again this argument is *devoid of any merit*." (emphasis added)

245 The unlimited ambit of the inspection ordered by Judge Mothle was further relied upon by the Bobroffs in paragraph 8.4 of their petition to the Supreme Court of Appeal (annexed as "**GvN 63**"):

"8.4 The relief sought by the [Grahams] was aimed at an inspection of the trust account of the [Bobroffs], whereas *the order went must further and required an inspection of all the [Bobroffs'] books of account for an unlimited period and was unlimited in scope*." (emphasis added)

246 The Supreme Court of Appeal dismissed the Bobroffs application for leave to appeal. Undeterred, the Bobroffs ran precisely the same argument (which is the opposite of what they now contend) before the Constitutional Court in their third application for leave to appeal. For example, in paragraphs 31 and 32 of their application for leave to appeal to the Constitutional Court (annexed as "**GvN 64**"):

> "31. Order 3 is, with respect, disjointed. A reading of the judgment will demonstrate that, up to paragraph 83 thereof, the Court *a quo* considered that no case was made for the Court to intervene in the investigation being conducted by the Law Society into the affairs and conduct of its members, the [Bobroffs]. Thus, Order 3 took a bizarre turn in the context of there being no case made out for this *over-reaching and draconian in-road into the business affairs of [RBP]*...
>
> 32. It is in this context that [the Bobroffs] complain that the *ambit*, purport and impact of order 3 is an affront to the dignity of the [Bobroffs]." (emphasis added)

247 The Constitutional Court dismissed the Bobroffs' application for leave to appeal on 3 November 2014.

248 It is clear, then, that the Bobroffs argued throughout their leave to appeal applications that Judge Mothle erred by *not* limiting the inspection to the Graham and De La Guerre accounts. It follows that on their own version, Judge Mothle's order cannot be interpreted to be limited to the Graham and De La Guerre accounts (because if that interpretation could be sustained, then the Bobroffs would not have applied for leave to appeal). Now,

despite having on three occasions (before Mothle J in the High Court leave to appeal application; in their petition to the Supreme Court of Appeal; and in their leave application to the Constitutional Court) made it clear that they fully appreciated the breadth of Mothle J's order as extending beyond the Grahams and De la Guerre matters, and despite all those Courts rejecting any efforts by the Bobroffs to limit the extent of the order, they now contemptuously and self-servingly contend that Judge Mothle's order means only an inspection of the Graham and De La Guerre accounts. In a letter to the Law Society from the Bobroffs' attorneys (annexed as "2" to the Law Society's founding affidavit), the following is stated:

> "...in the view of RBP's legal advisers, the inspection which the Disciplinary Department of Law Society is required to carry out in terms of paragraph 3 of the Court Order, which was handed down on 15 April 2014, *needs to be limited* to the matters referred to in paragraphs 8.2.1 and 8.2.2 of the report by Mr Vincent Faris dared 22 August 2012...*The two accounts in question are those relating to the matters of Graham and de la Guerre*." (emphasis added)

And further (in annexure "12" to the Law Society's founding affidavit):

> "where the court therefore referred in its order to the recommendation of Mr Faris, the order could logically only apply to what was the subject matter in the pending disciplinary enquiry in the Graham matter. Although the Faris report also dealt with the de la Guerre matter, the scope of the inspection, as ordered by the Court, could only have relevance to the disciplinary enquiry in the Graham matter...It further follows that the Court could not, as far as

the recommendation of Mr Faris was concerned, have intended anything other than the Graham matter."

249 There are two important aspects of the Bobroffs' approach to the inspection ordered by Judge Mothle:

249.1 The *first* is that one of the Bobroffs' grounds of appeal was that the inspection ordered by Judge Mothle was too broad in that it extended beyond the Graham matter. It must follow that *on the Bobroffs' own interpretation* of Judge Mothle's order, the inspection extends beyond the Graham matter. Their attempt to manufacture a different interpretation is disingenuous, and entirely at odds with their applications for leave to appeal.

249.2 The *second* important aspect is that even if the Bobroffs' approbation and reprobation is put aside, their argument that the inspection ordered by Judge Mothle ought to be limited to the Graham matter has been canvassed in three separate applications for leave to appeal, and dismissed on all three occasions. It is unsustainable, and *res judicata.*

250 Second, both the Law Society and the Bobroffs artificially re-interpret Judge Mothle's order regarding the inspection report. They do so in two ways:

250.1 *First*, the Law Society *mero motu* ordered its inspectors to compile two reports, one in respect of the Graham and De La Guerre accounts and another in respect of other matters. In the founding affidavit in the Law Society's application, the reason for this bifurcated reporting process is stated to be that "the Graham and

De la Guerre accounts are relevant to the application brought by the Grahams under case number 61790/2012 while the other accounts are not."

250.2 The bifurcated reporting process is in breach of Judge Mothle's order. Paragraph 3 of the order refers to the compiling of "*a report*" and the furnishing of "*the report*" to the parties. I have already shown above that Judge Mothle expressly intended for the inspection of RBP's books of account not to be artificially limited to the Graham matter. It necessarily follows, and is the only possible interpretation of Judge Mothle's order, that the report based on the inspection should be a single, consolidated report.

250.3 The reason proffered by the Law Society for the bifurcated reporting process confirms that the Law Society apparently intends to treat misconduct by the Bobroffs as isolated instances. Judge Mothle rightly recognised the pervasiveness of the Bobroffs' misconduct, which is why a single, consolidated report was required by his order. It is unclear upon what basis the Law Society insists on re-casting that order as permitting the bifurcated reporting process. It has no right to do so, save for bringing an application for correction or variation of the judgment and order, which it has not brought (and could not now bring because it would be out of time).

250.4 *Second*, both the Law Society and the Bobroffs contend that the report compiled in respect of non-Graham matters should not be disclosed to all the parties to this litigation. That interpretation of Judge Mothle's order is patently incorrect, as his order states that "*the report*" (i.e. the single, consolidated report) must be served on "*all the parties to this application*". Moreover, the interpretation now advanced by the Law Society and the Bobroffs which limits distribution of the inspection

report has already been tried, tested, and dismissed by the High Court, the Supreme Court of Appeal, and the Constitutional Court in the Bobroffs' applications for leave to appeal.

250.5 That the Bobroffs adopt this opportunistic interpretation of Judge Mothle's order is unsurprising, since they are bent on a deliberate and obviously contemptuous strategy of re-arguing grounds of appeal which have already been thrice dismissed by our courts. I quote relevant sections of the Bobroffs' applications for leave to appeal:

From the application for leave to appeal dismissed by the High Court:

> "6.12 The part of the order that the inspection report is to be served *'to all the parties in this application' is erroneous* for the following reasons:
>
> ...
>
> 6.12.4 The Court failed to recognise that the disciplinary processes, including an investigative process, conducted by the Law Society are *confidential* and that, in terms of the rules of the Law Society, only the Council of the Law Society or a disciplinary committee (in certain instances) may permit the publication of information relating to an enquiry;
>
> 6.12.5 Prior to the taking of a decision by the Council of the Law Society (which would amount to 'administrative action' in terms of PAJA)

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following the receipt and consideration of an inspection report, *it could be highly prejudicial and unfair, not only to the practitioner concerned but also to the Law Society, if the report were to be given to other parties*;

6.12.6 The service of the report on all the parties, which traverses the business records and accounts of the [Bobroffs], and which *extends much further than the complaint lodged by the [Grahams]*, is likely to result in the *invasion of the privacy and the disclosure of confidential / privileged financial information, not only of the [Bobroffs], but also of third parties, namely other clients of the [Bobroffs]*."

And from the second application for leave to appeal, dismissed with costs by the Supreme Court of Appeal:

"6.4. Was it proper for the Court to order that, once the inspection report had been compiled, such report should be *served on all the parties in the proceedings* (including [the Grahams] and the RAF) before the Council of the Law Society had the opportunity to consider the report and before the [Bobroffs] had the opportunity to comment on the report?

...

ES 9

8.9. To order that the inspection report be served 'to all the parties in this application' is wrong for the following reasons:

...

8.9.6 The service of the report on all the parties, after an inspection had traversed all the confidential and private business records and accounts of the [Bobroffs], and which (in terms of the order of the Court) is likely to extend much further than the complaint lodged by the [Grahams], is likely to result in the invasion of the privacy of and disclosure of confidential and/or privileged information, not only of the [Bobroffs], but also of third parties such as clients, and other service providers of the firm such as expert witnesses, advocates, partners and staff members."

And from the third application for leave to appeal, dismissed with costs by the Constitutional Court:

"37.5 Was it proper for the Court to order that, once the inspection report had been compiled, such report should be *served on all the parties in the proceedings* (including the [Grahams] and the RAF) before the Council of the Law Society had the opportunity to consider the report and

before the [Bobroffs] had the opportunity to comment on the report?

...

65. The Court failed to recognise that the disciplinary processes, including an investigate process, which are conducted by the Law Society, are confidential and that, in terms [of] the Rules of the Law Society, only the Council of the Law Society or a disciplinary committee (in certain instances) may permit the publication of information relating to an enquiry.

...

67. *The service of the report on all the parties, after an inspection had traversed all the confidential and private business records and accounts of the [Bobroffs]*, and which (in terms of the order of the Court) is likely to *extend much further than the complaint lodged by the [Grahams]*, is likely to result in the *invasion of the privacy of and disclosure of confidential and/or privileged information*, not only of the [Bobroffs], but also of third parties such as clients, and other service providers of the firm such as expert witnesses, advocates, partners and staff members." (emphasis added)

250.6 In dismissing leave to appeal, Judge Mothle stated as follows regarding distribution of the inspection report to all parties to this litigation:

> "The [Bobroffs] raised a further ground that the Court has introduced a precedent by ordering that the report from the inspection should be made available to other parties and not to the Council of the Law Society as it has always been the practice. *Again this is a self-serving argument*. The inspection has not been specifically ordered by the Council of the Law Society but by the Court. Secondly, the report of Mr Vincent Faris raises serious allegations relating to how the funds of the Grahams were dealt with. *The Grahams as well as the RAF which had paid those funds, are interested parties in knowing how the funds were dealt with. The inspection is not intended for the sake of it. It has to be part and parcel of the pending enquiry, in particular the question whether the Contingency Fee Agreement Act has been transgressed or not*." (emphasis added)

250.7 It is clear, then, both in respect of the ambit of the inspection ordered by Judge Mothle and the distribution of the report to be compiled following that inspection, that the Bobroffs are advancing an interpretation of Judge Mothle's order which has been tried, tested, and dismissed by every level of our judiciary (in fact, their arguments in this regard have been dismissed as not even having reasonable prospects of success). Having not found favour in the courts, the Bobroffs continue to ignore the plain wording of Judge Mothle's order. Quite apart from their arguments being unsustainable, their conduct displays a marked disregard for the judgments of this Court, the Supreme Court of Appeal, and the

Constitutional Court dismissing their applications for leave to appeal, which were based on precisely the same arguments now being advanced by the Bobroffs to avoid legitimate scrutiny of their practice. The Bobroffs are not simply seeking to (re-)appeal the judgment of Judge Mothle through the backdoor. They can't do that because the backdoor has been bolted shut by this Court, the Supreme Court of Appeal, and the Constitutional Court. Worse, the Bobroffs are simply ignoring the judgment of Judge Mothle and the endorsements of that judgment by the Supreme Court of Appeal and the Constitutional Court.

250.8 The Law Society should not be a party to the Bobroffs' self-serving attempts to recast the order of Judge Mothle. It states in the founding affidavit in the Law Society application that it has no intention of disclosing the second of its inspection reports to the parties to this litigation. The Law Society does not even seek declaratory relief from the Court in this regard (to the extent that such relief would even be possible given the dismissal of arguments based on disclosure of the inspection report in the Bobroffs' applications for leave to appeal). It treats its interpretation of Judge Mothle's order as a *fait accompli*, undeterred by the plain language of the order (and the judgment dismissing leave to appeal) requiring disclosure to all parties. The Law Society has no right to disregard clear judgments of this Court.

250.9 The Law Society is fully aware of the Bobroffs' applications dismissing leave to appeal and the grounds of appeal that were canvassed (and dismissed) therein. Although it chose not to formally participate in the leave to appeal applications, it was served with the affidavits filed in the applications (and therefore was aware of the grounds of appeal advanced by the Bobroffs) and the judgments dismissing