

31.3 In the instant matter, 4 payments were made to De La Guerre. The first 2 payments were made in the normal course. The 3rd payment of R19 126,46 was made approximately 4 months after receipt while the final payment of R184 325,11 was made after Bobroff Jnr, subsequent to a file audit, discovered such monies were still due to be paid to De La Guerre.

31.4 In *De La Guerre*¹¹³ the Court observed:-

"There is no explanation before court why payments of the amounts due to her were made over a period of 2 years".

31.5 Fortunately such explanation was furnished to this Committee as set out above and I'm satisfied with the explanation. Accordingly I find no *prima facie* evidence suggesting RBP acted unprofessionally or dishonourably or in a manner which resonates of unworthy conduct when it staggered payments to De La Guerre over a period of about 2 years.

32 Allegations of touting were levelled against RBP by:-

¹¹³

De La Guerre v Ronald Bobroff & Partners Inc and Others (2013) ZAGPPHC 33

- 32.1 by NBP in re Richard Triesman;
- 32.2 NRP in re Mon;
- 32.3 Moreki; and
- 32.4 NRP in re NetWare.

33 To my mind touting cannot be constituted by unilateral action. This is an essential element. Within the context of legal jurisprudence touting is, at the very least, a bilateral arrangement between persons with a common purpose proscribed by the canons of ethics. It is with this view that I approached the allegations of touting against RBP.

34 *The allegation that Richard Triesman was RBP's tout*

35 NBP alleges :-

35.1 that at all times material to the complaint :-

35.1.1 Richard Triesman was employed by Netcare as a Group
Legal Advisor¹¹⁴;

35.1.2 Richard Triesman also conducted business under the name of *Specialised Solution Services*("SSS").¹¹⁵

35.2 that RBP paid **R10 000,00** per month to Richard Triesman throughSSS in return for information of patients whose details were recorded on Netcare's casualty registers¹¹⁶ thereby enabling RBP to contact such patients in order to solicit work for possible claims.

36 Netcare's position, as set out in its letter dated 22nd May 2012 to NBP¹¹⁷ is:-

36.1 that neither Netcare nor any of its affiliates dealt with SSS;

36.2 that Netcare had never entered into any agreement with any attorney for the sharing of such attorney's fees.

37 In support of its allegation, NBP furnished:-

¹¹⁵ Page 6 of Bundle C at para 2

¹¹⁶ Page 1 of Bundle C at para 4

¹¹⁷ Page 5 of Bundle C

37.1 An invoice number 4 dated 16th March 2005,¹¹⁸ from SSS to RBP in the amount of **R10 000,00** for "services rendered";

37.2 A deposit slip dated 31st March 2006¹¹⁹ reflecting a deposit by RBP of **R20 000,00** (made up of 2 separate cheques of **R10 000,00** each) into an account conducted at the First National Bank under the name of SSS.

38 The invoice has the following hand-written notation:-

"C please do deposit iro Netcare marketing costs" apparently appended by a director of RBP and constituting an instruction to an employee of RBP to make payment to SSS.

39 NBP explains that "C" was a reference to Cathy Rodel, a bookkeeper then employed by RBP.

¹¹⁸ Page 3 of Bundle C

¹¹⁹ Page 4 of Bundle C

- 40 In a letter from NBP to Netcare dated 26th June 2012,¹²⁰ NBP alleges, *inter-alia*:-

"Pursuant to litigation between this firm and Ronald Bobroff & Partners information was made available to us which indicated that Ronald Bobroff & Partners were in fact paying R10 000,00 per month to Richard Treisman, your former Group Legal Advisor, while he was employed by you as a monthly 'marketing' or 'canvassing' fee.

We have since the lodging of that complaint been advised that significant sums of money may have been paid by Ronald Bobroff & Partners to Netcare. We are given to understand that "significant" may be to the order of tens of millions of rands."

- 41 In a letter dated 26th June 2012 to NBP¹²¹ Netcare advised, *inter-alia*:-

"We express great concern at the nature of the allegations made against Netcare in your letter and would request that you provide us with a proper substantiation of all such allegations.

¹²⁰ Pages 8 and 9 of Bundle C

¹²¹ Page 10 of Bundle C

At no stage was Netcare aware of any payments being made by Ronald Bobroff & Partners ("Bobroff,") to Netcare and certainly not in the order of "tens of millions of rands" unless these payments were made for services rendered to patients by Netcare in the normal course of its business.

"With regard to the alleged payments from Bobroff to Richard Triesman, Netcare was first advised of this at the time of the present complaint to the Law Society but had no previous knowledge thereof."

We would accordingly request the following on an urgent basis:

- *copies of all documentation and information that forms the basis of your allegation that "significant sums of money have been paid by Bobroff to Netcare."*

42 RBP's response is set out in an e-mail to the Law Society dated 19th June 2012.¹²² It states, *inter-alia*:-

- "3. *Our Practice quite properly in the normal course of business engaged the services of Specialized Solution Services (Pty) Limited, a Consultancy advising businesses on advertising, marketing and computer program design. The advisory services provided by them also related inter alia to our official Netcare Limited, Board approved services association.*
4. *As will have been noted the account received from Specialized Solution Services was dealt with by our Bookkeeping Department via our then bookkeepers, Ms C Rodel and D Guthrie, in the normal course of business and payment in respect thereof made by normal bank deposit procedures."*
- 43 RBP's unchallenged response also constituted the gist of the version of Bobroff Snr during the proceedings. Moreover, Bobroff Snr also explained:-
- 43.1 that Richard Triesman, then Netcare's Group Legal Advisor, was never associated with SSS;
- 43.2 that SSS was an entity owned by one Niel Steinberg;

43.3 that to the best of his knowledge Richard Triesman's son was Niel Steinberg's partner in SSS.

44 The version of Attorney Bobroff Snr was not challenged.

45 In its letter to the Law Society dated 13th August 2012¹²³, RBP in dealing with the allegations contained in NBP's letter to Netcare dated 26th June 2012¹²⁴ states:-

"We categorically deny all of Millar's allegations and we look forward to you forwarding us an Affidavit by him and/or any purported complainant, as is required in terms of Rule 94.3 referred to above."

46 The complaint was premised on Richard Triesman being:-

46.1 the party with whom RBP had a touting arrangement;

¹²³ Pages 15 and 16 of Bundle C

¹²⁴ Pages 8 and 9 of Bundle C

46.2 the link between RBP and Netcare through SSS.

47 NBP assumed that the "Triesman" associated with SSS was Richard Triesman then of Netcare. That was, of course, not the case as the "Triesman" associated with SSS was Richard Triesman's son who had no links to Netcare.

48 The nexus between SSS and Richard Triesman having failed, the complaint failed and was accordingly dismissed.

49 *Allegations of Mon being RBP's tout emanate from the following:-*

49.1 from a letter dated 20th September 2012 addressed by NBP to the Law Society¹²⁵ signed jointly by Millar and Serobe both currently of NBP (Serobe was previously employed by RBP);

49.2 from Moreki as set out in his affidavit dated 12th July 2013¹²⁶ ("the Moreki Complaint");

¹²⁵ Pages 17 and 18 of Bundle C

¹²⁶ Pages 30 an 31 of Bundle C

49.3 from NBP as set out in its letters to the Law Society:-

49.3.1 dated 15th July 2013 signed by Serobe¹²⁷; and

49.3.2 dated 5th December 2013 signed jointly by Millar and Serobe.¹²⁸

50 In a letter to the Law Society dated 20th September 2012¹²⁹ NBP allege:-

"7. ... Mr Serobe informed us that he knew Dr K Mon as being the Neurosurgeon at Riverfield Lodge, a rehabilitation centre. Dr Mon would call Ronald Bobroff & Partners after allegedly being asked by the families of patients to refer them to a lawyer.

¹²⁷ Page 24 of Bundle C

¹²⁸ Pages 104 and 105 of Bundle C

¹²⁹ Pages 17 and 18 of Bundle C

8. *Mr Serohe and/or Mr Darren Bobroff would go to Riverfield Lodge to talk to the patients or their families and in exchange for being allowed access to see them would hand to Dr Mon a cheque for between R5 000,00 and R10 000,00 for a medical report which contained the biographical information of the patient. There was very little medical information on those reports as some of those patients had just been admitted."*

51 The Moreki Complaint alleges:-

4. *While being treated at the Rehabilitation Centre I was approached by one of the doctors - Dr Krystof Mon who asked me whether or not I had appointed a lawyer to institute a case on my behalf.*
5. *I told Dr Mon that I had not yet thought about this and he told me that he would organise for an attorney who "wins cases like mine" to come and see me. Dr Mon told me that he had referred many many cases like mine to Ronald Bobroff & Partners.*
6. *I was under the care of Dr Mon and felt I could not say no so I agreed.*

7. *Thereafter a young white man came to see me in the Rehabilitation Centre. He told me he was from a firm of attorneys that did cases like mine and that they been told by Dr Mon to come and see me.*
8. *He handed me a letter, a copy of which is attached hereto marked "A" and from which it appears that he was from the law firm of Ronald Bobroff & Partners Inc.*
17. *I require the Law Society of the Northern Provinces to investigate how it is that Ronald Bobroff & Partners Inc were able to gain access to the Rehabilitation Centre to see me and presumably other patients of Dr Mon when he was not asked to assist in this way.*
18. *I also require the Health Professions Council of South Africa to investigate the conduct of Dr Mon because I do not believe that it is proper or ethical for him to do what he did as I felt that I was under a great deal of pressure to sign with Ronald Bobroff & Partners because of the obvious association with Dr Mon. I was concerned that if I openly refused Dr Mon this would affect the care that he was giving to me."*

52 RBP's response to the Moreki Complaint is set out in its letter to the Law Society dated 13th November 2013¹³⁰. In it RBP explains:-

52.1 that the firm received a telephonic request from Moreki for legal advice during which he indicated that Dr Mon had, in response to enquiries made by him to Dr Mon for help in seeking legal opinion, recommended that Moreki call RBP;

52.2 that as a result of the request, RBP's Mr P J Heiberg ("Heiberg") met Moreki;

52.3 Heiberg handed Moreki a standard practice letter dated 21st May 2013 consisting of 8 pages, 3 pages of which were furnished to the Law Society¹³¹ setting out the procedures which are followed in a personal injury claim;

53 The material differences between Moreki's version and that of RBP are:-

53.1 that he did not call RBP;

53.2 that he did not make any enquiries with Mon regarding legal advise;

53.3 that Mon sourced Moreki as a person who might require legal assistance in that

"I was approached by one of the doctors - Dr Krystof Mon who asked me whether or not I had appointed a lawyer to institute a case on my behalf";

53.4 that Mon recommended Moreki consults RBP;

53.5 that as a result of arrangements made by Mon, Heiberg visited Moreki at the Rehabilitation Centre.

54 When he appeared before this Committee, Moreki submitted that he did not have RBP's details and that such details only came to his knowledge when Heiberg handed to him the letter dated 21st May 2013. Bobroff Snr as well as Heiberg did not controvert Moreki's version and added that it was possible for Mon to have telephones RBP and for Mon to have arranged the consultation.

55 I accept Moreki's version as being more probable.

56 On its own, Moreki's version:-

56.1 established that Mon was known to RBP (a fact not denied, indeed confirmed by RBP);

56.2 established on a preponderance of probability that it was Mon who called RBP to arrange the consultation with Moreki;

56.3 does not establish touting on the part of RBP.

57 That brought the Committee to the complaint of Serobe as contained in NBP's letter to the Law Society dated 15th July 2013¹³² which I will, for convenience, refer to as "the Serobe Complaint".

58 Right off the bat:-

58.1 Serobe explained that the following allegations made by Bobroff Snr in its letter to the Law Society dated 13th November 2013¹³³ were false:-

58.1.1 an allegation to the effect that there was a problem relating to a special plea in one of the matters he had dealt with at RBP;

58.1.2 an allegation to the effect that Bobroff Snr requested him to come to his office on a Saturday;

¹³² Pages 24 to 29 of Bundle C

¹³³ Pages 47 to 63 of Bundle C

58.1.3 an allegation to the effect that he absconded or abandoned his employment with RBP;

58.1.4 an allegation to the effect that he had hidden the files of matters in which the claims had prescribed.

58.2 Serobe also explained:-

58.2.1 that he was absent from his employment at RBP for 4 days due to illness in respect of which he submitted a medical practitioner's certificate;

58.2.2 that he did return to RBP because RBP had a private investigator to ascertain his whereabouts.

59 Serobe's version was not challenged. Instead Adv Cassim SC suggested that as all the issues set out in the Serobe Complaint have been ventilated by Serobe as well as RBP in the papers and that RBP would be comfortable if the Serobe Complaint was dealt with on the papers. Mr Fourie had no objection to that suggestion and such suggestion was then implemented.

60 Several issues are raised in the Serobe Complaint. They include:-

60.1 support for the Moreki Complaint;

60.2 an allegation that Mon is RBP's tout;

60.3 the issue of RBP passing off Serobe as its employee;

60.4 the issue of RBP's association with Network Healthcare Holdings Limited and Trauma Link (Proprietary) Limited ("Netcare");

60.5 an allegation that Dr van Zyl had benefited from her association with RBP.

61 Prior to answering the allegations contained in the Serobe Complaint, RBP sets out, in its letter to the Law Society dated 13th November 2013,¹³⁴ information relating to the person of Serobe with a view to demonstrating that Serobe's complaint is unreliable. To that end RBP avers *inter-alia*, that the complaints of Serobe and Moreki:-

61.1 follow in reaction to the complaint which has been lodged by "Mr

¹³⁴ Pages 47 to 63 of Bundle C

Bezuidenhout, on behalf of RBP clients against Serobe" in July 2013;

61.2 *"followed after Serobe deserted the employment of our firm during August 2011":-*

and that "anything stated by Serobe in the rambling "complaint" should be viewed with the greatest scepticism and circumspection."

62 In relation to Serobe, RBP states:-

62.1 that Serobe RBP *"had a friendly and engaging demeanour";*

62.2 that *"Mr R Bobroff took an immediate liking to him";*

62.3 that Serobe *"received special treatment by RBP";*

62.4 that *"Mr Bobroff (snr) spared no effort in training him, assisting him with on-going various personal crisis in his life, mentoring him and training him in public speaking, including accompanying him to do a number of 702 Talk Radio legal shows, television*

appearances and addresses to various medical and para-medical groups";

62.5 that Serobe *"was provided with a large office and was paid a salary in excess of that paid to other professional staff."*

62.6 that *"For at least the last 5 years of his employment, Serobe had a senior and experienced legal secretary and he was someone in whom we reposed great confidence and trust. ..."*

62.7 that *"where SAAPIL and/or the LSSA received a request for an attorney to field questions on vernacular radio and television, we requested Serobe to assist and he did so admirably";*

62.8 that RBP *"had no reason to be concerned in any way that Serobe was not coping";*

62.9 that Serobe *"continually failed to complete his attorneys admission examinations - no less than 6 times"*

62.10 that during August 2011, Attorney *"Darren Bobroff noticed a special plea from one of the Road Accident Fund's attorneys on*

Serobe's desk in which it was alleged that Serobe had failed to submit timeously the prescribed serious injury Road Accident Fund 4 form to the Road Accident Fund."

62.11 that Bobroff Snr *"called Serobe into his office and assisted him in drafting a replication to the special plea."*

62.12 that despite the issue of the special plea, RBP, *"to assess Serobe's performance in relation to an anticipated promotion, the writer requested Serobe to come into the office on the following day, which was a Saturday and have all his files arranged for him and the writer to review a representative sample of same on the Monday. Serobe agreed to do so."*

62.13 that Serobe did not come to the office as he agreed to do and *"simply absconded and abandoned his practice."*

62.14 that RBP made many enquiries aimed at determining Serobe's whereabouts;

62.15 that RBP was *"concerned that some harm may have befallen Serobe";*

62.16 that after his desertion, RBP *"found a number of files carefully hidden in a side cupboard in his office, behind piles of medico legal reports and text books. They related to instruction files where:-*

- *Serobe had consulted with clients in new matters where RBP's mandates and other instructing documents had been signed but where the files had not been registered on RBP's server and absolutely nothing whatsoever done in the file other than the first consultation. Yet letters were found on the files to the clients falsely reporting on on-going progress;*
- *Instructions had been properly taken but the claims had prescribed and Serobe had written and/or spoken with the clients falsely telling them that the claims had been lodged, summons served etc. when in fact, this was not true;*
- *Folders containing letters and pleadings from defendant's attorneys and also letters from clients, in*

some cases going back more than a year, and where none of the documents in the folders had ever been attended to;"

62.17 that RBP had Serobe traced;

62.18 that Serobe advised Thapeto-Motiogae, RBP's administrative employee, *"that he would consider returning to his employment with RBP to take responsibility for his actions."*

62.19 that Serobe did not return to RBP but instead took employment with NBP;

62.20 that Serobe has been sued by 6 of RBP's clients; and

62.21 that complains have been lodged against Serobe with the Law Society by RBP on behalf of its clients.

63 By the foregoing, RBP sought to demonstrate:-

63.1 that Serobe absconded his employment because he did not want to face the reality of the files that were *"hidden in a side cupboard*

in his office, behind piles of medico legal reports and text books."

63.2 that Serobe has an axe to grind with RBP arising from the lodging of complaints by RBP on behalf of its clients with the Law Society against Serobe.

64 On RBP's version Serobe enjoyed much favour with RBP in that:-

64.1 Serobe was regarded as one who *"had a friendly and engaging demeanour"*;

64.2 Bobroff *"took an immediate liking to him"*;

64.3 Serobe *"received special treatment by RBP"*;

64.4 *"Mr Bobroff (snr) spared no effort in training him, assisting him with on-going various personal crisis in his life, mentoring him and training him in public speaking, including accompanying him to do a number of 702 Talk Radio legal shows, television appearances and addresses to various medical and para-medical groups"*;

64.5 Serobe *"was provided with a large office and was paid a salary in*

excess of that paid to other professional staff."

64.6 *"For at least the last 5 years of his employment, Serobe had a senior and experienced legal secretary and he was someone in whom we reposed great confidence and trust. ..."*

64.7 *"where SAAPIL and/or the LSSA received a request for an attorney to field questions on vernacular radio and television, we requested Serobe to assist and he did so admirably";*

64.8 RBP *"had no reason to be concerned in any way that Serobe was not coping".*

65 The favour which RBP caused to be visited upon Serobe coupled with RBP's satisfaction of his performance is incongruent with the issue raised by RBP that Serobe *"continually failed to complete his attorneys admission examinations - no less than 6 times"* which in my view is irrelevant and does not rise above a malicious endeavour to eviscerate Serobe's personality.

66 The fact that the complaints by Serobe and Moreki were lodged with the Law Society subsequent to the lodging of *complaints by "Mr*

Bezuidenhout, on behalf of RBP clients against Serobe" in July 2013 lend credence to the submission that the complaints by Serobe and Moreki are in reaction to the complaint by Bezuidenhout. However, such submission would be applicable against Serobe only as Moreki is an individual complainant who is not the subject of a complaint lodged with the Law Society by RBP and or its clients.

- 67 Whether or not the Serobe Complaint is a reactionary complaint does not mean that it is not a complaint that warrants appropriate attention.
- 68 The Serobe Complaint signals investigation especially because:-
- 68.1 it corroborates the Moreki Complaint in material respects;
- 68.2 it reflects Serobe's knowledge of the nature of RBP's association with Mon;
- 68.3 it speaks directly to the issue of touting.
- 69 Accordingly, the Serobe Complaint as well as RBP's response with be considered in the investigation process with a view to determining whether or not there was any wrong doing on the part of RBP.

70 *The following allegations contained in the Serobe Complaint¹³⁵ have been advanced in support of the allegation that there existed a touting arrangement between RBP and Mon:-*

"26. Another Life Health Care facility where Ronald Bobroff & Partners would get clients from was Riverfield Lodge Rehabilitation Centre in the Fourways/Diepsloot area. The doctor who is in charge of that facility, Dr K Mon is the one who referred his patients to Ronald Bobroff & Partners for a fee.

27. Dr Mon would call Ronald Bobroff & Partner's office when there were seriously injured patients who might have been injured in motor vehicle accidents.

28. *Mr Ronald Bobroff made it clear to him that he should call either himself, his son (Mr Darren Bobroff), or myself only in case he wanted to refer a patient.*
29. *However, one of the other employees, Ananda Booyesen, once went there with Mr Ronald Bobroff for a first meeting with Dr Mon and when she came back told me that she would not go back again because she did not become a lawyer to go and get people to sign papers in their hospital beds to make Mr Ronald Bobroff rich.*
30. *Later that day Mr Ronald Bobroff told me that no one else besides himself, me or Mr Darren Bobroff should ever go to Riverfield Lodge and warned me not to talk to any of the staff about the arrangement with Dr Mon.*
33. *Once Ronald Bobroff & Partners signed up a patient referred by Dr Mon, he would be advised and he would send us a 2 - 3 page "report" containing biographical details of the patient and the preliminary diagnosis. This was brief because most of these patients would have just arrived within a day or so and Dr Mon would not yet have had time to perform an extensive examination*

regarding their prognosis and diagnosis.

34. *In regard to the payments to Dr Mon - for these reports, Dr Mon would also attach an account ranging from R5 000,00 at a time to over R10 000,00 as time passed.*
35. *Once in the office one of the bookkeepers assistants, Ms Natascha Da Costa, came to my office. She was furious and asked me what the monies that were paid to Dr Mon were for. I told her that it was for those brief reports that he sent.*
36. *Ms Da Costa told me that Mr Ronald Bobroff "thought she was stupid" because those reports could not be medico legal reports and that she "used to tout where she used to work, so she knew how this worked". Ms Da Costa told me that since the cost of none of these reports was ever charged to the clients and was posted to a special account, Mr Ronald Bobroff should not think that she did not know what was going on. Ms Da Costa told me that when she has asked Mr Ronald Bobroff about monies paid to Dr Mon, Mr Ronald Bobroff had "tried to be clever with her" and told her to keep her nose out of businesses that did not involve her.*

39. *After Ms Da Costa left my office, Mr Ronald Bobroff called me to his office and closed the door. He told me that he heard that Ms Da Costa was in my office and had been "shouting about Dr Mon" and he wanted to know what she wanted and I told him. He told me to be careful of her as she was a "snake" and that I should keep all of this to myself because a number of staff members were not to be trusted as they would tell other attorneys how we get our business and then I would have no job."*

71 Paragraph 14 of NBP's letter to the Law Society¹³⁶ states:-

"Dr Mon is Ronald Bobroff's tout, is paid for the referral of the clients and to the best of Jacob Serobe's recollection his fee never appeared in any account to any client or on any print-out when the final account was being prepared".

72 The gist of RBP's response to the Serobe Complaint in far as it relates to Mon is:-

72.1 In an unrelated matter, it became desirable for Bobroff Snr to engage with medical practitioners who headed rehabilitation facilities.

72.2 Contact was established with Mon and in 2008 Bobroff Snr met Mon.

72.3 During Mon's meeting with Bobroff Snr, Mon furnished information relating to:-

72.3.1 the rehabilitation needs of catastrophically injured road accident victims;

72.3.2 the range of facilities and personnel required in the rehabilitation process (which no longer existed within state healthcare);

72.4 During subsequent meetings:-

72.4.1 Mon *"expressed concern that many of the patients under his care found themselves in desperate circumstances consequent upon their injuries and that, on enquiry in the course of his facilitating the rehabilitation of patients and their reintegration into the community, it became clear to him that few had received appropriate or any advice as to whether they might have claims for compensation against those who had caused them injury";*

72.4.2 Mon *"believed it was vitally important for the rehabilitation of such patients that they be put in a position to claim compensation where the merits of their case warranted such a claim, resulting in the victim regaining financial independence";*

72.4.3 Mon *"enquired whether, in a situation where any of his patients or their families would want to receive legal advice as to whether any claim might exist, RBP would be able to assist on an initial no charge basis"*

72.4.4 Bobroff Snr indicated that RBP *"would certainly be*

happy to assist"

72.4.5 Mon enquired as to the basis on which RBP *"would accept instructions"*

72.4.6 Bobroff Snr *"indicated that this was usually on a contingency basis"*

72.5 *"Occasionally patients or family members of patients under Dr. Mon's care would telephone the office requesting that an RBP advisor should visit the patient and/or family member so as to advise on the existence of any compensation claim."*

72.6 *"On a few occasions Dr Mon would also telephone the practice to relay a request as referred to herein."*

72.7 Serobe would either alone or together with one of the directors or professional assistants of RBP see the patients;

72.8 *"The visits occurred at the instance and request of a patient directly or at the request of Dr Mon who indicated that there was a patient who requested advice."*

72.9 *"The allegation by Serobe, that Dr Mon referred his patients to RBP for a fee is malicious and untrue"*

72.10 *"In every personal injury matter, "medical records and clinical reports are requested from treating doctors."*

72.11 *"In the normal course of practice where Dr Mon happened to be the treating physician of any client from whom instructions were received, this would also be the case"*

72.12 *".. such medical records, clinical records or clinical reports were only obtained once the patient had provided RBP with a formal mandate and gave written consent to obtain such information."*

72.13 *"The fees charged by Dr Mon falls within his discretion, as is the case with any medical practitioner who is requested to provide information and a report to a claimant's attorney."*

72.14 *"it is almost impossible to obtain completion of the RAF 4 Serious Injury form by any medical practitioner for less than R12,000.00 and even mere completion of the simple RAF1 Form costs in the*

region of R1,000.00."

72.15 *"At no stage was Dr Mon paid any amount in return for referral of a patient. He was paid for his services in providing clinical medical reports and clinical records."*

73 The main differences between the Serobe Complaint relating to Mon and RBP's responses are:-

73.1 Serobe alleges that Mon referred patients to RBP for a fee. This appears from:-

73.1.1 *"Dr K Mon is the one who referred his patients to Ronald Bobroff & Partners for a fee"*

73.1.2 *Dr Mon is Ronald Bobroff's tout, is paid for the referral of the clients and to the best of Jacob Serobe's recollection his fee never appeared in any account to any client or on any print-out when the final account was being prepared".*

73.2 RBP's version is that on occasions patients would request Mon to

call RBP and that no fee was paid to Dr Mon for doing so. In this regard RBP states:-

73.2.1 *"The visits occurred at the instance and request of a patient directly or at the request of Dr Mon who indicated that there was a patient who requested advice."*

73.2.2 *"On a few occasions Dr Mon would also telephone the practice to relay a request as referred to herein."*

73.2.3 *"At no stage was Dr Mon paid any amount in return for referral of a patient. He was paid for his services in providing clinical medical reports and clinical records."*

73.2.4 In relation to RBP's answer that payments to Mon was for medical reports and clinical records, NBP says in its letter to the Law Society dated 20th September 2012¹³⁷ that *"... hand to Dr Mon a cheque for between R5 000,00 and R10 000,00 for a medical report which contained the biographical information of the patient. There was very*

¹³⁷

Page 17 and 18 of Bundle C at para 8

little medical information on those reports as some of those patients had just been admitted."

73.3 The parties do not differ:-

73.3.1 on the issue of Mon calling RBP - it's the question of whether Mon did so at the request of a patient that is seeped in dissension;

73.3.2 on the issue of RBP visiting patients at the Rehabilitation Centre headed by Mon;

73.3.3 on the issue of Mon being paid - it's the question of whether the payment was for the referral or for medical reports and clinical records in the normal course of business.

73.4 Serobe's version obtains credence:-

73.4.1 when considered together with the Moreki Complaint which states that Mon

*"told me that he would organise for an attorney who
"wins cases like mine" to come and see me. Dr Mon told
me that he had referred many many cases like mine to
Ronald Bobroff & Partners.*

73.4.2 in his allegations that:-

*"27. Dr Mon would call Ronald Bobroff &
Partner's office when there were seriously
injured patients who might have been
injured in motor vehicle accidents.*

*28. Mr Ronald Bobroff made it clear to him that he
should call either himself, his son (Mr Darren
Bobroff), or myself only in case he wanted to refer
a patient."*

73.5 The explanations by Bobroff Snr were not challenged. That meant that an essential element of the allegation of touting - that of rewarding Mon for referring clients to RBP - remained unsubstantiated.

73.6 It would be amiss if I were not to mention that I have difficulty:-

73.6.1 in accepting that a client at a rehabilitation facility would be so sufficiently informed about RBP so as to request Mon to contact RBP;

73.6.2 in appreciating why patients at the Rehabilitation Centre did not speak to RBP directly but did so through Mon given that Mon *"believed it was vitally important for the rehabilitation of such patients that they be put in a position to claim compensation where the merits of their case warranted such a claim, resulting in the victim regaining financial independence"*

73.7 Despite my difficulties however, I cannot without speculating find that payments made by RBP to Mon was for referring patients to RBP and not in the normal course of business.

74 In the circumstances I find that there is insufficient *prima facie* evidence suggesting that Dr Krystof Mon was RBP's tout.

75 *The allegations made by Serobe regarding Ms Natascha Da Costa ("Da*

Costa")

75.1 the utterances attributed by Serobe to da Costa¹³⁸ has been refuted by Da Costa in her affidavit dated 7th October 2013;¹³⁹

75.2 Although I am mindful of the fact that Da Costa is employed by RBP, I cannot ignore the fact that in this regard Serobe is alone and his allegations are not corroborated.

75.3 In any event the utterances which Serobe attributed to Da Costa were intended to support his main complaint relating to a touting arrangement between RBP and Mon and even if true do not in themselves establish touting.

75.4 I find Serobe's allegations relating to Da Costa do not establish that Mon was RBP's tout.

76 As far as Beverley van Zyl ("van Zyl") is concerned:-

76.1 Serobe states in the Serobe Complaint:-¹⁴⁰

¹³⁸ Page 28 of Bundle C at paras 35 to 39

¹³⁹ Page 80 of Bundle C

¹⁴⁰ Page 27 of Bundle C

"26. *I would go, not only to Netcare facilities to see patients, but also to Life Health Care facilities as Mr Ronald Bobroff had made contacts there. For instance, I would go to Kensington Clinic where he would address the nursing staff there and a lot of clients would be referred from that hospital, mainly by an Educational / Neuro Psychologist, Ms Beverley van Zyl. I believe "that she benefited in that she would be referred these clients by Ronald Bobroff & Partners and all the clients referred by Kensington Clinic with head / spinal injuries for medico legal examinations."*

76.2 I find Serobe's allegations do not establish touting by RBP in so far as Van Zyl is concerned.

77 *In regard to Netcare, the Serobe Serobe Complaint¹⁴¹ states:-*

¹⁴¹ Pages 24 to 29 of Bundle C

- "5. *From the outset in 2003 most of the work was to phone Netcare patients. Almost every morning Mr Darren Bobroff or the driver, Mr Edward Machakatini, would go to various Netcare hospitals to collect casualty admission printouts.*
6. *On these printouts would be the details of the patients who were admitted, their next-of-kin, their reasons for admission, the nature of their injuries and whether their cases were MVA cases or not.*
7. *I was instructed by Ronald Bobroff to phone these patients and to tell them that the firm acted on behalf of Netcare to provide a free legal advice service to their patients as Netcare wanted to protect their patients from touting attorneys.*
10. *Most of the patients and their families would accept the offer of free legal advice, very few would refuse. Those that accepted would be visited in the hospital or, if they had already been discharged, at home, or they would be invited to the office.*
12. *Some of the Netcare patients would be upset as to how I had got their details and Mr Ronald Bobroff would be upset when he discovered that the reception staff at the hospitals were not*

giving the patients or their relatives the pamphlets."

78 RBP's responses to the allegations relating to Netcare are:-

78.1 On 8 September 2000 a written contract ("the Contract") was entered into between RBP and Network Healthcare Holdings Limited and Trauma Link (Proprietary) Limited ("Netcare").

78.2 According to RBP, the background to the Contract included the following:-

78.2.1 Netcare wanted to:-

78.2.1.1 provide its patients, in addition to medical care, a comprehensive range of services including free legal advice on all trauma and related issues;

78.2.1.2 to give information to patients and staff as to how personal injury compensation claims were processed;

78.2.1.3 to be given information aimed at assisting

patients to make informed decisions regarding trauma related compensation claims was to be made available to patients and staff via pamphlets and posters to be approved by Netcare and displayed at certain Netcare Hospitals;

78.2.1.4 to reduce the incidence of medical negligence claims against doctors and staff practising at or employed at Netcare Hospitals and to that end required medical and other staff to be informed through lectures and seminars of the applicable case and statute law and practical ways to reduce or avoid medical negligence claims.

78.2.2 Netcare was concerned with the extensive touting of patients at Netcare Hospitals by various firms of attorneys with regard to personal injury claims.

78.2.3 Netcare wanted patients and staff should to be aware of the perils of instructing attorneys who employed touts to secure clients.

78.2.4 Netcare identified RBP as being most suited to provide the advisory services which Netcare required as part of its vision.

78.2.5 Netcare wished to be advised of the prospects of it recovering the costs of medical services rendered to road accident victims who did not have medical aid and to that end RBP were required *"to assess MVA claim merits and report back to the hospital regarding the accuracy of merits which might already have been presented to the hospital by third parties"*.

78.2.6 During initial discussions Netcare made it clear that RBP would be required, in return for the marketing and advertising exposure at Netcare Hospitals, to offer an initial free advice and consultation service to patients and staff. In essence, the legal services would be:-

78.2.6.1 an extension of the legal services of the legal department of Netcare, by Netcare contracting with RBP to render the service on its behalf;

78.2.6.2 a 24/7 legal service call line was to be established by RBP;

78.2.7 the availability of the services would be made known to patients by staff members employed by Netcare and also by means of a brochure that would be available to patients at Netcare.

78.3 The provisions of the Contract which find relevance to the current matter are those of Clauses (d); 1; 2; 4.1 to 4.8; 5; 6; 14; 15; 16 and 19.

78.4 Clause (d): This clause envisages a facility where Netcare provides, through RBP, trauma related legal advice to Netcare patients and staff and Trauma Link members and their families ("the Recipients").

78.5 Clause 1: Netcare and Trauma Link appointed RBP as a service provider; and RBP agreed to furnish to the Recipients free of any charge with legal advice including but not limited to trauma related issues,

patient's rights to claim compensation for personal injury arising out of motor vehicle accidents and other causes; work place rights; estate matters; curatorship appointments; and other general legal issues which are trauma related. ("the Services").

78.6 Clause 2 : Netcare agreed to grant to RBP, subject to the consent of the Recipients, access to the Recipients to enable RBP to offer services to the Recipients.

78.7 Clause 4.1 : RBP agreed to provide an 0800 advice hotline, manned every day of the year, to provide the Services to the Recipients.

78.8 Clause 4.2 : RBP agreed to provide the Services to the Recipients telephonically and via visits to Netcare facilities.

78.9 Clause 4.3 : RBP agreed, under the name and style of Netcare, Netcare 911 and Trauma Link, to publish and distribute to the facilities referred to Schedule A, an informative pamphlet to be designed and

approved by Netcare and Trauma Link setting out legal and obligations of the Recipients who have sustained injuries in motor vehicle accidents as well as other legal rights which may be of consequence to medico-legal issues.

78.10 Clause 4.4 : RBP agreed, subject to the approval of the Publisher and Netcare, write a monthly column on legally related issues, to be published in the Netcare in house magazine for distribution in Netcare Group Hospitals.

78.11 Clause 4.5 : RBP agreed, at the request of the recipients, visit the Facilities referred to in Schedule A, in order to advise the Recipients with regard to the Services.

78.12 Clause 4.6 : RBP agreed, to offer a free 20 minute private interview to the Recipients, or family members of the Recipients, concerning the Recipients' legal rights and obligations in respect of trauma related issues.

78.13 Clause 4.7 : RBP agreed, to supply articles and information relating to trauma related issues and legal advice to Netcare and Trauma Link for publication by Netcare and Trauma Link on the Netcare and Trauma Link website.

78.14 Clause 4.8 : RBP agreed, to if required by Netcare and Trauma Link to participate in media presentations organised or facilitated by Netcare and to provide an overview of trauma related issues as instructed by the Netcare Group's Legal Officer.

78.15 Clause 5 : RBP agreed to provide the Services to Netcare and Trauma Link as a value added no cost facility to Netcare and Trauma Link and the Recipients.

78.16 Clause 6 : Netcare and Trauma Link acknowledged that it shall be necessary for RBP to employ the services of professional assistants and staff, at an added cost to RBP and in the circumstances and in consideration for RBP providing the Services, Netcare and Trauma Link undertake to provide the

endorsement and facilitation of RBP at the Facilities referred to in Schedule A during the period of this Agreement.

78.17 Clause 14 : RBP warranted that all personnel who staff the Service shall be appropriately legally qualified at all times and registered with the Law Society of Gauteng.

78.18 Clause 15 : RBP agreed to report directly to Netcare and Trauma Link on a monthly basis as to the services provided by RBP to the Recipients in a format and with such information as is acceptable to Netcare and Trauma Link.

78.19 Clause 16 : RBP agreed that in the event pf RBP wishing to advertise its association with Netcare or Trauma Link, RBP shall prior to publishing any such advertisement, furnish Netcare with a copy of such advertisement, and obtain the written approval of Netcare and Trauma Link.

78.20 Clause 19: RBP agreed not to persuade, induce, solicit, encourage or procure any employee of Netcare or Trauma Link to furnish RBP with information relating to patients, or to persuade patients of Netcare or members of Trauma Link to make use of the services of RBP.

78.21 Pursuant to the Contract, brochures were placed in various locations in Netcare hospitals. These were intended, according to RBP, to:-

78.21.1 inform patients of their rights pertaining to personal injury compensation;

78.21.2 make patients aware of touting practices and its inherent dangers;

78.21.3 specifically inform patients that:-

"Ronald Bobroff & Partners Inc is not the only attorney's firm handling personal injury claims and patients are under no obligation to make use of Ronald Bobroff &

Partners Inc services which are offered purely as a service by Netcare."

78.22 RBP's answer specifically referred to:-

78.22.1 the contents of clause 15 of the Contract;

78.22.2 the contents of clause 16 of the Contract;

78.22.3 the contents of the brochures;

78.22.4 the contents of a letter dated 9th November 2000
addressed by Netcare to RBP¹⁴²

78.23 I have considered with deliberate diligence the complaint by Serobe as well as RBP's response. I have also carefully considered the contents of the Contract as well as the brochures which were used to advertise RBP's services.

78.24 It is the examination of the letter addressed by Netcare to RBP¹⁴³ that is the source of much difficulty. The letter from Netcare purports to acknowledge that it was necessary so as to enable RBP to fulfil its obligations in terms of the contract for it to be furnished with patient contact details. Try as I might:-

78.24.1 I cannot see a legitimate rationale underpinning this communication;

78.24.2 I cannot see why it became necessary for Netcare to issue a formal written acknowledgment from itself (as one of the contracting parties) to RBP (as the other contracting party) to the effect that in order for RBP to fulfill its obligations under the Contract, it was necessary for RBP to have access to Netcare's patient details;

78.24.3 I cannot subdue the chicane gnawing within me that the letter is not an innocent acknowledgment but a deliberate endeavour aimed at shrouding an unlawful arrangement which gave access to RBP to Netcare's patients with some form of legitimacy.

78.25 It appears to me that the acknowledgment was used to conceal what *prima facie* evidence suggest was an illegitimate arrangement between Netcare and RBP in terms of which confidential details of Netcare's patients were furnished by to RBP in exchange for an initial free 20 minute consultation.

78.26 The fact that such practice was permitted in a contract or acknowledged as a necessity by one of the contracting parties is not an answer to wrong doing.

78.27 I am not persuaded that the Contract was not abused in the manner alleged by Serobe. More particularly:-

78.27.1 I am not persuaded that the almost daily collection of casualty admission print-outs by RBP constituted

performance by RBP of its contractual obligations to Netcare;

78.27.2 I am not persuaded that telephoning patients to tell them that RBP acted on behalf of Netcare to provide a free legal advice constituted performance by RBP of its contractual obligations to Netcare;

78.27.3 I am not persuaded that RBP telephoning patients and to tell them that Netcare wanted to protect their patients from touting attorneys constituted performance by RBP of its contractual obligations to Netcare;

78.27.4 I am not persuaded that visiting patients at the hospital or, if they had already been discharged, at home, or inviting them to RBP's offices constituted performance by RBP of its contractual obligations to Netcare.

78.28 I am however persuaded that a contractual arrangement in terms of which RBP obtained access to Netcare's patients and their contact details in return for an initial 20 minute free advice and

consultation service amounts to touting.

78.29 Taking all of the foregoing into account I find *prima facie* evidence suggesting that the written contract between RBP and Network Healthcare Holdings Limited and Trauma Link (Proprietary) Limited as well as the services provided by RBP under such contract amounts to touting.

79 *The following is relevant in regard to the complaint by Serobe that RBP had passed him off as its employee:-*

79.1 Serobe says in the Serobe Complaint:-

"I also request that the Law Society investigate the circumstances under which almost two years after the fact, Ronald Bobroff & Partners are still representing that I am employed by that practice when I am not."

79.2 RBP's answer is as follows:-

14.3 Heiberg *"handed Moreki a standard practice letter setting out the procedures which are followed in a personal injury claim"*

- 14.4 It appears that when he printed the letter in anticipation of meeting Moreki, he erroneously sourced an old letterhead from the server archives"

79.3 The following appears from the Moreki Complaint:-

- "2. Sash read this letter and in the footer where the professional staff are listed noted that one of his school friends, Mr Jacob Serobe, was amongst the names.
3. He told me that he grew up with Mr Serobe and that he was in touch with him and thought the letter was suspicious as he was aware that Mr Serobe was no longer working at that law firm.
4. Sash then telephoned the law firm in my presence and asked if Mr Serobe still worked there and was told that Mr Serobe had left almost two years before.
5. Sash then telephoned Mr Serobe in my presence and confirmed with him that he was now working at Norman Berger & Partners Inc. "

79.4 I cannot see a motive for RBP passing-off Serobe as its employee. Moreover RBP's explanation that Heiberg erroneously sourced an old letterhead from RBP's server archives is reasonable. In the result I cannot find *prima facie* evidence which could reasonably sustain a charge of passing-off Serobe as its employee.

80 In summary:-

80.1 In regard to the De Pontes Complaint :-

80.1.1 *Prima facie* evidence suggests that at the time of the conclusion of the De Pontes Agreement on or about 6 September 2007, RBP knew, or at the very least, ought to have known that Common Law Contingency Fee Agreements were unlawful but that despite such knowledge concluded such an agreement with the parents of De Pontes.

80.1.2 Taking the context into account there is *no prima facie* evidence suggesting unprofessional or dishonourable or unworthy conduct on the part of RBP in the conclusion

of the De Pontes Agreement on or about 6 September 2007.

80.1.3 *Prima facie* evidence suggests that RBP accepted the RAF's offer of settlement without first discussing such offer with De Pontes or his parents or either of them and without taking De Pontes' instructions relative to such offer or the instructions of his parents or either of them.

80.1.4 *Prima facie* evidence suggests that RBP misled Dyason Attorneys - being attorneys for the RAF - when in relation to the RAF's offer of settlement it (RBP) advised Dyason Attorneys on 19th November 2010 that "*We have taken instructions from our client and same is acceptable*".

80.1.5 *Prima facie* evidence suggests that RBP had raised fees for services it had not rendered in particular in regard to Items 286 and 307 which appears on pages 64 and 66 of Bundle B.

- 80.1.6 *Prima facie* evidence suggests that RBP had overreached when it charged De Pontes an attorney-client fee 23.57 times greater than the taxed party-party fees.
- 80.1.7 There is no *prima facie* evidence of wrong doing on the part of RBP in relation to the date of payment of R971 690,05 to AECL.
- 80.1.8 There is no *prima facie* evidence which suggests wrong doing on the part of RBP when it made an investment in terms of Section 78(2A) of the Attorneys Act in De Pontes' name with Investec Bank Limited.
- 80.1.9 There is no *prima facie* evidence which suggests that RBP acted unprofessionally when it invested R830 460,62 in terms of Section 78(2A) of the Attorneys Act in De Pontes' name with Investec Bank Limited. There is also no evidence which suggests that the use of De Pontes' name by RBP was to manipulate monies in RBP's trust account.
- 80.1.10 There is no *prima facie* evidence of wrong doing on the

part of RBP relative to the interest earned on the investment made by RBP with the Investec Bank Limited in De Pontes' name.

80.1.11 There is no *prima facie* evidence of unprofessional on the part of RBP conduct relative to the recovery by RBP of R260 893,43 from the RAF on 19th August 2011 in respect of party and party costs and the accounting thereof to De Pontes.

80.1.12 There is insufficient *prima facie* evidence suggesting unprofessional conduct on the part of RBP by instituting De Pontes' claim against the RAF in the High Court in Pretoria.

80.1.13 There is no *prima facie* evidence suggesting unprofessional conduct on the part of RBP by when it made payment to De Pontes of R 3 022 262,17 in 2 instalments, namely on:-

4 th February 2011	2 450 000,00
30 th March 2011	<u>572 262,17</u>
	R 3 022 262,17

80.1.14 *Prima facie* evidence suggests that RBP acted unprofessionally or dishonourably or in a manner which resonates of unworthy conduct when it attempted to serve a settlement proposal personally on De Pontes instead of serving on De Pontes' legal representatives.

80.2 In regard to the De La Guerre Complaint:-

80.2.1 *Prima facie* evidence suggests that at the time of the conclusion of the De La Guerre Agreement on or about 30th November 2005, RBP knew, or at the very least, ought to have known that common law contingency fee agreements were unlawful;

80.2.2 Taking the context into account there is *no prima facie* evidence suggesting unprofessional conduct on the part of RBP in the conclusion of the De La Guerre Agreement on or about 30th November 2005.

80.2.3 *Prima facie* evidence suggests that RBP had overreached when it charged De La Guerre an attorney-client fee 12.93 times greater than the taxed party-party fees.

80.2.4 *Prima facie* evidence suggests that RBP acted unprofessionally or dishonourably or in a manner which resonates of unworthy conduct:-

80.2.4.1 when it charged for consultations which did not take place;

80.2.4.2 when it charged for an inspection *in loco* which did not take place.

80.2.5 *Prima facie* evidence suggests that RBP acted unprofessionally or dishonourably or in a manner which resonates of unworthy conduct when on 16th February 2011, it instructed Mr Jerry Joubert of Legal Billing Systems to prepare a bill of costs to approximate the fees RBP had already charged, to wit, **"PLEASE URGENTLY PREPARE AN ATTORNEY CLIENT BILL SO AS TO ENSURE THAT YOU CAN JUSTIFY THE HOURS FOR A TOTAL FEE PLUS VAT OF R1.1 MILLION PLUS VAT"**

80.2.6 There is no *prima facie* evidence or any wrong doing on

the part of RBP when it staggered payments to De La Guerre

80.3 In regard to the allegations of touting:-

80.3.1 There is no *prima facie* evidence that Richard Triesman, former Group Legal Advisor of Netcare Limited, was RBP's tout.

80.3.2 There is no *prima facie* evidence that the payment by RBP to *Specialized Solution Services* of R20 000,00 on 31st March 2005 was in respect of a touting arrangement between RBP and Richard Triesman.

80.3.3 On its own, Moreki's version does not establish touting on the part of RBP.

80.3.4 There is insufficient *prima facie* evidence that Dr Krystof Mon was RBP's tout.

80.3.5 There is no *prima facie* evidence of wrong doing arising from:-

80.3.5.1 any utterances attributed by Serobe to Da Costa;

80.3.5.2 Serobe's allegations concerning Ms B van Zyl.

80.3.6 There is *prima facie* evidence suggesting that the written contract between RBP and Network Healthcare Holdings Limited and Trauma Link (Proprietary) Limited in terms of which RBP obtained access to contact details of patients in anticipation of work of a professional nature in return for a 20 minute free consultation service amounts to touting.

80.4 There is no *prima facie* evidence suggesting that RBP passed-off Serobe as its employee.

81 Recommendations

It is recommended that RBP, its directors as well as Attorney Farraj in so far as the De Pontes matter be charged jointly and severally with unprofessional or dishonourable or unworthy conduct arising from:-

81.1 In the De Pontes matter:-

81.1.1 Count 1

On or about 19th November 2011 and at Rosebank, Johannesburg the Respondent accepted the Road Accident Fund's offer of settlement without first discussing such offer with Anthony De Pontes or his parents or either of them and taking De Pontes' instructions relative to such offer and by so doing:-

81.1.1.1 contravened Rule 89.15 of the Rules of the Law Society in that the Respondent failed to give proper attention to the affairs of its client, Anthony De Pontes;

alternatively

81.1.1.2 contravened Rule 89.30 of the Rules of the Law Society in that the Respondent failed or neglected to perform, without reasonable cause or excuse, professional work of a kind commonly

performed by a practitioner, with such a degree of skill, care, or of such a quality or standard, as in the opinion of the Council may be reasonably expected of a practitioner.

81.1.1.3 contravened Rule 89.16 of the Rules in that it failed or neglected to adequately supervise its staff and in particular, Attorney Farraj who attended to the De Pontes matter and in particular Attorney Farraj's:-

81.1.1.4 failure or neglect to advise Anthony De Pontes or his parents or either of them of the receipt of a written offer of settlement from the Road Accident Fund through its attorneys Dyason Attorneys in the amount of R6 145 825,05 on 19th November 2010 ("the Offer");

81.1.1.5 failure or neglect to furnish Anthony De Pontes or his parents or

either of them with a copy of the
Offer;

81.1.1.6 failure or neglect to discuss
the Offer with Anthony De Pontes
or his parents or either of them;

81.1.1.7 failure or neglect to obtain
the instructions of Anthony De
Pontes or his parents or either of
them relative to the Offer;

81.1.1.8 acceptance of the Offer
without discussing it and without
obtaining the instructions of
Anthony De Pontes or his parents or
either of them;

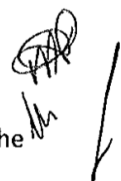
81.1.1.9 relative to the Offer advising Dyason
Attorneys that "We have taken instructions
from our client and same is acceptable".

81.1.2 Count 2

On or about 19th November 2011 and at Rosebank, Johannesburg the Respondent advised Dyason Attorneys - being attorneys for the Road Accident Fund - that "We have taken instructions from our client and same is acceptable" and by so doing intentionally made a false statement, alternatively intentionally misled a colleague.

81.1.3 Count 3

Contravention of Rule 89.²⁴~~26~~ of the Rules in that the Respondent overreached or charged De Pontes an attorney-client fee 23.57 times greater than the taxed party-party fees, which, having regard to the circumstances of the matter, is in the view of the Council unreasonably high.



81.1.4 Count 4

Raising fees for consultations which did not take place, to wit the consultations which are listed under Items 286 and 307 on the Bill of Costs which appears from page 51 onwards of Bundle B.

81.1.5 Count 5

The Respondent attempted to serve a with-prejudice offer of settlement personally on Anthony De Pontes instead of on the legal representatives of Anthony De Pontes under circumstances where it knew:-

81.1.5.1 that Anthony De Pontes was legally represented by Norman Berger and Partners Incorporated;

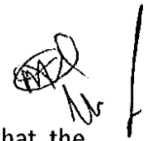
and

81.1.5.2 that Adv John Bitter was a duly appointed curator to Anthony De Pontes.

81.2 In the De La Guerre matter :-

81.2.1 Count 6

Contravention of Rule 89.²⁴~~16~~ of the Rules in that the Respondent overreached or charged Ms Juanne Elize De La Guerre an attorney-client fee 12.93 times greater than the taxed party-party fees, which, having regard to



the circumstances of the matter, is in the view of the Council unreasonably high.

81.2.2 Count 7

Raising fees for consultations which did not take place, to wit the consultations which are listed as items 57; 84; 91; 101; 168 and 189 on the Bill of Costs attached to the Notice of Taxation dated 19th August 2009.

81.2.3 Count 8

Charging for an inspection *in loco* which did not take place, to wit the inspection in loco listed as item 91 on the on the Bill of Costs attached to the Notice of Taxation dated 19th August 2009.

81.2.4 Count 9

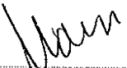
Instructing Mr Jerry Joubert of Legal Billing Systems to prepare, *ex post facto*, a bill of coststo approximate the fees RBP had already charged, to wit,when on 16th February 2011, it instructed Mr Jerry Joubert of Legal Billing Systems **"PLEASE URGENTLY PREPARE AN ATTORNEY CLIENT BILL SO AS TO ENSURE THAT YOU**

**CAN JUSTIFY THE HOURS FOR A TOTAL FEE PLUS VAT
OF R1.1 MILLION PLUS VAT"**

81.3 In regard to the contract between RBP and Network Healthcare Holdings Limited and Trauma Link (Proprietary) Limited as well as the services provided by RBP under the such contract :-

81.3.1 Count 10

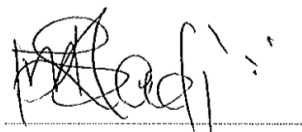
Contravention of Rule 89.1 in that the arrangement under the contract in terms of which RBP obtained access to contact details of patients in anticipation of work of a professional nature in return for a 20 minute free consultation service amounts to touting.



Y Mayet
29th January 2015

I concur


J F Grobler
29th January 2015

A handwritten signature in black ink, appearing to read 'P M K Tladi', written over a horizontal dotted line.

P M K Tladi

29th January 2015