



**Legal
Services Ombud**
Ethical Justice for the People

DATE:	10 OCTOBER 2024	REF NO	10/03-00240-23
TYPE OF REPORT	REPORT		
SUBJECT	LEGAL SERVICES OMBUD REPORT IN TERMS OF SECTION 48(6)(a) OF THE LEGAL PRACTICE ACT 28 OF 2014		

INVESTIGATION REPORT INTO ALLEGATIONS OF MALADMINISTRATION IN THE APPLICATION OF THE ACT AND/OR ABUSE OR UNJUSTIFIABLE EXERCISE OF POWER OR UNFAIR OR OTHER IMPROPER CONDUCT OR UNDUE DELAY IN PERFORMING A FUNCTION IN TERMS OF THIS ACT IN THAT IT DID NOT PROPERLY APPLY THE POWERS GIVEN TO IT BY THE LEGAL PRACTICE ACT 28 OF 2014 IN CONDUCTING THE DISCIPLINARY HEARING

INTRODUCTION

1. This is a report of the Legal Services Ombud in terms of Section 48(6)(a) and 48(6)(b) of the Legal Practice Act 28 of 2014 ("the Act"). In terms of Section 48(6)(a) of the Act, the Ombud may, subject to paragraph (b), in the manner he or she deems fit, make known to any person or body any report or finding, point of view or recommendation in respect of a matter investigated by him or her.
2. This report relates to the manner in which the Legal Practice Council ("LPC") handled the investigation and disciplinary proceedings of the complaint against the firm Schumann van den Heever & Slabbert Inc. of Kempton Park, Gauteng.
3. The Legal Services Ombud's mandate is derived from two sections, namely Section 46(a) and 46(c), which state that the Ombud must protect and promote the public interest in the rendering of legal services as contemplated in this Act as well as promote high standards of integrity in the legal profession. In achieving the objectives set out in the sections mentioned above, the Ombud is investigating the complaint in terms of Section 48(1)(a) which states that the Ombud is competent to investigate, on his or her own initiative or on receipt of a complaint.
4. Complaints relating to functions carried out in relation to investigations and disciplinary procedures are often an indication of deeper organizational issues dictating a need for either improved systems, procedures or training within the organization.
5. The purpose of such investigations is to therefore identify key issues within those entities falling within the Act, and to make recommendations on the procedural and/or systematic improvements so as to mitigate and, over time, illuminate some of the common causes of such complaints.

THE PARTIES

6. The complainant is attorney Stephen May ("Complainant") acting on behalf of a Ms. Thandi Dhlamini ("Ms. Dhlamini") and seven other plaintiffs who have sued Schumanns and its four directors in the High Court of South Africa, Gauteng Division, Johannesburg.¹
7. As stated above, the firm of attorneys whose conduct is the subject of the complaint to the LPC is Schumann van den Heever & Slabbert Inc. ("Schumanns"), which is an incorporated firm of attorneys who represented Ms. Dhlamini and the seven other complainants in a claim against the Road Accident Fund ("RAF").
8. The LPC is the regulatory body of the Legal Profession, established in terms of Section 4 of the Act.
9. The last-mentioned party is the Disciplinary Committee ("DC"), comprising three practising legal practitioners, two attorneys and an advocate, appointed by the LPC to consider the complaint lodged by Mr. May and which convened on 30 March 2023.
10. The members of the DC were, according to the LPC website:
 - 10.1. Mr. Ajay Chagan², an attorney of Auckland Park, Gauteng, admitted in 1996;
 - 10.2. Mr. Bob Makukunzva³; an attorney of Sandton, Gauteng, admitted in 2008; and
 - 10.3. Mr. Isiah Mureriwa⁴, an advocate of Pretoria, Gauteng, admitted in 2007 and practising as such in terms of Section 34(2)(a).

¹ The other seven claimants are Ms. Mamolefe Anna Mogale, Ms. Podile Anastacia Mokoena, Ms. Sanah Nomuiselo Mlambo, Mr. Mongezi Xakama, Mr. Jimmy Gordan Otto, Mr. Wynand Meyer and Mr. Sydney Modise.

² LPC membership number 12128

³ LPC membership number 40574

⁴ LPC membership number 54038

THE COMPLAINT

11. The Ombud received a complaint against Schumanns and the LPC in which the complainant alleges that:

11.1. the complaint lodged with the LPC was not properly investigated, and

11.2. the manner in which the LPC came to its decision against three of the four directors of Schumanns is reflective of maladministration by the LPC in terms of the LPA.

Background to the complaint

12. Ms. Dhlamini's complaint is illustrative of the modus operandi employed in numerous instances by Schumanns insofar as its RAF clients were concerned.

13. She was involved in a motor vehicle accident in 2014. She alleges that she was contacted by a person purporting to be in the employ of Schumanns regarding lodging a claim against the RAF. Thereafter, Ms Dhlamini met with Mr Jakkie Supra ("Supra"), a former director of Schumanns, and instructed Schumanns to represent her. Ms Dhlamini indicated that Supra informed her that the fee it would charge would be 25% of the award.

14. Ms Dhlamini indicated that she was informed by Supra in May 2018 that her claim against the RAF was settled. She alleges that she received R400,000.00 of the amount awarded to her, the balance of which Supra informed Ms Dhlamini went towards fees and disbursements.

15. In 2019 a whistleblower, who was a Candidate Attorney at Schumanns, approached a member of the media reporting on the irregularities occurring at its offices. This member of the media contacted Ms Dhlamini informing her of claims she may have against Schumanns. Ms Dhlamini thereafter instructed Mr. May to act on her behalf.

16. Mr. May lodged a complaint with the LPC in 2020 on behalf of Ms Dhlamini and the seven other plaintiffs whom he represents. The Investigating Committee found that there was a prima facie case for the directors of Schumanns to answer. Schumanns, the corporate entity, and its four directors were charged as follows:

16.1. failure to render written statements of account to their clients on finalisation of their mandate - charge 1;

16.2. overreaching their clients by failing to comply with the provisions of the Contingency Fees Act - charge 2;

16.3. overreaching their clients as a result of the firm's practice of keeping the party and party costs in respect of the motor vehicle accident matters - charge 3;

16.4. touting for professional work - charge 4;

16.5. bringing the profession into disrepute - charge 5;

16.6. failure to maintain the highest standard of honesty and integrity by the inclusion of disbursements for fictitious attendances - charge 6.

17. On 30 March 2023, at the disciplinary hearing, a plea agreement which was entered into between the LPC and three of the four Schumanns directors was presented to the DC for its approval. The agreement included Izak Bosman, Azelle Kleinen and Jacobus Johannes Slabbert. The agreement was that Schumanns would plead guilty to all six charges and, in exchange, the LPC would withdraw five of the charges against the three directors. Furthermore, Bosman, Kleinen and Slabbert would plead guilty to the only remaining charge being charge 5 of bringing the profession into disrepute. As a result of the plea of guilty to charge 5, the directors would be liable to pay a fine of R60,000.00 each and Schumanns, the corporate entity, would be liable to pay a fine of R120,000.00. Cumulatively, this amounted to R300,000.00. The committee, in respect of the complaint on the conduct by Supra, recommended that the LPC bring an application to court to suspend him as contemplated in Section 43 of the Act.

POWERS AND JURISDICTION OF THE OMBUD

18. The Legal Service Ombud is established under Chapter 5 of the Act. The Ombud is independent and subject only to the Constitution of the Republic of South Africa and the law, and exercises his powers and performs his functions without fear, favour or prejudice.

19. Section 48(1) of the Act provides that:

"in addition to other powers and functions conferred or assigned to him/her in this Act, and for purposes of achieving the objects referred to in Section 46 of the Act, the Ombud is competent to investigate, on his or her own initiative or on receipt of a complaint, any alleged:

(i) Maladministration in the application of the Act;

(ii) Abuse or unjustified exercise of power or unfair or other improper conduct or undue delay in performing a function in terms of this Act;

(iii) Act or omission which results in unlawful or improper prejudice to any person;

which the Ombud considers may affect the integrity and the independence of the legal profession and public perceptions in respect thereof.

20. In this matter, the complainant alleges that the LPC's conduct constitutes maladministration in the application of the Act and that same affects the integrity and independence of the legal profession and public perception thereof.

21. The Ombud is of the view that the complaint satisfies Section 48(1)(a)(i) and falls within its purview for investigation.

ISSUES IDENTIFIED FOR INVESTIGATION

22. Based on the analysis of this complaint, the following issues were identified and investigated:

22.1. Whether the LPC failed to properly investigate the complaint by not obtaining additional information which may have affected the outcome of the disciplinary hearing;

22.2. Whether the charges brought against Schumanns and its directors adequately reflect the alleged misconduct; and

22.3. Whether the LPC and the disciplinary committee adequately considered the reasonableness of the plea agreement in light of the allegations before them.

THE INVESTIGATION

23. Methodology

23.1. The investigation was conducted in terms of Section 48.

24. Process of investigation

24.1. The investigation process included analysis of documents received from the complainant, correspondence exchanged with Schumanns and LPC as well as a recording of the disciplinary proceedings. The documents received were then analysed and evaluated in light of the relevant law.

24.2. The office only sought to determine whether or not the LPC conducted a fair, efficient and effective investigation by establishing the following:

24.2.1. What was done by the committee during the course of its investigation;

24.2.2. What should have been done by the committee in accordance with the LPA;

24.2.3. Whether or not any discrepancies exist between (a) and (b);

24.2.4. Whether or not those discrepancies, if any, amount to maladministration in the application of the Act.

25. List of key sources of information and legislation

25.1. Correspondence sent and received

- a. Complaint Form together with complaint statement dated; 4 October 2023.
- b. Annexures to the Complaint Form consisting of:
 - i. Cover Letter dated 4 October 2023;
 - ii. Indexed and paginated documents relating to the Legal Practice Council's proceedings;
 - iii. Anton Piller Application dated 19 March 2020;
- c. Recording of disciplinary proceedings held in March 2023;
- d. Correspondence to and from Schumanns;
- e. Correspondence to and from the LPC.

26. Applicable legislation

26.1. Legal Practice Act 28 of 2014;

26.2. Legal Practice Council Rules;

26.3. Code of conduct for all legal practitioners, candidate legal practitioners and juristic entities.

27. Case law

GroundUp News NPC and Others v South African Legal Practice Council and Others (2015/2021) [2023] ZAGPJHC 559; 2023 (4) SA 617 (GJ) (24 May 2023)

Incorporated Law Society, Transvaal v K and Others 1959 (2) SA 386 (T). [29]

Heppell v Law Society of the Northern Provinces (1096/16) [2017] ZASCA 119 (22 September 2017)

Hewetson v Law Society of the Free State (948/2018) [2020] ZASCA 49; [2020] 3 All SA 15 (SCA); 2020 (5) SA 86 (SCA) (5 May 2020)

28. Parties version

- 28.1. The complainant is of the view that the assertion by the 3 (three) directors of Schumanns that they had no knowledge of the conduct allegedly perpetrated by Supra is implausible.
- 28.2. The complainant alleges that the directors of Schumanns were aware of the alleged irregularities in its RAF department, at least one year prior to Supra's resignation in that the Anton Piller application contained all the material information relating to the alleged impropriety.
- 28.3. One of the director's, Izak Bosman, appeared as counsel in some of the RAF matters. The contention is that Izak Bosman would have known the settlement amount and consequently the success fee.
- 28.4. The complainant alleges that Schumanns received a summons from a Severin Crawford (a person believed to be a tout for Schumanns) for breach of their agreement to pay R10,000.00 per case file opened.
- 28.5. The complainant alleges that when the Sheriff attended at the office of Schumanns on Thursday 26 March 2020 (some fourteen hours before the nationwide COVID-19 lockdown came into effect) to execute on the Anton Piller order, they found that Schumann's server was being removed from where it had been affixed. This was, they were informed, because Schumanns needed to place it in a more secure location.
- 28.6. The complainant also alleges that the storage unit on the premises of the office where the closed files were stored only had 30 (thirty) files. All matters prosecuted to finality by

Schumanns (five) years prior to the Anton Piller application fell within the scope of the order. From the information obtained from the whistleblower, Chrichton and the RAF, hundreds of files had been finalised.

- 28.7. Lastly, that despite the recommendation from the DC that an application in terms of Section 43 be brought against Supra to suspend him from practice, he has been able to obtain a Fidelity Fund certificate and practice for his own account for more than four years.
- 28.8. Schumanns' version is that upon receipt of the Anton Piller application, the directors of Schumanns sought an explanation from Supra for the allegations contained therein. They allege that their request for information from Supra was hampered by the COVID-19 lockdown and their files having been seized by the Sheriff in execution of the Anton Piller order. Schumanns stated that they attempted to overcome this by proposing to the complainant that they make copies of their files for their record, furnishing all files that the complainant has authority to act for and placing the file which the complainant did not have authority to act for with the LPC for safekeeping. It is alleged that the complainant refused said proposals.
- 28.9. Schumanns allege that it obtained legal advice from senior counsel on 3 December 2020 and thereafter directed a letter to Supra containing questions relating to his conduct which was brought to their attention through the various complaints and the Anton Piller application. His response was that he was unable to answer as he was not in possession of the files and was thus unable to inspect or meaningfully comment on them.
- 28.10. It is Schumanns' contention that Supra did not utilise the information that was available to him through the LegalSuite program in endeavouring to provide a response to the questions posed.

- 28.11. Schumanns also contends that it conducted its own investigation into the allegations contained in the Anton Piller application.
- 28.12. At a meeting on 10 December 2020 it is alleged that Supra was informed that his continued employment and directorship at Schumanns was intolerable. Supra consequently resigned as both Director and employee of Schumanns.
- 28.13. The main contention by Schumanns is that Supra was the director responsible for the RAF department of the firm. That they were not aware of the extent of the unethical and unlawful conduct by Supra, and that their relationship with Supra in running the RAF department was based on a trust relationship.
- 28.14. That during the course of the alleged unethical and unlawful conduct, the other directors had no knowledge and or involvement in said conduct.
- 28.15. The LPC stated to the Ombud that the firm and its directors, with the exception of Supra, plead guilty to the charges against them and were sanctioned to a fine. This statement is not an accurate reflection of the factual position. The three directors of Schumanns entered into a plea and sentence agreement whereby Schumanns, the corporate entity, would plead guilty to all 6 charges and they would plead guilty to the least serious charge, that of bringing the profession into disrepute.
- 28.16. That the committee's recommendation on 30 March 2023 in respect of Supra was that he failed the requisite fitness test and that an application to strike his name off the roll should be brought by the LPC. At the time of publication of this report the application had not been heard.

29. Discussion on the principles applicable

29.1. Section 37(1) and (2)(a) states that:

"The Council must, when necessary, establish investigating committees, consisting of a person or persons appointed by the Council to conduct investigations of all complaints of misconduct against legal practitioners, candidate legal practitioners or juristic entities.

An investigating committee may, for purposes of conducting an investigation contemplated in subsection (1), direct any legal practitioner or an employee of that legal practitioner to produce for inspection any book, document or article that is in the possession, custody or under the control of that legal practitioner or employee and which relates to the complaint in question: "Provided that the investigating committee may make copies of such book, document or article and remove the copies from the premises of that legal practitioner."

29.2. Rule 40.1 states that, *"When a complaint or allegation of misconduct against the respondent is referred to the investigating committee, that committee must investigate the complaint or allegation or cause the complaint or allegation to be investigated by the legal officer or by a legal practitioner appointed by the Council for that purpose."*

29.3. Rule 40.2 also gives the LPC the responsibility to take whatever steps that are not prohibited by law to obtain the information or documentation necessary for the investigation.

29.4. In the case of GroundUp News and Others v LPC⁵ the court stated that there is a duty on the investigating committee to investigate, which includes following up on the issues raised, obtaining information and interviewing witnesses if the matter so requires.

⁵ <https://www.saflii.org/za/cases/ZAGPJHC/2023/559.html> at para 41.

29.5. The court's treatment of a director's liability in respect of matters involving misappropriation of trust funds has always been clear. In the case of Hepple v Law Society of the Northern Provinces⁶, Judge Mthiyane DP said that alleging that you were not involved in the financial management of the firm is not a defence. At the time when the clients of Mr. May contracted with Schumanns, the Attorneys Act, 53 of 1979, was in operation Section 23(1)(a) of this Act permitted Schumanns to register itself as a personal liability company. Section 19(3) of the Companies Act also states that: 'if a company is a personal liability company the directors and past directors are jointly and severally liable, together with the company, for any debts and liabilities of the company as are or were contracted during their respective periods of office'. The LPA is the successor legislation to the Attorneys Act. Section 34(7)(c) contains a similar provision:

"(c) all present and past shareholders, partners or members, as the case may be, are liable jointly and severally together with the commercial juristic entity for—

(i) ...

(ii) in respect of any theft committed during their period of office."

29.6. The courts also said in the case of Transvaal Incorporated Law Society v K and Others that:

"In the instant case the Court is accepting the ignorance of the second respondent in the circumstances disclosed as a very strong mitigating feature, but in future no attorney should be heard to say that, because of the arrangement that he would be doing a particular type of work and therefore would not be concerned with the manner in which the books of account had been kept, or the trust account, he should not be blamed. Every attorney must realise that it is a fundamental duty on his part, breach of which

⁶ <https://www.saflii.org/za/cases/ZASCA/2017/119.html> at para 21.

may easily lead to his being removed from the roll, to ensure that the books of the firm are properly kept..."

- 29.7. The Supreme Court of Appeal in Hewetson v Law Society of the Free State also echoed the same sentiment and stated that, *"an attorney cannot abdicate his or her responsibilities in regard to funds held in trust."*⁷
- 29.8. In a more recent judgment by the Supreme Court of Appeal in the matter against Chueu Incorporated Attorneys⁸ it is stated that a director has a fiduciary duty towards the company in which he holds the office of a director. Pleading ignorance of financial matters when there are allegations of misappropriation does not absolve a director of liability. Furthermore, abdicating your responsibility as a director does not absolve you of your duties.
- 29.9. The third issue to consider is the prosecutorial powers given to the LPC during disciplinary proceedings by the Act as well as the powers and duties of the DC. In terms of Section 37(1) and (4), the LPC has a statutory responsibility **when necessary** to establish investigating committees and disciplinary committees to consider and adjudicate complaints. Section 37(3)(a) of the Act which is also consistent with Rule 40.5.1. and 40.7⁹ made in terms of the Act states that:

⁷ <https://www.saflii.org/za/cases/ZASCA/2020/49.html> at para 55.

⁸ <https://www.saflii.org/za/cases/ZASCA/2023/112.html> at para 26

⁹ *Rule 40.5.1. states that "if after investigating allegations of misconduct against the respondent the investigating committee is satisfied that the respondent, on the basis of available prima facie evidence, is guilty of misconduct which, on account of the nature of conduct, warrants misconduct proceedings, the investigating committee must refer the matter to the Council or to a committee of the Council established for that purpose for adjudication by a disciplinary committee.*

Rule 40.7. When the Council, or a committee of the Council established for that purpose, receives a referral from the investigating committee in terms of Rule 40.5.1 that the legal practitioner be charged with misconduct, it must refer the matter to a disciplinary committee for adjudication.

"An investigating committee **must**, after investigating a complaint,

if it is satisfied that the legal practitioner, or the candidate legal practitioner concerned may on the basis of available prima facie evidence, be guilty of misconduct that, in terms of the code of conduct, warrants misconduct proceedings, refer the matter to the Council for adjudication by a disciplinary committee." [own emphasis]

- 29.10. For purposes of properly understanding the powers and duties of the disciplinary committee, it is important to define "adjudicate". The Merriam-Webster dictionary defines adjudicate as "to make an official decision about who is right in (a dispute)". The Cambridge dictionary defines it as "to make a formal decision about something". The Oxford dictionary defines it as "to make an official decision about who is right in a disagreement between two groups or organisations".
- 29.11. Section 38(5) of the Act, decisions relating to disciplinary proceedings are made by majority vote of the disciplinary committee and in the case of a deadlock, the chairperson of the committee will have a casting vote in addition to the deliberative vote.
- 29.12. Section 39(3)(a) permits the disciplinary committee to subpoena any person who may have material information that may assist with making a determination on the matter being heard or who may have documentation in their possession which will assist the disciplinary committee. One of the powers vested in the disciplinary committee in terms of Rule 41.8.2. is to exercise the powers vested in the Council in terms of the Act in relation to its disciplinary functions.
- 29.13. The Act states that the LPC, in establishing the disciplinary committees, must consider the need to provide a cost-effective disciplinary system and the requirements for administrative justice.

29.14. Rule 41.7 states that: *"The Council may appoint a practising attorney or advocate, or an employee who is admitted as an attorney or advocate, to act as a pro forma prosecutor in the leading of evidence against, and the presentation of the case against, the respondent at the enquiry, and to examine and cross-examine witnesses."*

29.15. At any time before the hearing, the person who is charged for misconduct may plead guilty to the charge.¹⁰

ANALYSIS OF ISSUES AND EVIDENCE OBTAINED

30. The Courts in the GroundUp judgment showed that the responsibility of the investigation committee is to gather information and to investigate allegations that were brought before it. One of the allegations which the LPC had a duty to investigate was whether the directors of Schumanns, at any point prior to the Anton Piller application, knew of the conduct which was allegedly committed solely by Supra.

31. According to the complainant, the directors of Schumanns knew of the alleged touting of personal injury clients because of a summons which was issued by Mr. Severin Crawford. Secondly, Izak Bosman, one of the directors of Schumanns, is alleged to have appeared as counsel in some of the personal injury matters. Thirdly, there were allegations by the complainant that there was fraud committed against the RAF in respect of inflated correspondent bills of costs by Schumann. Furthermore, that the alleged over-inflation of the correspondents' bill of costs was brought to the attention of the respondent and the directors of Schumanns prior to the present complaint being lodged.

¹⁰ Section 39(6) of the Act and Rule 41.5.1

32. In a letter by Mr. May to the LPC dated 22 July 2020 titled, "Explanatory note on the matter of Dhlamini v SVDH Attorneys", the issues of concern regarding the conduct of Schumanns were set out succinctly. Namely; touting of clients, fees charged which are contrary to the Contingency Fees Act, the manner in which cases are settled and finalised, embezzlement of client's award, inflation of bills of costs sent to the Road Accident Fund, fraudulent correspondents' bills and failure to pay the party and party costs to the clients.
33. There was a duty on the LPC and its investigating committee, in terms of Rule 40.1, to investigate these allegations. Investigating in this instant required more than obtaining the statements of Mr. May and his client and that of Schumanns. It is noted that the LPC utilised the services of its own in-house auditor who is also a registered chartered accountant, Mr. Ashwin Reddy, to look into the complaint. Mr. Reddy produced a comprehensive report into the affairs of the personal injury department at Schumanns. One of the recommendations from the report was that the LPC should look at Schumanns files. When the LPC was asked whether this was done, it was unable to respond and stated that the matter in respect of Supra and the LPC's file was with its attorneys.
34. Paragraph 15.14 of Mr. Reddy's report stated that: "An inspection of the firm's bank statements in respect of their savings account revealed numerous payments ranging from R10,000.00 (Ten thousand Rand) to R15,000.00 (Fifteen thousand Rand) that were paid regularly to certain individuals. These payments correlate with the allegations made by Mr. William Crichton, however, further investigation is necessary to establish the nature and reason for these payments." [own emphasis]
35. In response to our letter, Schumanns explained their payment systems and stated that depending on the nature of the transaction it is not always possible to attach all supporting documents when requesting payments. This explanation is not disputed. However, in a proper

investigation by the LPC, it would only take the payment request and the supporting invoice or voucher to determine whether these transactions were in fact payments being made to a tout.

36. In a meeting with the RAF, who is an interested party as they were also victims of an alleged fraud at the hands of Schumanns, they indicated that they had pledged to co-operate with the LPC's investigation, but were not contacted in that regard.
37. From the documents obtained from Mr. May, which seems to be the full investigation file of the LPC, it would appear that the LPC did not obtain the evidence of the alleged tout (Mr. Severin Crawford) or a copy of the Summons served on Schumanns by him.
38. It is for the abovementioned reasons that the Ombud is of the view that this complaint was not properly investigated by the LPC's legal officer, Mr. Kholofelo Masedi, or the Investigating Committee.
39. The second aspect for consideration is whether the charges brought against Schumanns and its directors adequately reflect the allegations of misconduct.
40. The charges as already stated above are as follows:
 - 40.1. failure to render written statements of accounts to their clients on finalisation of their mandate - charge 1;
 - 40.2. overreaching their clients by failing to comply with the provisions of the Contingency Fees Act - charge 2;
 - 40.3. overreaching their clients as a result of the firm's practice of keeping the party and party costs in respect of the motor vehicle accident matters - charge 3;
 - 40.4. touting for professional work - charge 4;
 - 40.5. bringing the profession into disrepute - charge 5;

40.6. failure to maintain the highest standard of honesty and integrity by the inclusion of disbursements for fictitious attendances - charge 6.

41. The charges themselves do not capture the most serious of the allegations allegedly committed by Schumanns: the allegations of fraud in respect of the deducting of past hospital and medical expenses in circumstances where no past hospital and medical expenses were claimed or awarded. This conduct can also be seen as misappropriation of trust money. Secondly, the fraud in respect of over-inflation of correspondent's bills of costs claimed from the RAF. As already stated above, these are the allegations that the LPC failed to properly investigate and consequently it did not formulate charges.
42. What is important to note is that the inclusion of those charges that relate to misappropriation of trust funds would trigger the court precedent as set out by the Supreme Court of Appeal in Hepple, Transvaal Law Society v K, Hewetson and Chueu, in which all the directors of Schumanns would be liable jointly and severally together with the commercial entity, "*in respect of any theft committed during their period of office.*"
43. In the present complaint, the complaint against all the directors of Schumanns was investigated collectively. However, at the disciplinary hearing, the LPC elected to separate the complaint against Supra from the complaint against the other directors of Schumanns. The charges that were brought against all the directors of Schumanns including Supra were identical.
44. The use of plea bargaining or plea agreements as a case management tool should be encouraged in disciplinary processes against legal practitioners. However, the LPC must take its cues from the Criminal Procedure Act in codifying that process in order to avoid abuses. The LPC indicated that it does not have a policy that governs its plea bargaining or plea agreement process and that it relies on the common law for its authority.

45. The process of consultation with a complainant was seen by the South African Law Reform Commission Paper as a necessary step in the criminal procedure process of plea bargaining¹¹. The Ombud would suggest that the LPC also follow the example of the Criminal Procedure Act in this regard. Furthermore, unlike our Courts, the disciplinary committee plays an active role in the disciplinary proceedings. This can be seen from Section 39(3) of the LPA, which gives the disciplinary committee the power to subpoena witnesses.
46. Furthermore, the primary purpose for the establishment of a disciplinary committee is to adjudicate the complaint. As already defined above, adjudication entails considering the versions of the parties involved in order to make a decision. Therefore, the ultimate decision is that of the disciplinary committee with the powers duly given to them in terms of the Act. Considering administrative justice, the Ombud is of the view that the legal officer, who is the *pro forma* prosecutor, Mr. Kholofelo Masedi, should have taken the disciplinary committee into his confidence regarding what factors were considered in entering into the plea agreement with the directors of Schumanns. The disciplinary committee could not have made an informed decision regarding the reasonableness of the plea agreement without the evidence which the LPC considered in coming to its decision to withdraw the charges.
47. It is noted from the recording and transcript of the hearing that the Chairperson of the disciplinary committee did request Mr. May to comment on the plea agreement. This was the first and only opportunity given to Mr. May to express an opinion on what was already a *fait accompli*: the fact that the LPC, Schumanns, Bosman, Kleinen and Slabbert had behind closed doors already reached an agreement. Mr. May objected on the basis that he was of the view that the culpability of the directors of Schumanns was not negligence but rather intention, and that he was of the view that there was in fact intention and there was adequate evidence that would demonstrate

¹¹ Project 73: Fifth Interim Report on Simplification of Criminal Procedure (August 2002) - A more inquisitorial approach to criminal procedure - police questioning, defence disclosure, the role of judicial officers and judicial management of trials.

it. The disciplinary committee was dismissive and informed Mr. May that he (and his clients) may consider the legal options available.

48. The withdrawal of five of the six charges against the three accused directors was a quid pro quo that Schumanns, the corporate entity, pleads guilty to all the charges. With the onus being on the disciplinary committee to accept the plea agreement, the Ombud is of the view that they should have heard statements from Mr. May and the LPC for reasons why such a deal should be accepted. From the recording furnished to the Ombud, and the transcription created therefrom, there was little room to consider the information that led to such a plea agreement or for Mr. May to rebut said reasons. By the disciplinary committee not concerning themselves with the LPC's considerations it — Messrs. Chagan, Mureiwa and Makukunzva — failed to determine the reasonableness of the agreement and consequently were derelict in their duties.
49. Having regard to the above and the disciplinary committee accepting the plea agreement between the directors of Schumanns and the LPC, the Ombud is of the view that the complaint was not properly adjudicated.
50. The Ombud also notes with concern that the complaint was lodged with the LPC in 2020 (the LPC being made aware on 26 March 2020 that the Anton Piller order was being executed) but the disciplinary hearing was only held on 30 March 2023. In an internal LPC memorandum dated 2 July 2021, it was stated that, "the conduct of Mr. Supra and allegations against him at present is enough, according to our understanding to proceed for an Order against him". Having regard to the seriousness of the allegations levelled against Schumanns and its directors, it is inconceivable why it has taken so long for the LPC to act.
51. The delay by the LPC in bringing an application to suspend or remove Supra from the roll of legal practitioners (attorneys) shows how little regard the LPC has for protecting the public interest. The LPC in allowing the continued practise of a legal practitioner with such egregious

allegations against him is one of the very reasons the legislature saw it fit to establish an oversight body such as the Ombud. It is to hold the LPC to account for what may be perceived by the public as protecting its kith and kin.

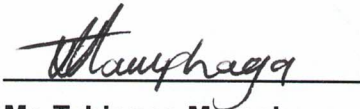
FINDINGS AND RECOMMENDATIONS

52. The Ombud is of the view that there was maladministration in the application of the Act in that:
- 52.1. the LPC failed to properly investigate the complaint by not obtaining additional information which may have affected the outcome of the disciplinary hearing;
 - 52.2. the charges brought against Schumanns and its directors do not adequately reflect the alleged misconduct;
 - 52.3. the disciplinary committee and by implication the LPC failed to adequately adjudicate the complaint by not considering the reasonableness of the plea agreement in light of the allegations before it.
 - 52.4. In so doing the LPC and the disciplinary committee not only failed to act in the public interest but also contributed to the injustice.

CONCLUSION

53. The future use of the parties involved in the prosecution before the DC, including the members of the DC, should be approached with circumspection.
54. We are alarmed at the dilatoriness at which the LPC has approached this matter, especially the suspension of Mr Supra.
55. The Ombud considers this matter finalised. Any party wishing to challenge this decision is at liberty to explore legal remedies available.

This report and its findings have been prepared by:



Ms Tshiane Mampaga

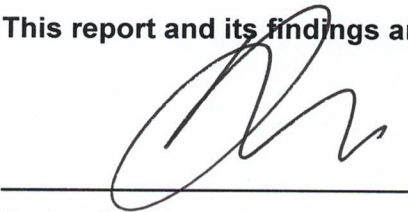
Manager: Complaints and Investigations

Office of the Legal Services Ombud

Email: TMampaga@justice.gov.za

Date: 10/10/2024

This report and its findings are confirmed by:



Judge Sirajudien Desai

Ombud for Legal Services

Office of the Legal Services Ombud

Date: 10/10/2024