

CASES / VONNISSE

WHEN LAWYERS LIE, CHEAT AND STEAL: UNDERSTANDING THE ROLE OF THE BAR

Ndleve v Pretoria Society of Advocates
[2016] ZACC 29

1 Introduction

On 1 September 2016, the Constitutional Court handed down judgment in the case of *Ndleve v Pretoria Society of Advocates* ([2016] ZACC 29), in which it unanimously dismissed an application for leave to appeal lodged by Ralph Patrick Ndleve. The case established that there is a duty placed upon the Society of Advocates to uphold the law and ensure the integrity of the profession and the justice system as a whole. Further, the Society of Advocates was held to owe that duty to both the courts and the public. The case also established that the *dominus litis* in such cases is the Society of Advocates, and not the clients who lodged complaints.

Ndleve's application followed a series of applications before the Constitutional Court and the lower courts, in which Ndleve sought to set aside a decision of the High Court striking him from the roll of advocates. His disbarment followed an application moved before the High Court by the Pretoria Society of Advocates (the Society) after it received complaints of unethical professional conduct from various of Ndleve's "clients". Among these were complaints that Mr Ndleve took instructions directly from clients without being instructed by an attorney; that he continued to practise as an advocate after he had been struck off the roll; that he took money from clients without the intervention of an attorney; and that he had stolen money from clients. What stands out in this case, as will be discussed below, is that Ndleve's dishonesty persisted even in the manner in which he conducted his application before the Constitutional Court.

2 A high ethical standard demanded of those admitted to the Bar

It is said that "an advocate must serve many masters" (Dennison and Kiryabwire "The Advocate-Client Relationship in Uganda" in Dennison and Tibihikirra-Kalyegira (eds) *Legal Ethics and Professionalism: A Handbook for Uganda* (2014) 53). Legal practitioners are bound by three obligations – namely, obligations to clients, the profession and the court (Lacovino "Ethical

Principles and Information Professionals: Theory, Practice and Education” (28 October 2013) <https://www.tandfonline.com/doi/pdf/10.1080/00048623.2002.10755183?needAccess=true> (accessed 2018-05-27) 68). The second obligation can be further broken down into the component obligations of the legal profession, such as are expressed in the Admission of Advocates Amendment Act (53 of 1979), the Advocates Act (74 of 1964), the Attorneys Act (53 of 1979), the Legal Practice Act (28 of 2014) and the Rules of the Law Society. A client is any individual, group of persons, juristic person, entity or trust, who is duly represented by an advocate and is therefore responsible to pay him costs (Kiryabwire “Duties of the Ugandan Advocate” in Dennison and Tibihikirra-Kalyegira (eds) *Legal Ethics and Professionalism: A Handbook for Uganda* (2014) 54). An advocate is indebted to the client to perform duties such as adequate representation, regular updates and communication with regard to the client’s case, as well as fair and honest billing, among other things. These duties may be tacitly inferred as part of professional conduct (Kiryabwire in Dennison and Tibihikirra-Kalyegira *Legal Ethics and Professionalism* 59). The advocate-client relationship should adopt an approach that positions the client at the centre, thereby championing the client’s best interests at all times (Dennison and Kiryabwire in Dennison and Tibihikirra-Kalyegira *Legal Ethics and Professionalism* 71). By design, an advocate cannot take instructions directly from a client without the intervention of an attorney.

The High Court put it thus in *Kekana v Society of Advocates of South Africa* (1998 (4) SA 649 (SCA) 656A): “when a person decides to practise as an advocate, he subjects himself to scrutiny of his professional conduct”. In *General Council of the Bar of South Africa v Geach; Pillay v Pretoria Society of Advocates* ([2012] ZASCA 175), it was stated that this is a high standard, the preservation of which depends largely on professional ethics (*General Council of the Bar of South Africa v Geach; Pillay v Pretoria Society of Advocates supra* par 126). The court opined that this standard:

“[h]aving been left almost entirely in the hands of individual practitioners, it stands to reason, firstly, that absolute personal integrity and scrupulous honesty are demanded of each of them and, secondly, that a practitioner who lacks those qualities cannot be expected to play his part.” (*General Council of the Bar of South Africa v Geach; Pillay v Pretoria Society of Advocates supra* par 126)

In *Pretoria Society of Advocates v Ledwaba* ((38230/2014) [2014] ZAGPPHC 849), the court stated that “an advocate may not lack the sense of responsibility, honesty and integrity which is characteristic of an advocate”. Such a lack may be a ground for disbarment (*Pretoria Society of Advocates v Ledwaba supra* 22).

The process of determining whether to strike an advocate from the roll involves a three-stage enquiry:

- a) The court must decide whether the alleged offending conduct has been established on a preponderance of probabilities. This is a factual enquiry.
- b) The court must consider whether the person concerned, in the discretion of the court, is not a fit and proper person to continue to practise. This leg of the enquiry involves weighing up the conduct

complained of against the conduct expected of an advocate. This is a value judgement.

- c) The court must enquire whether in all the circumstances the person in question is to be removed from the roll of advocates or whether an order of suspension from practice would suffice. This last part seeks to arrive at a just and equitable remedy, and takes cognisance of the fact that in certain cases, the offending advocate may still be capable of rehabilitation. The inference that can be drawn is that striking off from the roll should, where exculpating circumstances exist, be a last resort (*Jasat v Natal Law Society* 2000 (3) SA 44 (SCA) 51 par 10; *Malan v Law Society, Northern Province* 2009 (1) SA 216 (SCA) 219 par 4; *Kekana v Society of Advocates of South Africa supra* 654C–F; *Nyembezi v Law Society, Natal* 1981 (2) SA 752 (A) 756H–758C).

Indeed in *General Council of the Bar of South Africa v Geach; Pillay v Pretoria Society of Advocates (supra)*, the court stated that the purpose of proceedings to strike an advocate from the roll is the upholding of the rules regulating the profession, rather than punishment of the transgressor (*General Council of the Bar of South Africa v Geach and Pillay v Pretoria Society of Advocates supra* par 67). In *Van der Berg v General Council of the Bar of SA* ([2007] 2 All SA 499 SCA 50), the court opined:

“The enquiry before a court that is called upon to exercise its disciplinary powers is not what constitutes an appropriate punishment for a past transgression, but rather what is required for the protection of the public in the future.”

Thus, if the rules can be upheld by suspending the advocate, or ordering a repayment of any money unlawfully appropriated, the courts will make orders in that regard. Where, however, it appears that the offending advocate is beyond rehabilitation, the courts will not hesitate to order that he be struck off. In *Geach*, the court put it thus: “It follows that generally a practitioner who is found to be dishonest should in the absence of exceptional circumstances expect to have his name struck from the roll” (*General Council of the Bar of South Africa v Geach; Pillay v Pretoria Society of Advocates supra* par 87).

3 The Ndleve case: High Court proceedings

The High Court struck the name of Mr Ralph Patrick Ndleve from the Roll of Advocates at the behest of the Society on 12 June 2013 (*Ndleve v Pretoria Society of Advocates, In re: Pretoria Society of Advocates v Ndleve* [2015] ZAGPPHC 448 par 1). Ndleve attempted to appeal the decision by filing his papers out of time without an application for condonation. Despite his failure to abide by the timelines, the court condoned his late application and proceeded to deal with the merits, citing the importance of the facts of the matter and the desire to finalise it (*Ndleve v Pretoria Society of Advocates (GP) supra* par 2). The thrust of the Society’s case was a series of complaints brought against Ndleve by his “clients”. Ndleve was admitted as an advocate on 18 February 2002 (*Ndleve v Pretoria Society of Advocates (GP) supra* par 3). However, even before his admission, from as early as 2000, he had been masquerading as an attorney. From 2000 up until 2008,

Ndleve took instructions directly from several lay people without the intervention of an attorney (*Ndleve v Pretoria Society of Advocates* (GP) *supra* par 3). The High Court described him as being dishonest in the worst degree as he stole most of the money his clients entrusted with him (*Ndleve v Pretoria Society of Advocates* (GP) *supra* par 3.1). Ndleve's unlawful practices included taking instructions directly from lay clients without being briefed by an attorney, taking money from clients without the intervention of an attorney and stealing money intended for his clients' creditors (*Ndleve v Pretoria Society of Advocates* (GP) *supra* par 3).

It was revealed during the High Court proceedings, that although Ndleve had affirmed that he was a "fit and proper person" to be admitted as an advocate, his failure to disclose that he had already stolen an amount of R72 857.10 from the estate of a deceased "client" amounted to perjury (*Ndleve v Pretoria Society of Advocates* (GP) *supra* par 3). As such, he had misled the court in his papers for admission. The court therefore struck his name off the roll.

Not satisfied with the 2013 order of the High Court, Ndleve filed for leave to appeal. He cited the following as his grounds of appeal: (a) that he was denied a fair hearing, and (b) that he had been denied a chance to file a supplementary affidavit, leading to a failure of justice. Several factors militated against a successful appeal in this case. First, when asked by the court if he had indeed stolen a client's money, Ndleve responded in the affirmative (*Ndleve v Pretoria Society of Advocates* (GP) *supra* par 4). The court found that in addition to his confession, the Society had proved his transgressions beyond doubt (*Ndleve v Pretoria Society of Advocates* (GP) *supra* par 5).

Secondly, prior to the hearing, Ndleve had attempted to convince the court that he was in communication with the clients from whom he had stolen, and that he was trying to reimburse them (*Ndleve v Pretoria Society of Advocates* (GP) *supra* par 7). He attempted to file an affidavit in that regard. Finding that this was not a substantive application, the High Court dismissed it (*Ndleve v Pretoria Society of Advocates* (GP) *supra* par 14.1). Ndleve was trying to illustrate that the agreement he had reached with his clients rendered the matter moot (*Ndleve v Pretoria Society of Advocates* (GP) *supra* par 7). The High Court termed this line of submission as ludicrous since the *dominus litis* in the matter was the Society, and not the applicant's clients (*Ndleve v Pretoria Society of Advocates* (GP) *supra* par 8).

Thirdly, Ndleve had accused the Society of failing to provide him with a fair hearing, in that the Society failed to call witnesses whom Ndleve could cross-examine (*Ndleve v Pretoria Society of Advocates* (GP) *supra* par 11.1). In other words, his argument was that the Society's decision to approach the High Court directly prejudiced him. The High Court held that where the evidence before the Society warranted a direct approach, it was not necessary first to hold an internal hearing (*Ndleve v Pretoria Society of Advocates* (GP) *supra* par 11). Ndleve's misgivings were not only directed at the Society, but to the court as well. Thus, the High Court decried the derogatory manner in which Ndleve had drafted his heads of argument, in which he blamed the court "for not coming to his assistance to meet the complaints against him" (*Ndleve v Pretoria Society of Advocates* (GP) *supra*

par 10). The court concluded that there were no prospects of success on appeal, as no other court would be likely come to a different conclusion (*Ndleve v Pretoria Society of Advocates* (GP) *supra* par 14). His application for leave to appeal was thus dismissed and costs were awarded against him.

4 The matter before the Constitutional Court

Ndleve thereafter sought leave to appeal to the Supreme Court of Appeal by filing an application before the Supreme Court of Appeal. When this failed, he then approached the Constitutional Court. However, this was not his first application. He had unsuccessfully lodged a series of applications for leave to appeal to the Constitutional Court, and all of them were dismissed for lack of prospects of success (*Ralph Patrick Ndleve v Pretoria Society of Advocates* Case No.185/15 (29 October 2015); *Ralph Patrick Ndleve v Pretoria Society of Advocates*, order of the Constitutional Court, Case No. 213/15 (26 November 2015); *Ralph Patrick Ndleve v Pretoria Society of Advocates*, order of the Constitutional Court, Case No. 240/15 (3 February 2016); and *Ralph Patrick Ndleve v Pretoria Society of Advocates*, order of the Constitutional Court, Case No. 35/16 (4 May 2016)). Ndleve tried to convince the Constitutional Court that his latest application was different from the previous applications, in that it now contained evidence that the High Court was prejudiced against him (*Ndleve v Pretoria Society of Advocates* (CC) *supra* par 6). He claimed he had now attached the transcript of the initial hearing before the High Court, which had not been provided in the previous applications to the Constitutional Court (*Ndleve v Pretoria Society of Advocates* (CC) *supra* par 6). The transcript, Ndleve alleged, would demonstrate an infringement of his rights, and convince the court to reconsider his case (par 6). However, the Constitutional Court found that Ndleve was lying, since he had indeed attached the same transcript before in Case No. 240/15 and Case No. 35/16, both of which were dismissed (*Ndleve v Pretoria Society of Advocates* (CC) *supra* par 6). There was nothing new in his present application. The court stated that:

“The only conclusion that can be drawn is that the applicant is peppering this Court with repeated applications, each entirely devoid of merit, simply to stave off the coming into effect of the order striking him from the roll of advocates. This conduct cannot be countenanced.” (*Ndleve v Pretoria Society of Advocates* (CC) *supra* par 7)

5 Continued practice after disbarment constitutes contempt of court

The Constitutional Court also noted with concern that Ndleve continued to practise as an advocate four months after being struck from the roll (*Ndleve v Pretoria Society of Advocates* (CC) *supra* par 8). This surfaced after a founding affidavit dated 4 October 2013, in the case of *Stance Selomane v S* (order of the Constitutional Court, Case No. 231/15 (30 March 2016)), mentioned Ndleve as counsel for the accused. As a general rule, the lodgement of an appeal suspends the operation of an order, pending the appeal (*Ndleve v Pretoria Society of Advocates* (CC) *supra* par 9). Ndleve only filed his appeal on 7 February 2014, long after the expiry date of 4 July

2013 (par 9). When he actively represented the two accused in October 2013, the order striking him from the roll was enforceable since he had not lodged an appeal (par 9). The Constitutional Court found that Ndleve's behaviour was unlawful, and that it put in peril the fairness of the criminal proceedings in which he had appeared as counsel (par 9).

The Constitutional Court addressed this as a matter of grave concern (par 10). Ndleve's continued practice as an advocate, even after his initial application for leave to appeal was dismissed, amounted to unethical professional conduct (par 10). Furthermore, it bordered on contempt of court (par 10). The Constitutional Court, drawing inspiration from *Van der Berg v General Council of the Bar of South Africa* ([2007] ZASCA 16; [2007] 2 All SA 499 (SCA)), noted that orders striking an advocate from the roll are not merely punitive; they also serve a higher purpose – that is, to protect the public (*Ndleve v Pretoria Society of Advocates* (CC) *supra* par 10).

6 Duty of the Society to the public and the courts

Section 3 of the Amended Admission of Advocates Act (74 of 1964) details the requirements for an applicant to be admitted into the profession as an advocate. Among other criteria, the Act expressly demands that the applicant be a "fit and proper person". This applies equally to the attorneys profession, as provided for in section 15 of the Attorneys Act (53 of 1979). The fundamental basis for the establishment of the legal profession is the pursuit of the public good (Badwaza "Public Interest Litigation as Practiced by South African Human Rights NGOs: Any Lessons for Ethiopia?" (31 October 2005) https://repository.up.ac.za/bitstream/handle/2263/1135/badwaza_ym_1.pdf;sequence=1 (accessed 2018-05-21) 3).

Both advocates and attorneys have a professional body (a society) that regulates their industry. The society is responsible for regulating assumption of and termination of membership of these professional bodies. In the case of advocates, it is the Society of Advocates, while for attorneys it is the Law Society of South Africa, that has regulatory oversight. Each professional body determines the rules by which their members must conduct their practices, take action to ensure that the members adhere to the rules, scrutinise and where appropriate, take action in regard to applications. While the attorney has direct links with a lay client, taking instructions directly from him or her, the advocate does not, and can only do so upon being briefed by an attorney (*Ndleve v Pretoria Society of Advocates* ([2016] ZACC 29 par 2).

In the *Ndleve* case, the Constitutional Court emphasised that because of this long-established rule, it is incumbent upon the Society to stop the applicant from masquerading as an advocate and misleading unsuspecting clients in the courts (*Ndleve v Pretoria Society of Advocates* (CC) *supra* par 13). This duty, the court stated, the Society owed first to the courts, and also to the public (par 13). In other words, it is the Society, and not the court that must take whatever steps are necessary to ensure that characters such as Ndleve do not defraud the justice system (par 13). Hence the Constitutional Court, when called upon to advise the Society on how it could carry out its duty, declined to do so (par 13). This followed a request by the Society for

the court to issue directions on how to proceed in light of Ndleve's multiple applications before the Constitutional Court.

In *Law Society of the Northern Provinces v Sonntag* ([2011] ZA SCA 204; 2012 (1) SA 372 (SCA)), this duty was understood as a statutory duty in terms of which the Law Society has to approach the court to have an attorney (or advocate) who is not a fit and proper person struck off the roll. In *Pretoria Balieraad v Beyers* (1966 (1) SA 112 (T)), this was described as a statutory duty to uphold ethical practice even in relation to non-members. All this is done in order to protect the interests of the public in its dealings with legal practitioners (*Solomon v Law Society of the Cape of Good Hope* (25 [1934] AD 401); *Law Society of the Northern Provinces v Mabando* ([2011] ZASCA 122; [2011] 4 All SA 238 (SCA)). To ensure that the public was protected from Ndleve's cunning escapades, the Registrar was directed to draw the judgment of the court and its order to the attention of the Society and to the attention of the Judge President of the Gauteng Division of the High Court of South Africa (*Ndleve v Pretoria Society of Advocates* (CC) *supra* par 13).

7 Duties of the Law Society in cases of professional misconduct

The Society of Advocates and the Law Society in the case of attorneys are both duty-bound to protect members of the public from unscrupulous practitioners. Although the Law Society and the Society of Advocates both owe a duty to the public to keep a vigilant eye on unscrupulous practitioners, they have on occasion been accused of dragging their feet. The case of *Law Society of the Northern Provinces v Bobroff* ((20066/2016) [2017] ZAGPPHC 704 (20 July 2017)) is instructive in this regard. This matter turned on the attempts of disgruntled clients of Ronald Bobroff, Darren Bobroff and Stephen Derek Bezuidenhout (who were directors of Ronald Bobroff and Partners Incorporated) to have them struck from the roll of attorneys. The clients, Matthew and Jeniffer Graham, initially reported the misconduct of the Bobroffs and Bezuidenhout to the Law Society in 2011. The Grahams were clients of the firm in a damages claim against the Road Accident Fund.

Their complaint to the Society centred on allegations of overcharging by the Bobroffs and Bezuidenhout who, they claimed, inflated fees and as a result grossly overreached them. Although the Law Society was seized of the matter, the Grahams were not satisfied with the slow pace with which the matter was approached. In 2012, they instituted proceedings in which they sought to have the court take over the Law Society's disciplinary enquiry or allow the process to continue under the court's supervision (*Graham v Law Society* (NP 2014 (4) SA 229 (GP)). This in itself stalled proceedings as the enquiry was suspended pending the determination of the application by the Grahams. In 2014, the High Court granted the Grahams an order directing the Law Society to institute disciplinary proceedings against the Bobroffs, which eventually resulted in their being struck from the roll in July 2017 (*Law Society of the Northern Provinces v Bobroff supra* par 2). *In casu*, the court questioned the tardiness of the Law Society (*Law Society of the Northern Provinces v Bobroff supra* par 40) and reiterated its duty to approach the court when complaints are lodged against an attorney for alleged

misconduct (*Law Society of the Northern Provinces v Bobroff supra* par 137).

The court emphasised the importance of holding all members of a partnership liable for transgressions that have taken place during the course and scope of their practice. The court relied on the case of the *Law Society of the Northern Provinces v Cowling* ((69300/13) [2016] ZAGPPHC 711 (16 August 2016)) to demonstrate how no party in a partnership can be absolved of liability by simply distancing themselves and claiming ignorance. The court insisted that each attorney is obliged to comply with the Attorneys Act and the Rules of the Law Society despite being involved in a partnership (*Law Society of the Northern Provinces v Bobroff supra* par 123). Therefore, Bezuidenhout (the third partner in the firm) could not rely on the fact that he was not involved in the administrative and financial management of the firm, and claim that this duty was left to the Bobroffs (the first and second partners in the firm).

Furthermore, the court engaged with the “fit and proper” enquiry, which calls for the character assessment of integrity, reliability and unwavering honesty from all its members; a requirement that all three partners in the firm fell short of (*Law Society of the Northern Provinces v Bobroff supra* par 129). The court in its deliberation on sanction had to consider the possibility of re-occurrences of such transgressions, and therefore had to consider protecting the public. Although there were no guarantees that punishment would necessarily transform an errant practitioner into a fit and proper practitioner, the court was, in Bezuidenhout’s case, inclined to consider a lesser sanction. This punishment would be conditional upon the cause of unfitness being removed (*Law Society of the Northern Provinces v Bobroff supra* par 131, 132, 134). The court had to be guided by considerations of the possibility of that conduct being repeated by the practitioner. A lesser penalty than striking off the practitioner completely would be suspension, and the court was satisfied that it was appropriate to give Bezuidenhout the sanction of suspension, with certain conditions attached (*Law Society of the Northern Provinces v Bobroff supra* par 134). In contrast, the court felt that it was only fitting and also in the best interests of the public that the Bobroffs be struck off the roll (*Law Society of the Northern Provinces v Bobroff supra* par 135). Flowing from the above, it is clear that in the *Ndleve* case a lesser sanction such as suspension could not be imposed, given his past record of repeated dishonesty.

8 The relationship between ethics and the legal profession

Ethical standards are the cornerstone of the legal profession. They preserve the legal profession by retaining its honour, integrity and reputation, which, in turn, determines the efficiency and the longevity of the profession (Ogoola “Ethics: The Heart and the Soul of the Legal Profession” in Dennison and Tibihikirra-Kalyegira (eds) *Legal Ethics and Professionalism: A Handbook for Uganda* (2014) 31). The importance of ethics cannot be overemphasised, as it is mandatory for all members of the profession to be in compliance (Ogoola in Dennison and Tibihikirra-Kalyegira *Legal Ethics and*

Professionalism 31). The erosion of ethical standards has manifested in reports of incidents of dubious behaviour such as a legal professional faking his own death after misappropriation of client funds, calling into question the honour and prestige of the profession itself (Regchand "Attorney Struck off the Roll" *News24* (15 May 2018) <https://www.news24.com/SouthAfrica/News/attorney-struck-off-roll-20180514> (accessed 2018-07-25)). Ogoola insists that the preservation of the reputation of the legal profession requires a collective effort by all practitioners (Ogoola in Dennison and Tibihikirra-Kalyegira *Legal Ethics and Professionalism* 33). Some of the attributes of a well-functioning legal profession include:

- maintenance of the public confidence in the profession;
- keeping the trust of clients;
- allowing development as a business;
- establishing ethics as a moral standard for all members to aspire to; and
- guiding the conduct of professionals in their daily functions.

Ogoola asserts that, "an advocate, being a professional service deliverer, owes the client a duty of care. That duty is a juridical redress before the courts of law" (Ogoola in Dennison and Tibihikirra-Kalyegira *Legal Ethics and Professionalism* 33). The enforcement of legal ethics is a fragile task. The entire practice is a balancing exercise of several variables that need careful consideration. This duty normally belongs to the courts to assess, namely, the conduct of the professional, the impact of the conduct on the overall image of the profession, as well as the appropriate punishment to be handed down as a deterrent to others (Ogoola in Dennison and Tibihikirra-Kalyegira *Legal Ethics and Professionalism* 41).

It is trite that despite a close affinity between law and ethics, the two continue to maintain a tenuous relationship. Attorneys and advocates as officers of the court are expected to know the law, and to uphold a high standard of ethical behaviour. The foregoing illustrations, however, demonstrate that the standard is not always adhered to. Instead, these cases show a failure of corporate governance that is widespread within law firms in South Africa. Apart from the attorney or the advocate as an individual and an officer of the court, these occurrences also highlight a lack of corporate governance within entities established to facilitate the work of the legal profession – that is, law firms. The King IV Report defines corporate governance as the exercise of ethical and effective leadership by the governing body towards the achievement of the following governance outcomes – namely, ethical culture, good performance, effective control and legitimacy. The case of a KwaZulu-Natal lawyer who squandered money in his trust account and thereafter faked his own death also helped to erode the legitimacy of the legal profession in the eyes of the public (Regchand <https://www.news24.com/SouthAfrica/News/attorney-struck-off-roll-20180514>). Such an incident detracts from the ethical culture that is expected to underlie the governance and leadership structure of law firms. Ethical misconduct indicates a failure to embrace ethical values, and have these ingratiated into the decision-making, conduct and the relationship between the law firm, its stakeholders and the broader society (Institute of Directors Southern Africa "King IV – Report on Corporate Governance for

South Africa” (2016) https://c.ymcdn.com/sites/iodsa.site-ym.com/resource/collection/684B68A7-B768-465C-8214-E3A007F15A5A/loDSA_King_IV_Report_-_WebVersion.pdf (accessed 2018-06-15).

9 Conclusion

The *Ndleve* case elucidates the role of the Society of Advocates in regulating the profession, upholding ethical standards and protecting the public. It also places in sharp focus the symbiotic relationship between the courts and the Society. Further, it is clear from the case that an agreement between an offending advocate and complainants does not render the matter moot; the courts still have to determine whether such a repentant advocate is a fit and proper person. Lastly, it underscores the principle that in applications for disbarment, it is the Society of Advocates that is *dominus litis*, and not the complainants. Quite importantly, the Constitutional Court established that each application for disbarment is to be dealt with on its own merits. Where appropriate, corrective measures can be taken against an offending advocate where exceptional circumstances exist. In the case of grave breaches, where no such circumstances exist, as in the *Ndleve* case, the court will not hesitate to endorse the immediate striking off of an advocate from the roll.

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