

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

20/2/15

CASE NO: 56790/2013

In the matter between:

BRIAN BADER

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED.

Applicant

and

20/2/2015
DATE SIGNATURE

**SA COUNCIL FOR SOCIAL SERVICE
PROFESSIONS**

First Respondent

LEONIE HENIG

Second Respondent

JUDGMENT

DAVIS, AJ

NATURE OF RELIEF SOUGHT:

[1] This is a review application in terms of which the Applicant seeks the following relief:

"1. In terms of the provisions of Section 6 of the Promotion of Administrative Justice Act, No. 3 of 2000 ("PAJA"), reviewing and correcting and/or setting aside the decision by:

1.1 The First Respondent not to cancel the registration of the Second Respondent to practise as a social worker in terms of Section

22(1)(c) of the Social Service Professions Act, Act No. 110 of 1978 ("SSPA"); **alternatively**

1.2 The First Respondent's Committee for Preliminary Inquiry ("CPI") on 22 November 2012 to uphold the decision of the First Respondent's Registrar's Committee on Professional Conduct ("RCPC") and not to refer the Applicant's complaint against the Second Respondent for a disciplinary inquiry, **alternatively**

1.3 The First Respondent's Registrar's Committee on Professional Conduct ("RCPC") ON 16 May 2012 not to refer the complaint against the Second Respondent for a disciplinary inquiry.

2 In terms of the provisions of Section 8(1)(c)(ii)(aa) of PAJA substituting the decision of:

2.1 The First Respondent with the following:

'The registration of Leonie Henig to practise as a social worker is cancelled pursuant to the provisions of Section 22(1)(c) of the Social Service Professions Act, Act No. 110 of 1978.'
alternatively

2.2 *The First Respondent's CPI with the following:*

'The decision of the RCPC meeting held on 16 May 2012 is set aside and replaced with the following:

In terms of Regulation 7(5) of the Regulations regarding the conducting of inquiries into alleged unprofessional conduct, R917 published on 27 June 2003 in GG No. 25109, the complaint against Leonie Henig is referred for a disciplinary inquiry in terms of Regulation 16.'
alternatively

2.3 *The First Respondent's RCPC on 16 May 2012 with the following:*

'The complaint against Leonie Henig is referred for a disciplinary enquiry.'

Costs are also claimed in the event of the application being opposed.

[2] In order to understand how the decisions complained of came about, it is necessary to set out the roles of the different parties:

- 2.1 The Applicant is the father of two minor children, Joss Bader born on 12 August 2002 from a marriage with Jill Mundell Bader and Peter Max Bader ("*Peter*") born on 27 September 2008 from a relationship with Rebecca Sands.
- 2.2 As a consequence of disputes between Ms Sands and the Applicant, she obtained an interim protection order against him in terms of Section 5(2) of the Domestic Violence Act, 116 of 1998 which order, so the Applicant says, effectively deprived Peter of all contact with him.
- 2.3 During the Domestic Violence Act proceedings, an agreement was reached allowing Peter supervised contact with the Applicant, the Second Respondent was appointed to supervise the contact.
- 2.4 The Second Respondent is a qualified and registered social worker.
- 2.5 The First Respondent was established in terms of Section 2(1) of the SSPA and *inter alia*, tasked with the determination of standards of professional conduct for social workers and the exercising of control over their conduct. In

terms of Section 22 of the SSPA, it is also empowered to discipline a social worker and cancel a social worker's registration of found guilty of unprofessional or improper conduct.

PRECEDING EVENTS:

[3] The events preceding the decisions which the Applicant now seeks to have reviewed and set aside can be summarised as follows:

3.1 Supervised contact with Peter commenced on 15 May 2011. The Second Respondent supervised the contact and reported on the first six contact sessions on 6 June 2011. Her conclusions in a report was that it was premature to draw any hard and fast conclusions about the Applicant's parenting capacity after only six contact sessions.

3.2 The contact sessions thereafter continued and on 25 October 2011 the Second Respondent produced a second report which concluded with the following comment:

"My professional opinion is that Peter's best interest will be served if contact is suspended until such time as Peter is older and less vulnerable. To continue contact

at present would be to place Peter at risk for emotional and physical abuse."

3.3 The report effectively terminated contact between the Applicant and his son Peter. The Applicant was (in the words used in the Founding Affidavit) "*astounded and devastated*" by the report. If one has regard to the correspondence exchanged however, it appears that he was more than that, he was clearly incensed by the report.

3.4 The Applicant's overt dissatisfaction with the report stems from the fact that he disputed some of the factual averments made therein and categorised them as false, fictitious or biased. In particular the report dealt with a videotaped incident at a pond where goldfish was caught and there were allegations of alleged maltreatment by the Applicant of his dog in front of Peter. In support of his allegations, the Applicant relied on a psychometric assessment report of a Dr Del Fabbro and a veterinary behavioural report from a Dr Quixi Sonntag as well as a transcript of the video regarding the pond incident and the Respondent's reaction thereto given in evidence in subsequent Domestic Violence Act proceedings.

3.5 The Applicant referred his complaint to the president of the First Respondent by way of a letter of his attorneys to which the Applicant had annexed a substantial number of annexures detailing the abovementioned situation. In his written complaint the Applicant referred to the Second Respondent's second report which she delivered after she had without any prior notice withdrawn as supervisor with immediate effect. After dealing with the Second Respondent's latest report for three pages, the Applicant concluded his complaint as follows:

"4. Conclusion

4.1 It is not for me to speculate on the reasons for the clear fabrication by Henig of facts and a subsequent biased report. However it has catastrophic consequences for Peter and myself in that:

4.1.1 My small son with whom I have a close and loving relationship, cannot see his father and obviously I as a father have no contact with my son.

4.1.2 To restore the situation (which should be that I have free and

unsupervised contact) is not quick or simple and necessitate complex legal processes.

4.2 I submit that it is clear from this report that Henig is guilty of such unprofessional conduct that she is not fit to practise as a professional social worker. I therefore request the council to investigate and preside over this matter."

AD THE DECISIONS COMPLAINED OF:

- [4] 4.1 How the First Respondent deals with complaints it receives, as eloquently explained by Mr Molele who appeared for the First Respondent, is that the matter be referred to and considered by the First Respondent's Registrar's Committee on Professional Conduct ("RCPC"). As I understood Mr Molele, this committee acts as a "*filtering mechanism*". Due to the number of complaints received and the costs involved in conducting disciplinary inquiries or proceedings, the RCPC as decision-making body of the first instance, decides whether a complaint merits a referral to the First Respondent's Committee for Preliminary Inquiry ("CPI") or a direct referral for a disciplinary inquiry. Should the RCPC find that, according to it, there is no

evidence of unprofessional conduct, then the matter ends there and there is no referral. This is what happened in the present instance.

4.2 The record of proceedings filed by the First Respondent indicates that the Applicant's complaint together with a response thereto served before the RCPC. The First Respondent's Registrar reported on 14 June 2012 to the Applicant as follows:

"FEEDBACK ON COMPLAINT OF ALLEGED UNPROFESSIONAL CONDUCT: BADER V HENIG

1. *Reference is made to your complaint lodged with the SACSSP in respect of Ms Henig.*
2. *As you have been informed, the process followed by Council in investigating such complaints, is guided by the Regulations regarding the Conducting of Inquiries into Alleged Unprofessional Conduct, as published in R917 in Government Gazette No. 25109 of 27 June 2003.*
3. *The matter was presented before the Registrar's Committee for Professional Conduct (RCPC), and after careful consideration and evaluation the committee resolved that at this stage, the matter has*

been fully attended to in terms of the Council's mandate. The matter is thus regarded as closed.

4. *A letter of caution will be sent to the Respondent, advising her to take note of the Policy Guidelines for Course of Conduct, Code of Ethics and Rules of Social Workers."*

4.3 The Applicant, through his attorneys, requested "*full reasons*" for the above decision as well as copies of the Policy Guidelines. In response hereto the First Respondent's Registrar forwarded a "*Notice of dispute form*" to the Applicant. This is apparently the form used by the First Respondent should a person "*be in dispute or disagree with the recommendations made by ...*" the RCPC. Once the notice of dispute form is received it would be tabled before the CPI.

4.4 The Applicant duly completed such a dispute form on 28 August 2012 and this served before the CPI's next meeting together with a transcript of the Second Respondent's evidence in the Domestic Violence application referred to above.

4.5 On 13 December 2012 the First Respondent's Registrar reported again to the Applicant (through his attorneys) on the

"OUTCOME: COMMITTEE FOR PRELIMINARY INQUIRY: BADER V HENIG". In the response the reference to the Regulations as contained in paragraph 2 of the Registrar's previous letter of 14 June 2012 is again repeated *verbatim* whereafter the following is stated:

"3. The matter was tabled before the Registrar's Committee for Professional Conduct as well as the Committee for Preliminary Inquiry (CPI) of the Professional Board for Social Work. The CPI had after deliberation resolved to uphold the decision made by the Registrar's Committee for Professional Conduct. The matter is thus regarded as closed."

4.6 Again, a request for reasons by the Applicant (through his attorneys) produced no results.

4.7 The minutes of the RCPC meeting of 16 May 2012 was delivered as part of the record. It deals with the Applicant's complaint at paragraph 6.15 thereof. As this is the most complete record of the decision which the Applicant seeks to attack, I quote it in full:

"COMPLAINT:

The Complainant is unhappy with the report submitted by the social worker on the supervised contact between him and his minor son.

DISCUSSION:

- *Complainant is unhappy with the fact that the Respondent has withdrawn from rendering supervised contact services.*
- *According to the Respondent, she felt she was unable to fulfil her mandate of acting in the best interests of the child due to the complainant's remarks towards her and his behaviour while she was supervising contact between him and the minor child.*
- *RCPC has noted that 'supervised contact' of 5 hours does not appear normal and that visitations between the parent and the child should rather have been for a shorter period.*
- *Uncertainty exists about the reasons for the complainant attaching an affidavit from a veterinarian when the fundamental issue is the best interests of the minor child and not the household pet.*

- *Despite no evidence of unprofessional conduct being found RCPC members did challenge the fact that the Respondent could have either recommended that a new social worker be appointed to supervise visits or that an independent social worker be appointed to review the visitation rights.*

RCPC RESOLUTION:

The RCPC resolved as follows:

- *No evidence of unprofessional behaviour or unethical conduct could be found.*
- *Complainant to be referred to the office of the Family Advocate for a review of the care and conduct arrangement and to appoint a new supervising social worker.”*

4.8 The minutes of the CPI meeting held on 22 and 23 November 2012 read (*in toto*) regarding the present matter as follows:

“COMPLAINANT: Mr Bader (represented by Geyser Attorneys)

RESPONDENT: Ms Henig (10-12802)

Summary:

- *Mr Bader has appealed the decision of the RCPC and the notice of appeal was submitted to the CPI panel.*

CPI RESOLUTION

The CPI resolved that:

- *The decision of the RCPC meeting held on 16 May 2012, to be upheld.”*

THE PAJA REQUIREMENTS:

[5] Initially in the papers the issue as to whether the decisions complained of constituted administrative decisions which may be reviewable by a court has been denied but this has been conceded in the heads of argument on behalf of the First Respondent, in my view correctly so.

[6] Section 5(1) of PAJA gives effect to the right entrenched in Section 32(2) of the Constitution of the Republic of South Africa by providing that any person whose rights have been materially or adversely affected by an administrative action and who was not being given reasons for the action, may request the furnishing of such reasons. In terms of Section 5(3) of PAJA, the failure to furnish “*adequate reasons for an administrative action*” creates a presumption in any proceedings for judicial review of the administrative action that, in the

absence of proof to the contrary, the action was taken without good reason.

THE REASONS FOR THE RCPC DECISION:

[7] 7.1 The letter conveying the RCPC's "*feedback*" dated 14 June 2012 contains no reasons but only the contents of the Committee's resolution that "*the matter has been fully attended to*".

7.2 The minutes of the meeting, insofar as it states in both the discussion part and the resolution part thereof that "*no evidence of unprofessional behaviour or unethical conduct could be found*" do not deal with the basis for such finding nor with the Applicant's actual complaints of incorrect or even fabricated statements in the Second Respondent's report.

[8] Mr Molele strenuously argued that the RCPC "*did what it was obliged to do*" in terms of the SSPA, namely to consider a complaint referred to it and to make a ruling thereon.

[9] Having regard to the oversight obligations contained in the SSPA, as part of the consideration of a complaint by a person such as the

Applicant, the RCPC would be tasked with the assessment of the conduct of a practitioner, in this instance the Second Respondent. This would also involve an assessment of her compliance with the Policy Guidelines for Cause of Conduct, Code of Ethics and the Rules for Social Workers of the First Respondent and a determination whether the Second Respondent's conduct fell short of what was required including whether such conduct was "*unprofessional*". This would have involved a weighing up of the conduct (and a determination if it has been established) against the norms set out in the SSPA and the aforesaid code.

- [10] Despite Mr Molele's argument, it does not appear from the RCPC's letter or minutes that the aforesaid had indeed taken place. In dealing with the decision of the RCPC, the Caretaker Registrar of the First Respondent, who was the deponent to its principal answering affidavit, could do no more than to refer to the said letter and the minutes. Similarly, the confirmatory affidavit of the Chairperson of the RCPC goes no further than to state the following:

"4. *That on the 16th May 2012 I was the chairperson of the meeting of the Registrar's Committee for Professional Conduct (RCPC). I further confirm that the complaint of Brian Bader against Leonie Henig was discussed by the Committee.*

5. *I further confirm that the Committee resolved amongst others that no evidence of unprofessional behaviour or unethical conduct could be found.*
6. *I further confirm the correctness of the minutes of the RCPC attached to the opposing affidavit."*

[11] I am therefore of the view that no "*reasons*" for its decision appears from the RCPC's letter, its minutes or the affidavit of its Chairperson. Insofar as it was argued or contended that the minutes should be taken to constitute adequate reasons, I again differ. It has been stated that the usage of the word "*adequate*" in Section 5(2) of PAJA constitutes an "*important qualifier*".

See: Hoexter, Administrative Law in South Africa, 2nd Edition at 476.

[12] The aforementioned learned author, with reference to Rean International Supply Company (Pty) Ltd v Mpumalanga Gaming Board 1999(8) BCLR 918 (T) at 926F quoted that:

"It is impossible to lay down a general rule of what would constitute adequate or proper reasons for each case must depend on its own facts."

Arguing further, it has been stated by the learned author that:

“Adequacy cannot be an intrinsically meaningless or infinitely variable concept and some of its ingredients at least must be common to all cases. In particular there is an inevitable connection between the adequacy of reasons and their explanatory power.”

In the present instance, the RCPC documents do not contain any explanatory statement as to why the Applicant's contentions of unprofessional conduct and complaints against the insertion of certain statements in the Second Respondent's report (which had adversely affected him at the time) had not been dealt with or if it had been dealt with, on what basis it had been rejected.

[13] I interpose to state that, at the hearing of the application, the Applicant's contact rights with his son had been *“regularised”* according to Ms Kolbe SC who appeared for him. I will deal with this issue more fully hereunder but in my view he falls in the category of disgruntled parties against whom an administrative decision had gone and in respect of which the Supreme Court of Appeal had, with reference to Australian case law, linked the idea of adequacy with the affected person's appreciation of *“why the decision went against me”*.

See: Minister of Environmental Affairs & Tourism v Phambili Fisheries (Pty) Ltd 2003(6) SA 407 (SCA) at [40].

- [14] In the aforesaid case the following has been described as an apt description of what constitutes adequate reasons (although in a slightly different context):

“... the decision-maker should set out his understanding of the relevant law, any findings of fact on which his conclusions depend (especially if those facts have been in dispute) and the reasoning process which led him to those conclusions. He should do so in clear and unambiguous language, not in vague generalities or the formal language of legislation. The appropriate length of the statement covering such matters will depend upon considerations such as the nature and importance of the decision, its complexity and the time available to formulate the statement.”

- [15] In respect of the CPI decision, Mr Molele again argued that the matter was properly considered. He relied on statements contained in the answering affidavit by the Registrar of the First Respondent who dealt with and argued the incorrectness of the Applicant's complaint and the factual submissions made by him. The affidavit also dealt with the subsequent transcript in the Domestic Violence proceedings which had been forwarded to the PCI as part of the

"*appeal*". None of these arguments, deliberations, considerations of factual disputes (if any) and the evaluation and assessment process of the Respondents' conduct to which I have already referred to above, are however apparent from the CPI minutes. The minutes display even less of a compliance with the aforementioned case law or the requirement for "*adequate reasons*" than the minutes of the RCPC. In similar fashion as above, its Chairperson, in his confirmatory affidavit to the Registrar's affidavit only states the following:

"On 22 and 23 November 2014 I was the Chairperson of the meeting of the Committee for Preliminary Inquiry (CPI). I further confirm that the complaint of Brian Bader against Leonie Henig was discussed by the Committee as a result of the dispute lodged by Mr Bader against the decision of the Registrar's Committee of Professional Conduct (RCPC). I further confirm that the Committee resolved to uphold the decision of the RCPC meeting held on 16 May 2012. I further confirm the correctness of the minutes of the CPI attached to the opposing affidavit."

[16] I also add that the Applicant's application was launched in terms of Rule 53 of the Uniform Rules which also enjoins a respondent to dispatch, together with the record "*such reasons as he is by law required or desires to give or make*". As pointed out, this invitation

has not been accepted by the relevant decision-makers. There has also not been an indication that the decision-makers were entitled to depart from the requirement to furnish adequate reasons in any of the circumstances set out in Section 5(4) of PAJA.

- [17] The consequence of the above and the effect of the rebuttable presumption created in Section 5(3) of PAJA is to place the onus on the administrator to show that the action was taken lawfully notwithstanding the failure to give reasons.

See also: **Wessels v Minister for Justice and Constitutional Development** 2010(1) SA 128 (GNP) at 141E.

- [18] In view of the nature of the order which I propose making, I do not deem it appropriate to express myself further regarding the merits or not of the Applicant's complaints against the Second Respondent or as to the unprofessionalism of her conduct or not, save to state that the complaints raised are of a serious nature and constitute sufficient grounds to demand further and better exploration and responses than that furnished by the Second Respondent previously as well as a proper and full consideration as to whether the conduct merits sanction or censure.

REMEDIES:

- [19] The Regulations regarding the Conducting of Inquiries into Alleged Unprofessional Conduct, R917 published on 27 June 2003 in Government Gazette No. 25109, promulgated pursuant to Section 28 of the SSPA provide for the “*constitution of a professional Conduct Committee and a Committee of Preliminary Inquiry*”. There is no provision for the constitution of the so-called Registrar’s Committee on Professional Conduct (the “RCPC”). Nevertheless, it appears to be a functioning committee of the First Respondent performing the functions of the Registrar as referred to in [21]*intra*.
- [20] In the absence of any other indication, I assume that the CPI is the *Committee of Preliminary Inquiry*” provided for in Regulation 2(4) established in terms of Section 10 of the SSPA. As such, it is only empowered to hold a preliminary inquiry and can only impose a reprimand on a plea of guilty.
- [21] A reading of the regulations indicates that the process for a disciplinary enquiry starts with the lodging of a complaint of alleged unprofessional conduct on the part of the registered person in terms of Regulation 3 with the Registrar. The Registrar should thereafter investigate the complaint and in the event of a dispute between the

Registrar and the complainant, the complaint shall be referred to the Committee of Preliminary Inquiry for further investigation in terms of Regulation 4(4).

[22] The Committee of Preliminary Inquiry is, in terms of Regulation 6, obliged to take the following factors into consideration in deciding whether it would be appropriate to hold a preliminary or disciplinary inquiry:

22.1 The nature of the complaint;

22.2 The consequences of the alleged unprofessional conduct;

22.3 The complexity of the unprofessional conduct;

22.4 The penalty which the Committee of Preliminary Inquiry anticipates could be imposed by the Professional Conduct Committee;

22.5 Any other matter which in the opinion of the Committee warrants the holding of a preliminary or disciplinary inquiry.

[23] The Committee of Preliminary Inquiry, if after having investigated the complaint, is of the opinion that a complaint, even if it is proven, does not constitute unprofessional conduct, “*shall take such steps as it may deem necessary*” and report the steps to the Council in terms of Regulation 7(1). In terms of Regulation 7(5) the Committee of Preliminary Inquiry may refer the matter for a disciplinary inquiry in terms of Regulation 16.

[24] To sum up:

24.1 Neither the RCPC (or the Registrar) nor the CPI provided adequate reasons for its decisions.

24.2 The PAJA deeming provision which follows to the effect that the decisions were made without good reason, was not disturbed by any evidence provided in rebuttal.

24.3 Although there is no specific provision providing for a body or committee such as the RCPC but in order to err on the side of caution and on the assumption that the RCPC performs the

functions of the Registrar provided for in Regulation 4, its decision should be set aside.

24.4 The same deeming provision operating against the CPI in the absence of the furnishing of adequate reasons as well as an absence of evidence that it had complied with its obligations in terms of Regulation 6, similarly renders its decision invalid and it should be set aside.

SUBSTITUTION:

[25] In terms of its initial notice of motion, the Applicant claimed that the decisions of the Committees of the First Respondent be substituted with a decision whereby the registration of the Second Respondent is cancelled.

[26] The Applicant has requested that this court substitute its decision for that of the abovementioned decision-makers and cancel the registration of the Second Respondent.

[27] From a reading of the decisions as detailed by me, it is clear that the decision-makers have not made the decision complained of by the Applicant in paragraph 1.1 of its notice of motion.

- [28] Furthermore, neither the Registrar, nor the RCPC nor the CPI have been empowered by the regulations to cancel the registration of a person such as the Second Respondent. It is only after the proceedings in a disciplinary inquiry has taken place in terms of Regulations 16 to 24 that the decision of such a committee (being a “*Professional Conduct Committee*”) reports its findings to the First Respondent who may then act in terms of Section 22 of the SSPA.
- [29] In the alternative prayers to the amended notice of motion of the Applicant, reviews are only sought of the decisions of the RCPC and CPI and that it be substituted with a referral for a disciplinary inquiry.
- [30] To an extent the referral to a disciplinary inquiry constitutes a “*correction*” of the CPI decision. At common law it is well established that the court will generally refer the matter to the original decision-maker rather than to attempt to correct the decision, i.e. substitute its own decision for that of the administrator. This, the learned author Hoexter *op cit* at 552 says:

“... is because the courts’ respect for the distinction between appeal and review has judicially made them reluctant to usurp the decision-making powers that the legislature has delegated to the administration.”

- [31] Although a court should be slow to assume a discretion which has by statute been entrusted to a tribunal or a functionary, it can and should do so, where the end result is a foregone conclusion, where a further delay would cause unjustifiable prejudice or where the original decision-maker has exhibited bias or incompetence and lastly where the court is as well qualified as the original authority to make the decision.

See also: Johannesburg City Council v Administrator Transvaal 1969(2) SA 72 (T).

- [32] In the present instance however, the “*correction*” is only to the effect that a disciplinary inquiry should be held. The “*correction*” would therefore not lead to a final determination regarding the conduct of the Second Respondent and/or the unprofessionalism thereof. In view of the substance of the Applicant’s claims and the nature of his complaint as already referred to above, I am of the view that in the present circumstances such a correction is warranted and to decline to do so, would lead to an unnecessary delay which would only cause prejudice to the parties. It is in the interest of all that a proper consideration and finality be obtained as soon as possible.

STANDING:

[33] In the last instance, Mr Molele argued on behalf of the First Respondent that the application should not be granted due to the fact that the Applicant lacks the necessary *locus standi*. This is based on the argument that the access between the Applicant and Peter has subsequently been regularised and that a disciplinary enquiry or even any subsequent sanction which may be imposed on the Second Respondent will have no real effect on the Applicant or his rights of access.

[34] In a counter to the aforesaid argument I was, *inter alia* referred to the wording of Section 6(1) of PAJA which provides that “*any person*” may institute review proceedings of administrative action.

[35] In my view it must be clear that the Applicant was an affected party at the time when he lodged the complaint and clearly remained so affected at the time when the matter was dealt with by the CPI. It is not clear at which stage the contact rights became “*regularised*”. Apart from having been an affected party at the time, the Applicant remained an aggrieved party as long as the effect of the Second Respondent’s report had an impact on the limitation of his rights of access to Peter. I am of the view that the overcoming or “*correction*”

of the consequences of the report of the Second Respondent about which the Applicant complains, does not result in a situation where, if she had been guilty of unprofessional conduct, he had forfeited the right to have his complaint properly heard or investigated or no longer has such a right.

- [36] More than a century ago, Innes CJ in **Dalrymple v Colonial Treasurer** 1910 TS 372 at 379 stated the following:

“The general rule of our law is that no man can sue in respect of a wrongful act unless it constitutes the breach of a duty owed to him by the wrongdoer or unless it causes him some damage in law... and the rule applies to wrongful acts which affect the public as well as to torts committed against private individuals.”

- [37] In my view this comment is still applicable and, if there had been a wrongful act committed, the fact that it is now part of history, does not detract from the Applicant’s right to have that wrongful act properly investigated and adjudicated upon by the statutory body empowered to do so.

CONCLUSION:

[38] In the premises I find that the Applicant has established grounds entitling him to an order in terms of Sections 8(1)(c), 8(1)(c)(ii)(aa) as well as 8(1)(f) of PAJA.

ORDER:

[39] Accordingly I make the following order:

1. The decision of the First Respondent's Registrar's Committee on Professional Conduct ("RCPC") dated 16 May 2012 whereby it resolved that no evidence of unprofessional behaviour or unethical conduct of the Second Respondent could be found and whereby the Applicant's complaint was not referred to a disciplinary enquiry is hereby set aside.
2. The decision of the First Respondent's Committee for Preliminary Inquiry ("CPI") on 22 and 23 November 2014 to uphold the decision of the First Respondent's Registrar's Committee on Professional Conduct ("RCPC") on 16 May 2012 in respect of the Applicant's complaint and failure to refer the Applicant's complaint against the Second

Respondent for a disciplinary inquiry is set aside and replaced with the following:

"In terms of Regulation 7(5) of the Regulations regarding the Conducting of Inquiries into Alleged Unprofessional Conduct R917 promulgated on 27 June 2003 in Government Gazette No. 25109, the complaint by Brian Bader against Leonie Henig is referred for a disciplinary inquiry in terms of Regulation 16."

3. The First Respondent is ordered to pay the costs of the application.



N DAVIS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION
PRETORIA