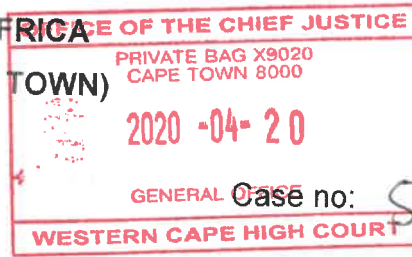


IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)



In the matter between:

CAPE TOWN ATTORNEYS ASSOCIATION	First Applicant
TYGERBERG ATTORNEYS ASSOCIATION	Second Applicant
COASTAL AND WINELANDS ATTORNEYS ASSOCIATION	Third Applicant

and

THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	First Respondent
THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICES	Second respondent

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE THAT the abovenamed Applicants will make application to the above Honourable Court on Thursday the 23rd day of April 2020 at 10h00 or so soon thereafter as counsel may be heard for an order in the following terms:

1. that the rules relating to time limits and forms be dispensed with and that this application be heard as a matter of urgency in terms of Rule 6(12) and/or on the practice directives issued by the Judge President;
2. that the service of this application upon the First and Second Respondent c/o The State Attorney Cape Town Head of Office/ Acting Head of Office: Mr M Biko by email at MBiko@justice.gov.za is authorised;
3. that it is declared that legal practitioners are entitled to obtain a permit authorising the performance by them of essential legal services as contemplated in paragraph B. 16 of Annexure B to the Regulations promulgated by the First Respondent in Government Gazette No. 398 on 25 March 2020 ("the Regulations"), in the manner contemplated in paragraphs 11B (2) and (3), read with form 1 to Annexure C, of the Regulations;
4. that only in the event that this honourable Court deems it necessary for the relief referred to in paragraph 3 above to be granted, reviewing and setting aside the definition of "head of institution" and paragraphs 9 and 10 of the directions issued by the second Respondent on 31 March 2020 in Government Gazette No. 43191;
5. that the Respondents are liable for the Applicants costs, jointly and severally, the one paying the other to be absolved, only in the event of them opposing this application;
6. Further and/or alternative relief.

TAKE NOTICE FURTHER that the affidavit of CLIVE SINCLAIR HENDRICKS annexed hereto will be used in support of this application.

TAKE NOTICE FURTHER that the Applicants has appointed the offices of BISSET BOEHMKE MCBLAINE, 45 Buitengracht Street, Cape Town as the address at which it will accept notice and service of all process in these proceedings and that such service shall be effected by email to the address: s.koen@bissets.com

TAKE NOTICE FURTHER that if you intend opposing this application you are required:

- (a) to notify the Applicant's attorney by email on or before 17h00 on **Monday 20 April 2020**;
- (b) to deliver your answering affidavits, if any, on or before 17h00 on **Tuesday 21 April 2020**;
- (c) the Applicant shall deliver its replying affidavits, if any, on or before 12h00 on **Wednesday 22 April 2020**..

KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING ACCORDINGLY.

DATED AT CAPE TOWN THIS 19th day of April 2020.

BISSET BOEHMKE MCBLAIN
Applicants Attorneys
45 Buitengracht Street
Cape Town

per:



Stephen Koen

s.koen@bissets.com

Cellphone 082 3332 707

TO: THE REGISTRAR

High Court

Cape Town

AND TO: THE FIRST AND SECOND RESPONDENTS

c/o The State Attorney Cape Town

Head of Office/ Acting Head of Office: Mr M Biko

and Mr L Ngwenya

Email: MBiko@justice.gov.za

Email: LNgwenya@justice.gov.za

AND TO: THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Provincial Director Western Cape Office

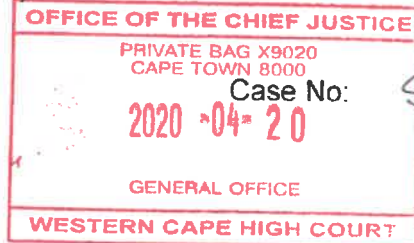
Mr Frank Dorey

Email: directorwc@lpc.org.za

Email: frankd@lpc.org.za

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

In the matter between:



CAPE TOWN ATTORNEYS ASSOCIATION

First Applicant

TYGERBERG ATTORNEYS ASSOCIATION

Second Applicant

COASTAL AND WINELANDS

ATTORNEYS ASSOCIATION

Third Applicant

and

THE MINISTER OF COOPERATIVE GOVERNANCE

First Respondent

AND TRADITIONAL AFFAIRS

THE MINISTER OF JUSTICE

AND CORRECTIONAL SERVICES

Second Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

CLIVE SINCLAIR HENDRICKS

do hereby state under oath as follows:

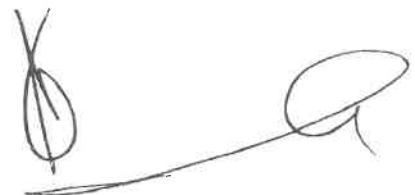
1. I am the Chairperson of the First Applicant in this matter.
2. I am authorised by the First, Second and Third Applicants to make this application and to sign this affidavit and any further affidavit(s) and/or document(s) pursuant thereto on behalf of the Applicants. An affidavit confirming the content of this affidavit will be deposed to by the Chairperson of the Second and Third Applicants and filed with this application.
3. Save where otherwise specifically or by implication provided, or where the content or context otherwise requires, the facts and allegations set out in this affidavit are within my own knowledge and belief. Where I make legal submissions, I do so on the advice of the Applicants lawyers and where I refer to information conveyed to me by others, I believe such information to be correct.

The Applicants

4. The First Applicant is a voluntary association of legal practitioners who are enrolled, and who practice, as attorneys. Its members, who are approximately 1266 in number, practise within the territorial area of jurisdiction of the Cape Town Magistrates Court. It has amongst its objects the promotion of the common interests of its members and the responsibility of dealing with legislation which pertains to its members.



5. The Second Applicant is also a voluntary association of legal practitioners who are enrolled, and who practice, as attorneys. Its members, who are approximately 600 in number, operate throughout the territory of the Western Cape Province, but focus on the areas encompassing the jurisdictions of the Goodwood, Bellville and Kuils River Magistrates' Courts. Its objects are, *inter alia*, to uphold, safeguard and advance the rule of law, the administration of justice, the Constitution and the laws of the Republic of South Africa, to represent generally the views of its members on a local level.
6. The Third Applicant is the Coastal and Winelands Attorneys Association. It is similarly a voluntary association of legal practitioners who are enrolled, and who practice, as attorneys. Its members, who are approximately 450 in number, practise in the Magisterial districts of Paarl, Stellenbosch (including Franschoek), Wellington, Somerset West, Strand, Grabouw, Caledon, Hermanus and Bredasdorp. Its objects are, *inter alia*, to promote the interests of its members, to consider and deal with legislation, and to do all things necessary to achieve its objects.
7. I do not attach copies of the Constitutions of the Applicants in order not unduly to burden the record. Should the Respondents wish to see them copies will be made available to their attorney. Copies thereof will also be made available to the Court.

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The Respondents

8. The First Respondent is the Minister of Co-operative Governance and Traditional Affairs, care of the State Attorney, 22 Long Street, Cape Town.
9. The Second Respondent is the Minister of Justice and Correctional Services, care of the State Attorney, 22 Long Street, Cape Town.
10. The Respondents have authorized the State Attorney, Cape Town, in the persons of Mr Ngwenya and Ms Marsh-Scott, to accept service of this application on their behalf. An email to this effect was received by our attorney from Mr Biko, the Acting Office Head of the State Attorney's Office in Cape Town on 17 April 2020. It read as follows:

*"From: Biko Mongezi <MBiko@justice.gov.za>
To: Stephen Koen <skoen@bissets.com>Cc: Ngwenya Lawrence <LNgwenya@justice.gov.za>
Date: 04/17/2020 18:26
Subject: RE: **SPAM** RE: Essential Service Permits for Legal practitioners*

Good Evening Sir,

- 1. Please accepted my apology for the delayed response as I was still marshalling my forces as in establishing the attorneys on our urgent roster.*
- 2. I have just been advised that Mr Ngwenya and Ms Marsh-Scott are available to run with the matter and to accept service for our clients that will be cited on your clients' urgent application.*

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3. *I have purposely copied Mr Ngwenya as he is working closely with Ms Marsh-Scott. He can be contacted at 0846740530. You may as well copy me in your future emails just to keep me in the loop.*
4. *I trust that you will find the above in order and be guided accordingly.*

Regards,

*Mongezi R Biko
Acting Office Head
Office of the State Attorney
22 Long Street, Cape Town
Tel: +27 21441 9200/01
Cell: +27 84 571 0701
Mail to: mbiko@justice.gov.za*

The Legislative Framework

11. A bundle of the legislation to which I will refer in this affidavit will be prepared and made available to this honourable Court prior to the hearing of this application. For this reason, I do not attach copies of the Acts, regulations and directions to which I will hereunder refer. I do however, quote in what follows those parts which are relevant.
12. On 15 March 2020, acting in terms of section 27(1) of the Disaster Management Act, 2003 ("the DMA"), the First Respondent declared the COVID-19 pandemic to be a national state of disaster. The declaration was promulgated in Government Gazette No. 43096 of that date.
13. On 18 March 2020, acting in terms of section 27(2) of the DMA, the First Respondent promulgated regulations which she said were "*necessary to prevent an escalation of the disaster or to alleviate, contain and minimise*" its effects. ("18

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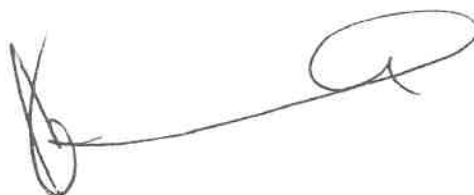
March regulations"). These regulations were promulgated in Government Gazette No. 43107 of that date. These are the "parent" regulations. They have been expanded upon by way of various amendments as circumstances pertaining to the COVID-19 state of disaster have developed.

14. Paragraph 10 of the 18 March regulations is relevant. Amongst other things it provided that:

"10 (2) The Minister of Justice and Correctional Services may—

- (a) issue directions to address, prevent and combat the spread of COVID-19 in all Correctional Centres and Remand Detention Facilities in the Republic of South Africa;*
- (b) after consultation with the Chief Justice, where appropriate, issue directions to address, prevent and combat the spread of COVID-19 in all courts and court precincts in the Republic of South Africa; and*
- (c) vary the directions referred to in paragraphs (a) and (b) as the circumstances require."*

15. On 22 March 2020 President Ramaphosa announced on national television that a 21 day "lockdown", under which the movement of persons would be severely restricted, would commence at on 27 March 2020. This was necessary in order to deal with the COVID-19 disaster. His announcement was followed by an amendment, on 25 March 2020, to the 18 March regulations. This amendment was necessary to give lawful effect to the implementation of the lockdown. The 25 March 2020 amendment was promulgated in Government Gazette No. 43148 of that date. In what follows I shall refer to it as the "25 March regulations".

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16. All of the provisions of the 25 March 2020 amendment are not relevant to the issue before the Court in this case. I intend therefore only to outline those aspects of the amendment which have a direct bearing on this matter.
17. Firstly, a regulation 11 was inserted. Regulation 11B (1)(a) provided that:
- “for the period of the lockdown every person is confined to his or her place of residence, unless strictly for the purpose of performing an essential service, obtaining an essential good or service, collecting a social grant, or seeking emergency, life-saving or chronic medication”.*
18. “Essential services” were defined as including those described “as listed in paragraph B of Annexure B” to the 25 March regulations.
19. Item 16 of paragraph B to Annexure B provided that “essential services” include “services related to the essential functioning of the courts, judicial officers, the Master of the High Court, sheriffs and legal practitioners required for those services”.
20. The 25 March regulations contemplated that some degree of human movement would be necessary. Thus, if it was “strictly” necessary, a person was permitted to leave their place of residence in order to obtain an essential good or service or to perform an essential service.
21. The 25 March regulations went on to provide a mechanism for the obtaining of permission to perform an essential service in the form of a permit.

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22. Regulation 11B(2) provided as follows:

"The head of an institution must determine essential services to be performed by his or her institution and must determine the essential staff required to perform those services: Provided that the head of an institution may delegate this function as may be required in line with the complexity and size of the business operation.

23. The "head of an institution" was defined in regulation 11B(1) to be:

"the accounting officer of a public institution and the chief executive officer or the equivalent of a chief executive officer of a private institution".

24. Regulation 11B(1) defined an "institution" to be:

"any public or private institution engaged in the supply or distribution of an essential good or service".

25. Regulation 11B(3) provided, as follows, for the designation in writing of persons performing essential services:

"Persons performing essential services as determined in sub-regulation (2), must be duly designated in writing by the head of an institution, on a form that corresponds substantially with Form 1 in Annexure C".

26. Form 1 in Annexure C is headed "Permit to perform essential service". It contains information identifying the person concerned and states that persons must at all times carry identification with them failing which they would have to return to their place of residence during lockdown.

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27. I am aware that a large number of these permits were issued by persons falling within the definition of "*head of an institution*" to legal practitioners who were, or might have to, perform essential legal services during the period of the lockdown. These permits were issued without difficulty or complication to all persons who needed them in order lawfully to leave their place of residence to perform an essential service. These persons included all of those listed in paragraph B of Annexure B to the 25 March regulations such as health workers; grocery and spaza shop staff; necessary municipal workers; newspaper, broadcasting and telecommunication workers; and banking and insurance personnel.
28. On 26 March 2020, the Second Respondent issued a set of directions which were promulgated in Government Gazette No. 43167. He did so in terms of section 27(2) of the DMA, under which he was authorised by the First Respondent to issue directions, read with regulation 10(2) of the 18 March regulations referred to above. Five days later, on 31 March 2020, the Second Respondent withdrew those directions and replaced them with another set of directions. These were promulgated on 31 March 2020 in Government Gazette No. 43191 of that date ("the 31 March directions").
29. Directions 9 and 10 of the 31 March directions are relevant to this matter. It is necessary to quote them in full:

"9. Travel by officers of court during lockdown

9.1 Legal Practitioners:

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- (a) *Legal practitioners who are engaged in litigation processes during the lockdown must seek a permit authorising them to do so from the Provincial Director of the relevant Provincial Legal Council.*
 - (b) *A permit so issued constitutes a permit to perform an essential service referred to in Annexure B item B16 to the Regulations and may be issued only to practicing legal practitioners as defined in sections 24 and 30 of the Legal Practice Act.*
 - (c) *A legal practitioner may only be issued with the abovementioned permit if he or she is appearing in a matter enrolled for hearing and is classified as urgent in terms of these Directions.*
 - (d) *A legal practitioner may only utilise a permit in conjunction with a form of identification referred to in paragraph 9.2(b)(ii). Such identification includes confirmation by the relevant Provincial Director that the practitioner is on the Council's list of practicing legal practitioners.*
 - (e) *The identification referred to in subparagraph (d) must be presented when the permit is used, failing which the practitioner seeking to rely on the permit must return to her or his residence in accordance with Regulation 1B(1)(a)(i) for the duration of the lockdown.*
- 9.2 (a) *Enforcement officers must allow Judges, Magistrates and sheriffs to commute during the lockdown for purposes of performing urgent and essential services, upon presentation of proof of appointment to such office.*

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(b) *A Legal practitioner who is unable to obtain a permit referred to in paragraph 9.1(b) must be allowed to commute between his or her place of residence and the court at which he or she is required to appear for purposes of attending to urgent and essential matters, upon presentation of the following documents:*

- (i) *An original or certified copy of the practitioner's admission certificate;*
- (ii) *proof of identification; and*
- (iii) *confirmation from the registrar or clerk of the relevant court that the matter is on the court roll for that particular day, that the practitioner is on record as the official legal representative in the particular matter and that the matter is urgent or essential.*

(c) *A legal practitioner may only be allowed to commute from his or her place of residence to a police station for purposes of arranging for police bail if the investigating officer of the case concerned confirms that such arrangements for police bail have been made, and the provisions of paragraph 9.1(b) or 9.2 (b)(i) and (ii) above, are complied with.*

(d) *Sheriffs must be allowed to commute between their places of residence and the area of service of process at which they are required to appear for purposes of attending to urgent and essential matters, upon presentation of the following documents:*

- (i) *an original or certified copy of their appointment certificate;*
- (ii) *proof of identification; and*

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(iii) *original document/s to be served.*

10. *The issuing of certificates to perform essential service In addition to the officers of the court mentioned in paragraph 9 above, other persons who are required to perform essential services must, at all times, have in their possession a certificate to perform an essential service, as issued by an authorised person”.*

30. It is also important to note that the Second Respondent, in the directions issued on 31 March 2020, also defined the expression “*head of institution*”. However, he did so as follows:

“head of institution' means the head of an institution defined in regulation 1 of the Regulations, and for the purposes of these Directions means the Director of a Provincial Legal Council established in terms of section 23 of the Legal Practice Act, or her or his delegate as the case may be.”

(underlining supplied).

Applicant's Main Submissions:

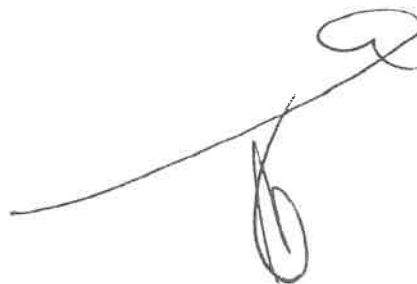
Two regimes for issuing essential service permits

31. The 25 March regulations, insofar as they are relevant to this matter, have not been withdrawn or amended. They accordingly stand. It is therefore apparent that the directions issued by the Second Respondent prescribe an additional, and considerably more restrictive, regime for the obtaining of essential services permits by legal practitioners. There are now two laws which regulate the obtaining by legal practitioners of essential services permits, and they are different

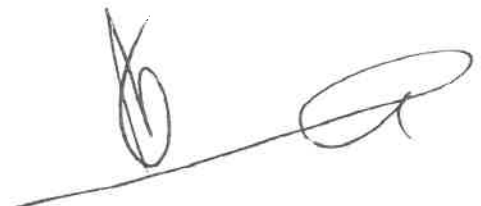


in a number of material respects. I will deal with the two main differences hereunder.

32. Firstly, the 31 March directions provide that legal practitioners must obtain a permit from the Provincial Director of the Legal Practice Council in order to render an essential legal service. The 25 March regulation requires that legal practitioners be designated by the head of an institution and issued with a permit by that person. "*Head of Institution*" is defined in the 25 March regulations in a broad and elastic way, as it must be, because it is intended to cater for a wide range of situations. There is no such flexibility in the 31 March directions, as "head of institution" means the Provincial Director of the Legal Practice Council.
33. Secondly, under the 31 March directions a permit can only be issued in regard to an urgent matter that has actually been enrolled for hearing. No such restriction is contained in the 25 March regulations.
34. Thirdly, direction 9(2)(b) provides for a regime not replicated in the 18 March regulations. This requires being in possession of an admission certificate, or a certified copy thereof. I point out that because the 31 March directions were issued after the lockdown commenced, and because many legal practitioners do not have their original certificates of admission with them at their place of residence, or if they do, cannot lawfully travel to have a certified copy made, it is impossible for them to comply with direction 9(2)(b).

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35. What is even more confounding is that the provisions of paragraph 10 of the 31 March directions provide, in effect, that anyone other than an officer of the court, who requires an essential services permit for the purpose of performing essential legal services should obtain one in the manner provided for in the 18 March regulation. Thus a secretary who is required to type an urgent application, or make copies for service and the court, or a candidate attorney who must represent an accused in a court, are not burdened with the difficulties which confront legal practitioners.
36. The principal difficulty which arises is that the 31 March directions do not take account of the fact that it is often necessary to undertake a considerable amount of work in relation to a matter, before it is enrolled for hearing. It is necessary to consult with a client and witnesses, obtain documentary or photographic evidence, draft affidavits, have them printed, have them commissioned before a commissioner of oaths, make copies for service, counsel and the Court, and travel to the Court to have the papers issued. Only after this has been done can it be said that the matter is enrolled for hearing. Furthermore, in the lower courts matters are enrolled for first appearances on the day of such appearance. Legal Practitioners rendering essential services cannot obtain confirmation of enrolment before the matter is actually called.
37. What results is a Catch-22 situation. Even if a matter is pressingly urgent, and even if it has grave ramifications for a client, a legal practitioner cannot have it enrolled, which is necessary before he or she can be issued with a permit, because one cannot do the work necessary to have it enrolled without being in

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possession of a permit.

38. The restrictions imposed upon legal practitioners are not mirrored in any other sector to the best of my knowledge. Grocer shop workers, bank employees, insurance clerks, prosecutors and any other person other than a legal practitioner who renders an essential service are not confronted with practically insurmountable difficulties in obtaining a permit. This notwithstanding that a number of provisions have been enacted which ensure that the protection of Court staff and legal practitioners through effective distancing and by the restriction of the numbers of persons who may attend a court hearing.

The Second Respondent acted in a manner not rationally connected to the purpose of the "parent" regulations:

39. There are also legal difficulties with the promulgation of the 31 March directions. If they do not operate as a parallel regime for the obtaining of permits the directions, in effect, amount to an amendment of the 25 March regulations. There is nothing in the legislation which allows this. It is respectfully submitted, in any event, that the provisions of subordinate directions, can never operate to nullify or trump the provisions of a "parent" regulation.
40. On this basis it is respectfully submitted that in exercising the power to issue directions conferred upon him by paragraph 10 of the 18 March regulations the Second Respondent acted under a delegation of power which was not authorised by the empowering provision, being the 18 March regulations. This is a basis for it to be set aside under section 6(2)(a)(ii) and 6(2)(e)(i) of the Promotion of

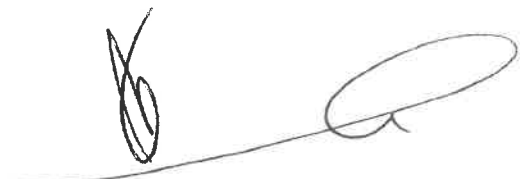
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Administrative Justice Act, 3 of 2000.

41. Moreover, in exercising the power conferred upon him by paragraph 10 of the 18 March regulations, the Second Respondent acted in a manner not rationally connected to the purpose for which it was taken, or the purpose of the empowering provision, being the 18 March regulations. He did not need to prescribe a regime for the issuing of permits to legal practitioners, as this has already been done, and his actions were irrational for the same reason, and also in view of the problems with the 31 March directions I have described above.

Urgency

42. It goes without saying that the restrictions referred to above make it significantly more difficult, and in some cases impossible, for members of the public to exercise their right of access to the Courts, guaranteed by section 34 of the Constitution. They cannot appear in person, because the regulations and directions do not allow them to, and they cannot engage legal practitioners to assist them, because of the difficulties outlined above.
43. These problems are often compounded. The most disadvantaged and vulnerable in our society do not have access to electronic forms of communication. It is simply impossible to render legal services to them, no matter how urgent their need may be, because one cannot obtain a permit until the matter is actually enrolled for hearing. It has been widely reported, and can be accepted, that in certain instances members of the public, often the most disadvantaged and vulnerable, have been the victims of unlawful and excessive enforcement of the lockdown by

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the authorities. In practice, they have no access to the law and cannot exercise their rights. They are helpless. For these reasons, it is respectfully submitted, the matter is self-evidently urgent.

The Issue

44. On account of the manifest uncertainty brought about by parallel contradictory regimes for the obtaining by legal practitioners of essential services permits I instructed the Applicants attorney to address an email to the First and Second Respondent outlining the difficulties and asking for confirmation that they agree with the position that essential service permits can validly be obtained either under the 25 March regulations or under the directions issued on 31 March. I quote the email in full:

From: Stephen Koen <skoen@bissets.com>

*To: ZaneNdlovu@justice.gov.za, Bsarele@justice.gov.za,
jjeffery@justice.gov.za, info@cogta.gov.za, MandisaMB@cogta.gov.za,
PamelaS@cogta.gov.za*

Date: 04/16/2020 17:45

Subject: Essential Service Permits for Legal practitioners

Dear Minister Lamola and Minister Dlamini Zuma,

We act for the Cape Town Attorneys Association ("the CTAA"). The CTAA is a voluntary association of attorneys who practise within the territorial area of jurisdiction of the Cape Town Magistrates Court which has amongst its objects the promotion of the common interests of its members and the responsibility of dealing with legislation which pertains to its members.

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The CTAA's members render "essential services" as defined in the regulations promulgated by the Minister of Cooperative Governance and Traditional Affairs on 25 March 2020 ("the 25 March regulations"). The 25 March regulations empower the "head of an institution" to "determine the essential staff required" to perform essential services (regulation 11B(2)) and issue to those staff a permit which entitles them to leave their place of residence in order to perform an essential service. The "head of an institution" was defined as meaning "the accounting officer of a public institution and the chief executive officer or the equivalent of a chief executive officer of a private institution". An "institution" was defined to be any public or private institution engaged in the supply of an "essential service".

At the time the 25 March regulations were promulgated the CTAA took the view that its members were entitled to be issued with an essential services permit under the 25 March regulations. In fact, a number of such permits were issued to its members in terms of the 25 March regulations. The 25 March regulations have not been amended or withdrawn insofar as they pertain to the issue of essential service permits. Accordingly they stand.

Acting under the authority given to Minister Lamola in the 25 March regulations, directions were promulgated by Minister Lamola on 26 March 2020, which were subsequently withdrawn and replaced by directions promulgated on 31 March 2020 ("the 31 March directions"). In these directions the definition of the "head of an institution" read differently to that provided for in the 25 March regulation. It was stated that for the purposes of the directions, the "head of an institution" was the Provincial Director of the Legal Practice Council. The directions promulgated by Minister Lamola also stand.

The result is that there is confusion as to whether or not for the purpose of rendering essential legal services "essential staff" should have a permit

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issued by the "head an an institution" as defined in the 25 March regulations, or by the "head of an institution" as defined in the 31 March directions, or whether it is permissible to obtain a permit from either. Our client takes the view that it is permissible to obtain a permit either under the 25 March regulations, or under the 31 March directions.

The issue is particularly pressing because members of the CTAA, and undoubtedly other legal practitioners, cannot obtain a permit under the 31 March directions if the matter they are attending to has not been enrolled for hearing. In practice this presents insurmountable difficulties as it is often not possible to obtain instructions and give advice about urgent matters without consulting with a client, obtaining all relevant evidential material, and drafting papers. As you will know this must be done prior to papers being issued and the matter can only be enrolled for hearing after all this work has been done. Members of the public are thus effectively prevented from accessing the courts.

We are instructed to request that you please let us have your confirmation that you agree with the CTAA's position that essential service permits can validly be obtained either under the 25 March regulations or under the directions issued on 31 March.

As the matter is extremely urgent we are instructed to ask you please to let us have your response to this email by close of business tomorrow, 17 April 2020. If no response is received our client will assume that you do not agree with its position, and in this event we hold instructions urgently to apply to the Western Cape High Court for the necessary declaratory and other appropriate relief.

Yours sincerely

*Stephen Koen
Bisset Boehmke McBlain
45 Buitengracht Street
Cape Town; 0823332707"*

A handwritten signature in black ink, appearing to be 'S. Koen', written over a horizontal line.

45. A reply to the email was forthcoming on 17 April 2020 at 17h03. Again, I quote it in full:

"From: Mandisa Mbele <mandisa29@gmail.com>

To: Stephen Koen <skoen@bissets.com>

Cc: ZaneNdlovu@justice.gov.za <ZaneNdlovu@justice.gov.za>, Bsarele@justice.gov.za <Bsarele@justice.gov.za>, jjeffery@justice.gov.za <jjeffery@justice.gov.za>, info <info@cogta.gov.za>, Pamela Salusalu <PamelaS@cogta.gov.za>

Date: 04/17/2020 17:03

*Subject: Re: **Essential Service Permits for Legal practitioners***

Good day colleague,

Kindly get further clarity from the head of the Disaster Management Dr Tau +27 (82) 052-9311 or +27 (82) 884-5541

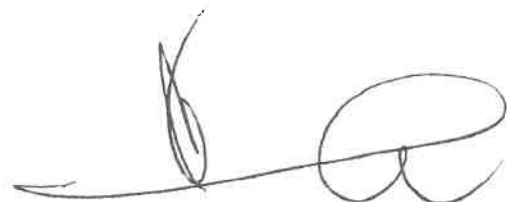
Best regards,

Mandisa Mbele

Sent from my iPhone"

46. Telephonic attempts by our attorney to telephone Dr Tau have proved unsuccessful. A call to the second cell number furnished was answered, but the person who answered it was in a meeting and could not talk. An sms message was sent to the latter number as a follow up stating:

"My name is Stephen Koen. I am an attorney and wrote to the Ministers of Justice and COGTA about the permit regime for legal practitioners. Your number was given to me in an email from Mandisa Mbele. Please let me know when I can call you. Thanks."


A handwritten signature in black ink, appearing to be 'S. Koen', written in a cursive style.

There has been no reply to the sms, and a further call made at 12h58 on 18 April 2020 was not answered. An affidavit confirming this by Mr Koen will be filed with this application, or handed to this honourable Court at the hearing of the matter.

47. In view of the foregoing I respectfully submit that the Applicants must conclude that there will not be a meaningful response to the email of 16 April 2020 referred to above, and that the Respondents do not confirm that the Applicants can avail themselves of March 18 regulations in order to obtain essential services permits.

The Legal Practice Council

48. The LPC does not, in my respectful submission, have a direct and substantial interest in the subject matter of this application, nor does it have a legal interest which would be prejudicially affected by the judgment of this honourable Court. This notwithstanding, a copy of this application will be served on the Legal Practice Council, by sending it electronically to the Provincial Director of its Western Cape office.
49. For these reasons I respectfully submit that it is not required that the LPC be formally joined as a Respondent in these proceedings.
50. I am aware, however, that the second Respondent, on or about 7 April 2020, sought comment from a number of professional bodies concerning the impact of the directions on the legal profession.

A handwritten signature in black ink, consisting of a stylized first letter and a long, sweeping horizontal line extending to the right.

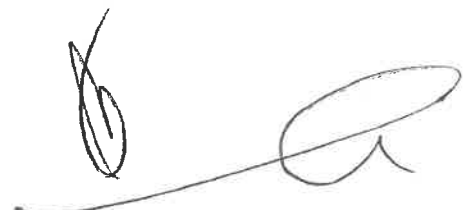
51. I have seen a copy of the response of the LPC to his request for input dated 16 April 2020. I shall not burden the record with everything which is said in the letter as it is not relevant to this application. However, the LPC did state, at paragraph 17.3 of its letter, the following:

“The directions regarding permits should be amended to allow the senior partner in a law firm or the head of a Bar Council to be authorised as the head of the institution to issue the permit to the legal practitioner as required by the lockdown regulations”.

52. The letter was signed by the Chairperson of the LPC, H. K. Matolo-Dlepu. It is apparent therefore that the LPC also thinks that the permit regime for legal practitioners should be that set out in the 25 March regulations.
53. I should add that the Applicants were aware that the Second Respondent had called for submissions concerning the effect of the directions and was hopeful that an amendment addressing the issue in this application would be forthcoming so that proceedings would not be necessary. This however, has not transpired and has rendered it necessary now that the Court be approached urgently.

Substantive Relief Sought

54. The Applicants contend that the 18 March regulations issued by the First Respondent contain a legislative regime which entitles legal practitioners to obtain essential services permits from the head of an institution as defined, and in the manner prescribed, in those regulations. Those regulations have not been withdrawn and stand. The primary relief sought by the Applicants is thus an order

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declaring that this is so, as recorded in paragraph 3 of the Notice of Motion to which this affidavit is attached.


55. In the event that the Applicants persuade this honourable Court that the relief sought in paragraph 3 of the Notice of Motion should be granted it is unnecessary, it is respectfully submitted, for the relief sought in paragraph 4 of the Notice of Motion to be granted. The two permit regimes can exist in parallel, notwithstanding the shortcomings in the permit regime legislated for by the Second Respondent, as outlined above.
56. In the event, however, that this honourable Court concludes that it cannot lawfully grant that order without setting aside the offending portions of the 31 March directions, then the Applicants contend that grounds have been shown to exist for those parts of the 31 March directions which govern the obtaining of essential services permits to be reviewed and set aside. In this event the Applicant respectfully requests that an order in terms of both paragraphs 3 and 4 of the Notice of Motion be made.

Costs

57. The Applicants deeply appreciate the gravity of the disaster presented by the COVID-19 pandemic. They realise that it was necessary for the First and Second Respondents to react promptly and in great haste, and unreservedly accept that both Respondents have acted for proper motives, and in what they sincerely believe is in the best interest of the country.

A handwritten signature in black ink, consisting of a stylized, cursive script. The signature is written on a horizontal line that extends across the width of the page.

58. For this reasons costs are sought against the First and Second Respondents, jointly and severally, only in the event that this application is opposed by them.



CLIVE SINCLAIR HENDRICKS

I certify that the abovementioned appeared before me and acknowledged to me that he knows and understands the contents of the foregoing affidavit which was signed and sworn to at the undermentioned address on this 19th day of APRIL 2020 in accordance with the provisions of Regulation R1258 dated 21 July 1972 as amended by Regulation R1648 dated 19 August 1977 and further amended by Regulation R1428 dated 11 July 1980 and Regulation R774 dated 23 April 1982.

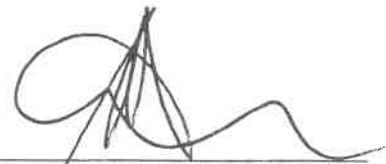
Before me

Herman Bester Ref No 9/1/8/2
Commissioner of Oaths
First Floor, Cascades Terraces
Waterfront Road
Tyger Waterfront
BELLVILLE

TEL: 021 914 8290
FAX: 086 750 3910

SIGN: _____

DATE: 19/4/2020



COMMISSIONER OF OATHS

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case no:

In the matter between:

THE CAPE TOWN ATTORNEYS ASSOCIATION	First Applicant
THE TYGERBERG ATTORNEYS ASSOCIATION	Second Applicant
THE COASTAL AND WINELANDS ATTORNEYS ASSOCIATION	Third Applicant

and

THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	First Respondent
THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICES	Second Respondent

CONFIRMATORY AFFIDAVIT

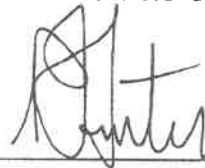
I, the undersigned,

PETER JOHN TRUTER



State under oath as follows:

1. I am an admitted attorney of this Honourable Court practising as a director at the firm Marias Muller Hendriks Incorporated at First Floor, Tyger Forum A, 53 Willie van Schoor Avenue, Tyger Valley.
2. I am also the Chairperson of the Tygerberg Attorneys Association, the Second Applicant in this application.
3. The facts contained in this affidavit are true and correct and within my personal knowledge.
4. I am duly authorised to make this affidavit on behalf of the Second Applicant.
5. I have read the founding affidavit of Clive Sinclair Hendricks in this application and confirm its contents.
6. The Second Applicant respectfully requests this Honourable Court to grant an order as set out in the Notice of Motion.



PETER JOHN TRUTER

I certify that the abovementioned appeared before me and acknowledged to me that he knows and understands the contents of the foregoing affidavit which was signed and sworn to at the undermentioned address on this 19th day of April 2020 in accordance with the provisions of Regulation R1258 dated 21 July 1972 as amended by Regulation R1648 dated 19 August 1977 and further amended by Regulation R1428 dated 11 July 1980 and Regulation R774 dated 23 April 1982.

Before me

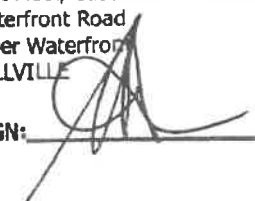


COMMISSIONER OF OATHS

Herman Bester Ref No 9/1/8/2
Commissioner of Oaths
First Floor, Cascades Terraces
Waterfront Road
Tyger Waterfront
BELLVILLE

TEL: 021 914 8290
FAX: 086 750 3910

SIGN:



DATE:

19/4/2020

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case no: _____

In the matter between:

THE CAPE TOWN ATTORNEYS ASSOCIATION

First Applicant

THE TYGERBERG ATTORNEYS ASSOCIATION

Second Applicant

THE COASTAL AND WINELANDS

ATTORNEYS ASSOCIATION

Third Applicant

and

THE MINISTER OF COOPERATIVE GOVERNANCE

First Respondent

AND TRADITIONAL AFFAIRS

THE MINISTER OF JUSTICE

AND CORRECTIONAL SERVICES

Second Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

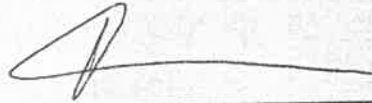
SONJA LABUSCHAGNE

State under oath as follows:

1. I am an attorney of this honourable Court practising as a director in the firm Barnard Labuschagne Incorporated trading as Ettienne Barnard Attorneys at 5 Audas Street, Audas Estate, Somerset West.


K.M.

2. I am also the Chairperson of the Coastal Winelands Attorneys Association, the Third Applicant in this application.
3. The facts contained in this affidavit are true and correct and within my knowledge.
4. I am authorised to make this application on behalf of the Third Applicant.
5. I have read the founding affidavit of Clive Sinclair Hendriks in this application and confirm its content.
6. The Third Applicant respectfully requests this Honourable Court to make an order as set out in the Notice of Motion.



SONJA LABUSCHAGNE

I certify that the abovementioned appeared before me and acknowledged to me that he knows and understands the contents of the foregoing affidavit which was signed and sworn to at the undermentioned address on this 19 day of April 2020 in accordance with the provisions of Regulation R1258 dated 21 July 1972 as amended by Regulation R1648 dated 19 August 1977 and further amended by Regulation R1428 dated 11 July 1980 and Regulation R774 dated 23 April 1982.

Before me



CST
7215103-0
K. MANANA

COMMISSIONER OF OATH

Kheululwa Manana

Main Road

St West

021 850 13 03

SOUTH AFRICAN POLICE SERVICE VISPOL HEAD
19 APR 2020
SOMERSET WEST
AMAPOLISA OMZANTSHI AFRICA

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case no:

In the matter between:

THE CAPE TOWN ATTORNEYS ASSOCIATION First Applicant

THE TYGERBERG ATTORNEYS ASSOCIATION Second Applicant

**THE COASTAL AND WINELANDS
ATTORNEYS ASSOCIATION** Third Applicant

and

THE MINISTER OF COOPERATIVE GOVERNANCE First Respondent
AND TRADITIONAL AFFAIRS

THE MINISTER OF JUSTICE
AND CORRECTIONAL SERVICES Second Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

STEPHEN JOHN KOEN



state under oath as follows:

1. I am an attorney of this honourable Court practising as a partner in the firm Bisset Boehmke McBlain, 45 Buitengracht Street, Cape Town.
2. The facts contained in this affidavit are true and correct and within my knowledge.
3. I have read the founding affidavit of Clive Sinclair Hendriks in this application and confirm its content insofar as it refers to me or to conduct on my part.



STEPHEN JOHN KOEN

I certify that the abovementioned appeared before me and acknowledged to me that he knows and understands the contents of the foregoing affidavit which was signed and sworn to at the undermentioned address on this 19 day of April 2020 in accordance with the provisions of Regulation R1258 dated 21 July 1972 as amended by Regulation R1648 dated 19 August 1977 and further amended by Regulation R1428 dated 11 July 1980 and Regulation R774 dated 23 April 1982.

Before me



COMMISSIONER OF OATHS

Certified a true copy of the original:

Date: 19 April 2020

Signature: Jayden Garth Loots

Ex Officio COMMISSIONER OF OATHS (RSA)

CERTIFIED FINANCIAL PLANNER®
Chaiford Wealth Management PTY LTD
Office 204, Vallyland Centre
Recreation Road, Fish Hoek, 7975