IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO.

In the matter between:

P.A. PETER	**First Applicant**
A.P. PETER	**Second Applicant**
M.D. PETER	**Third Applicant**

and

ADV. AVRIL E. POTGIETER SC N.O.	**First Respondent**
CORRINE BERG N.O.	**Second Respondent**
DR. ROB CROSLEY N.O.	**Third Respondent**
NATIONAL HORSE RACING AUTHORITY	**Fourth Respondent**
RIAAN JANSE VAN RENSBURG	**Fifth Respondent**

APPLICANTS' FOUNDING AFFIDAVIT

I, the undersigned,

PAUL ANTHONY PETER,

do hereby make oath and state:

1. I am an adult businessman, registered as an Assistant Trainer to the Second Applicant by the Fourth Respondent, and the First Applicant herein. I am duly authorized to depose to this affidavit on behalf of the Second and Third Applicants. Copies of their Confirmatory Affidavits are attached hereto as **Annexures A** and **B** *respectively.*

2. The facts herein contained are within my own knowledge and belief, and are true and correct.

3. The Honourable Court has jurisdiction to hear this matter as the entire cause of action arose within its jurisdiction *alternatively* it is convenient for the Honorable Court as three of the five Respondents reside *alternatively* carry on business within the jurisdiction of the Honorable Court.

4. The Second Applicant is **ANTHONY PAUL PETER**, an adult male racehorse trainer, registered as such by the Fourth Respondent, and carrying on business at Turffontein Racecourse, Turf Club Street, Johannesburg.

5. The Third Applicant is **MARC DOMINIC PETER**, an adult male stable employee of the Second Applicant, and registered as such by the Fourth Respondent.

6. The First Respondent is **AVRIL POTGIETER SC**, an adult male advocate with his place of business at Victoria Country Club Estate, 170 Peter Brown Drive, 48 Bush

Strike Close (Investec Building).

7. The Second Respondent is **CORINNE BERG**, an adult female legal advisor, with chosen place of service for this application at Cresco, First Floor, 267 West Buildng, West Avenue, Centurion.

8. The Third Respondent is **DR ROB CROSLEY**, an adult male veterinarian, with chosen place of service for this application at 8 Quarry Road, Assegay, Outer West, Kwa-Zulu Natal.

9. The Fourth Respondent is **THE NATIONAL HORSE RACING AUTHORITY**, with its head office situated at Turffontein Racecourse, Turf Club Street, Turffontein, Johannesburg.

10. The Fifth Respondent is **RIAAN JANSE VAN RENSBURG,** an adult male employed by the Fourth Respondent as a Senior Special Investigator, with his place of employment at Turffontein Racecourse, Turf Club Street, Turffontein, Johannesburg.

11. The Fourth Respondent is the authority that promotes and regulates the sport of thoroughbred horseracing in South Africa. Parts of its duties are the licensing of participants, including jockeys, horse trainers, racecourse operators, racehorse owners and horse breeders. As part of its authority, it may, *inter alia,* institute inquiries regarding horseracing and the participants therein.

12. The Second Applicant is a registered horse trainer and licensed as such by the Fourth Respondent. I am also licensed by the Fourth Respondent as an assistant trainer, and employed as such by the Second Applicant.

13. The Third Applicant is a junior employee of the Second Applicant, and licensed by the Fourth Respondent as a "stable employee". As a stable employee, the Third Applicant has very limited authority with regard to his duties.

14. The First, Second and Third Respondents were appointed by the Fourth Respondent as a Disciplinary Board ("*the Board*") to consider and rule on various contraventions of the Fourth Respondent's Rules allegedly committed by the Applicants.

15. This is an Application to, *inter alia*, review and set aside the finding of the Board not to strike out the entire evidence given by the Fifth Respondent during the Inquiry proceedings ("*the Ruling*").

16. The Constitution of the Fourth Respondent is attached hereto as ***Annexure C***. The objectives of the Fourth Respondent stated therein are:

> *"4. OBJECTS*
>
> *The objects of the NATIONAL HORSERACING AUTHORITY shall be:*

4.1 to promote and maintain honourable practice and to eliminate malpractice which may arise in thoroughbred horse racing in SOUTHERN AFRICA;

4.2 to regulate the sport of thoroughbred horse racing in SOUTHERN AFRICA;

4.3 to maintain and publish the General Stud Book;

4.4 to foster, through its regulatory function, the promotion of thoroughbred horse racing in SOUTHERN AFRICA;

4.5 to encourage and improve, through its regulatory function, the breed of the thoroughbred race horse in SOUTHERN AFRICA;

4.6 to promote and foster co-operation and goodwill with recognized thoroughbred racing authorities, Governments and Provincial Governments;

4.7 to render services of whatever nature to racing or other sporting authorities, whether within SOUTHERN AFRICA or elsewhere, and to render services to persons or bodies serving, associated or connected to such authorities."

17. At Section 5 of the Constitution, the Fourth Respondent states that it has, *inter alia*, the following power to carry out its objects:

"5.5 to constitute and appoint INQUIRY BOARDS, APPEAL BOARDS, APPEAL PANELS, INQUIRY REVIEW BOARDS, INQUIRY REVIEW PANELS and the LICENSING BOARD.

5.6 to impose penalties for any breach or contravention of this Constitution or the RULES, including, without limitation, the imposition of a warning off;

.....

5.18 to institute, conduct, defend, compound or abandon any legal proceedings by or against the NATIONAL HORSERACING AUTHORITY, DIRECTORS, BOARDS, committees or OFFICIALS, or otherwise concerning the affairs of the NATIONAL HORSERACING AUTHORITY, with power also to refer any such claim or demand to arbitration or mediation.

.....

5.25 to remunerate employees, consultants, advisors, investigators and the like, and also to remunerate members of APPEAL BOARDS, INQUIRY BOARDS and/or INQUIRY REVIEW BOARDS."

18. Notwithstanding its Constitution, the Fourth Respondent and all participants in the horseracing industry (save for gamblers) are also subject to the Rules of the Fourth Respondent. A copy of the Rules of the Fourth Respondent is attached hereto as **Annexure D**.

19. I turn now to summarize the events that have given rise to this Application.

20. The Inquiry relates to alleged events that occurred on 25 November 2023. I deem it apposite to state that on that date Gauteng was hosting its premiere race day and race at Turffontein Racecourse in Johannesburg known as "The Summer Cup" with total available prize money on the day in excess of R7.7 million. I will hereafter refer to that day as the Summer Cup Day.

21. At *approximately* 10h30 the Fifth Respondent together with his assistant, Ms Prakash arrived at the stables of the Second Applicant situated at Turffontein Racecourse ("*the stable area*") in order to conduct a search of the stable area.

22. I together with my wife were in the process of leaving the stable area to go and attend at the races in order to watch a horse that I am a part owner of run in the first race. The horse known as Almond Sea was a very short priced favorite to win the race, which it duly did by a wide margin. The Third Applicant was also present and was also in the process of leaving the stable area when the Fifth Respondent together with his

assistant arrived thereat.

23. My wife had attended the stable area that day together with a number of clients of the Second Applicant together with other members of the staff and our family in order to celebrate the birth of our first grandchild the previous evening. In this regard my wife had brought snacks including biscuits and hot dogs.

24. I deem it apposite to state the following:

24.1 the stable area whilst it is situated on the property of the racecourse is quite separate to the area from which races are conducted, nor is it in any way the property of, or managed by the Fourth Respondent;

24.2 as a consequence of her evidence during the Inquiry Proceedings Ms Prakash was dismissed by the Fourth Respondent. As will be seen from the contents hereunder such dismissal and the disciplinary process thereof also forms part of the complaint against the behavior of the Fifth Respondent;

24.3 my wife is not a registered person as envisaged in the Rules of the Fourth Respondent and as such its Rules do not apply to her nor is there any signage at the stable area *and/or* on the race course itself which permits the Fourth *and/or* Fifth Respondent to in any way have jurisdiction over my wife *and/or* her person *and/or* her property. In this regard I attach hereto a number of

photographs taken by the Fifth Respondent during an *inspection in loco* during the inquiry proceedings as **Annexures E1** to **E24**. As can be readily determined therefrom there is no reservation of rights by the Fourth Respondent *and/or* the racecourse operator with regards to my wife. There are currently three racecourse operators in South Africa, these are the entities which put on the race meetings and furthermore, the Gauteng racecourse operator is the party from whom the Second Applicant rents the stable area and also utilizes the facilities it provides for the training of the racehorses under his care;

24.4 the merits of the alleged incident are not relevant to this Application save to state that any wrongdoing by any of the Applicants *and/or* my wife is denied.

25. On or about 22 December 2023 we received a Notice of Inquiry containing allegations against us ("*the First Notice*"). A copy of the First Notice is attached hereto as **Annexure F**.

26. The date of the Inquiry as stated in the First Notice was 24 January 2024.

27. On 9 January 2024, we received an Amended Notice of Inquiry ("*the Second Notice*"). A copy of the Second Notice is attached hereto as **Annexure G**. As can be seen from the Second Notice the dates of the hearing were now unilaterally moved by the Fourth

Respondent to 26 / 29 / 30 January 2024.

28. On 15 January 2024, we received a further Amended Notice of Inquiry ("*the Third Notice*"). A copy of the Third Notice is attached hereto as **Annexure H**.

29. Due to the Fourth Respondent changing the date and thereafter unliterally selecting a date for the initial hearing which was unsuitable to the Applicants due to, *inter alia*, our counsel not being available on those dates, as well as, the Second Applicant having one of the favorites for a 7.5 million Rand race to be run on Saturday, 27 January in Cape Town, and in order to avoid any other unnecessary delay to the hearing of the matter, the Applicants instructed our attorney of record ("*Bolus*") on 8 January 2024 to send an email to the Fourth Respondent's attorneys Ulrich Roux and Associates ("*Roux*") wherein, *inter alia*, the following was stated:

"The dates proposed in your above mentioned correspondence are unfortunately not suitable as our clients counsel is not available on the proposed dates.

I shall, in due course, provide further alternative dates for your consideration."

30. A copy of the above correspondence is attached hereto as **Annexure I**.

31. At this juncture Roux was well aware that at all times Adv Riley had been acting on behalf of the Applicants. Notwithstanding his legal knowledge and experience, as a former jockey, trainer and a present owner and breeder of racehorses Adv Riley is not only well versed and understanding of the racing industry, but is also fully conversant

of the Rules and Constitution of the Fourth Respondent. I also repeat that as it was the Fourth Respondent's unilateral decision to change the date of the hearing from 24 January 2024, without any prior notice thereof to us, Bolus' request was reasonable in the circumstances. Roux's response thereto on 9 January 2024 (which was in my opinion disingenuous and unnecessarily antagonistic) stated, *inter alia*, the following:

"Your clients seem to be under the misconception that they are in charge of their own disciplinary inquiry.

As previously confirmed, the disciplinary inquiry will be proceeding on 26, 29 and 30 January 2024. In this regard, please find the amended notice of inquiry attached hereto, reflecting the dates as set out above.

There is a plethora of capable advocates in Gauteng who will adequately be able to represent your clients should their current counsel not be available. The said disciplinary inquiry will accordingly proceed, regardless of whether your clients are represented or not.

It is disingenuous of your clients to demand that they are provided with the relevant material on 10 January 2024, despite you confirming that you will "in due course, provide further alternative dates for your consideration."

As previously confirmed, the relevant material will be made available to your clients on 17 January 2024. This is more than sufficient time to prepare for the inquiry which will be proceeding on 26 January 2024."

32. A copy of the above correspondence is attached hereto as **Annexure J**.

33. On 17 January 2024 Bolus addressed a further email to Roux wherein, *inter alia*, the following was stated:

"Our clients instruct our offices as follows herein below.

It is the request of our clients that they be provided with the names of the Inquiry Board constituted to hear this matter.

Kindly provide our offices with such information by close of business tomorrow, 18 January 2024.

Finally, on attending at your offices earlier today at approximately 14h30 (as indicated in your correspondence of 3 January 2024 "The relevant material for the inquiry will be made available for collection at 12:00") the material was on route to our offices which is appreciated despite the fact that our attendance at your offices was, in fact, in vain.

Our clients record the unreasonable changing of the date of the Inquiry to a date where (a) our clients chosen counsel is not available and (b) Mr Anthony Peter will be in Cape Town attending to his runner in a R7.5 Million race."

34. A copy of the above email is attached hereto as **Annexure K**.

35. Despite our objection to these dates Roux on Friday, 19 January 2024 replied to the above email and stated, *inter alia*,

"I furthermore, confirm that a number of the NHA witnesses who will be testifying during the inquiry commencing on 26 January 2024 will also be attending the Cape Town Met race where your client will allegedly be in attendance. Said race is only on Saturday, 27 January 2024. There is accordingly nothing which prohibits your clients from attending the inquiry on 26 January 2024, flying to Cape Town to attend the Met on Saturday 27 January and returning to Jhb to be in attendance on 29 to 30 January 2024 for the continuation of the inquiry. This is exactly what the members of the NHA will be doing.

Please confirm in terms of which NHA Rule your clients are entitled to the names of

the Inquiry Board prior to the commencement of the inquiry on 26 January 2024."

36. A copy of the above email is attached hereto as **Annexure L**.

37. The reason for us seeking the names of the panel members was because at the time the Second Applicant was involved in another Inquiry relating to a rather minor offence that he had allegedly not properly completed the record of veterinary treatments provided to horses. As such, it would not have ben proper and correct for the same members of that Inquiry Board to also sit on the upcoming Inquiry Board. Unfortunately, Roux's reaction and behaviour is indicative of the extremely antagonistic manner in which the Fourth and Fifth Respondents have conducted themselves in the Inquiry Proceedings.

38. On 22 January 2024 Bolus sent an email to Roux wherein he stated, *inter alia*, the following:

"*2 Our clients instruct our offices to record the following:*

2.1 The tone of the email under reply and your client's behaviour is unnecessary and unfortunately antagonistic. The comment regarding the Rule on which our clients seek the information concerning the composition of the Inquiry Board is noted. In accordance with this statement our clients acknowledge that the entire inquiry will therefore be conducted in accordance with the Rules of your client;

2.2 Notwithstanding the aforesaid comment contained in the email under reply, our clients are well aware that as late as Saturday, 20 January 2024 your client had not yet finalised the composition of the Inquiry Board and was still attempting to recruit members thereof;

2.3 The relevant statement in the email under reply is again further indicative of the aforementioned regrettable behaviour adopted by your offices and your

client in this matter. It is submitted by our clients that it would have been more appropriate to have advised our offices of the correct position mainly that the Inquiry Board had not as yet been finalised. This regrettable behaviour is, in our clients opinion, further indicative of the victimisation of our clients by your client. It seems that your client is intent upon criminalising our clients, in this regard our clients reserve their rights;

2.4 Our clients have now received a copy of the documents and videos upon which your client intend to rely at the inquiry. Our clients reserve their rights to deal with the authenticity thereof and do not admit same. In this regard and in light of your client's behaviour in this matter our clients seek the following information:

2.4.1 The names of all parties to whom the video/s have been supplied;

2.4.2 The date(s) on which the video evidence was supplied to the individuals requested in paragraph 2.4.1 supra; and

2.4.3 The reasons and/or purpose for which such copies of the video evidence were supplied.

2.5 Our clients, instructions are further that they require the following:

2.5.1 The names of all parties to whom the documentation have been supplied;

2.5.2 The date(s) on which the documentation was supplied to the individuals requested in paragraph 2.5.1 supra; and

2.5.3 The reasons and/or purpose for which such copies of the documentation were supplied."

39. A copy of the above email is attached hereto as **Annexure M**.

40. In response to the above, on the same date i.e. Monday, 22 January 2024, Roux replied to Bolus and stated, *inter alia*, the following:

"As previously confirmed, our instructions are NOT to litigate via correspondence.

As confirmed, your client will be made aware of the identity of the inquiry board members upon commencement of the said inquiry on 26 January 2024."

"The videos in question, as well as the evidence pack supplied to your clients, have NOT been supplied to any unauthorised person.

In addition to the above, our instructions are that the legal representative acting on behalf of your client, Advocate Nigel Riley, has made contact with a number of individuals who are known to be members of the Inquiry Panel of our client. Said individuals have reached out to our client confirming same. We are instructed that Advocate Riley is attempting to coerce said panel members, in portraying a false narrative about our client, as well as the actions of your clients.

As a result of this patently unethical conduct, our client has been forced to make last-minute change to the intended Inquiry Board.

Our client requires an urgent undertaking that there will be no further direct or indirect contact by either of your clients, or their legal representatives, with members of the Inquiry Panel of our client."

41. A copy of the above email is attached hereto as **Annexure N**.

42. As a consequence of the above email Adv Riley instructed Furman Attorneys ("*Furman*") to send an email on his behalf to Roux, wherein the following was, *inter alia*, stated:

"Our client has furnished us with a copy of an email received from Bolus Attorneys dated 22 January 2024, wherein false and serious allegations pertaining to our client were made.

Our client treats the falsities peddled in your email under reply with the utmost contempt he can muster.

We are instructed as follows:-

1. At no time has Adv Riley been acting as the legal representatives of the Panel's. He is instructed in the matter by Bolus attorneys who are the parties legal representatives.

2.At no time has our client been aware of the identity of the inquiry board, as at all times despite requests from your offices, by attorney Bolus for such information, same has been refused.

3. At no time has our client contacted any person who is or may be a member of the inquiry board, and has not made any allegations as alleged.

In light of the serious nature of your allegations, including unethical conduct, our client demands the following information by close of business today, 23 January 2024:-

1. The identity of the parties that our client has allegedly made contact with.
2.Details and nature of the alleged coercion.
3. The nature of the alleged false narratives.
4. Whether the allegations of unethical conduct is made by your offices or your client.

As our client is unaware of the identities of the members of the inquiry panel, our client is not able to provide you with an undertaking, however as our client denies ever having acted in an unethical or improper manner at anytime, there is no necessity for any undertaking, save that our client will as always act in accordance with his professional obligations and responsiblities.

In the event of our client not receiving the abovementioned information per the above, our client shall immediately refer your offices conduct to the Legal Practice Counsel."

43. A copy of the above email is attached hereto as **Annexure O**.

44. As Furman did not receive a response to the aforementioned email, on 26 January 2024 Furman sent a further email to Roux wherein, *inter alia*, the following was stated:

"We refer to our email below.

You have failed to take the opportunity afforded to you by our client to provide us with

the information requested in our email below. This is telling and aligns with our client's contention regarding the scandalous and disingenuous nature of your/your client's allegations.

Our instructions are that your conduct as set out above and below, amounts to unprofessional conduct on your part, and most certainly is not conduct which should be attributed to an attorney. As such we are instructed to proceed to report your conduct to the Legal Practice Council."

45. A copy of the above email is attached hereto as **Annexure P**.

46. On 30 January 2024 Furman received an email from Roux wherein, *inter alia*, the following was stated:

"I refer to your emails dated 23 and 26 January 2024.

Your email dated 23 January 2024 went to my junk email folder and I only had sight of it in the thread of your email dated 26 January 2024.

Said email most likely went into my junk email folder as a result of being sent from your iPhone, as depicted in your email signature.

As you are aware, lawyers act on instructions received from their clients. This is clearly set out and confirmed in our legal correspondence dated 22 January 2024 to which you refer.

Our client in that matter, the National Horseracing Authority ("NHA"), is of course tasked with the appointment of a disciplinary board to preside over any disciplinary proceedings instituted by the NHA. Advocate Riley acts on behalf of three members of the Peter family in a disciplinary matter which is currently pending.

Our client instructed us that they had identified Advocate Karen Lapham-Fourie to be a member of the disciplinary board in question, as she is a member of the panel of identified individuals from which our client appoints disciplinary board members for specific disciplinary hearings.

Our instructions are that Advocate Riley is well aware of the fact that Advocate Lapham-Fourie is a member of the said panel, given that Advocate Riley has previously acted on behalf of Muziwandile Yeni, where Advocate Lapham-Fourie was one of the respondents, together with our client, the National Horseracing Authority. Members of the said panel is also common knowledge with the horseracing industry.

Our instructions are, that upon our client reaching out to Advocate Lapham-Fourie to form part of the disciplinary board for the Peter inquiry, she confirmed to

representatives of our client that Advocate Riley had in fact discussed the matter with her at length.

Advocate Lapham-Fourie was accordingly disqualified as a member of the disciplinary board, as a direct result of being approached by Advocate Riley pertaining to same. Upon being made aware of this, our client instructed us to address correspondence to attorney John Bolus in which we request that there will be no discussions of the Peter enquiry by Advocate Riley with any of the members of the panel from which they are able to choose disciplinary board members from."

47. A copy of the above email is attached hereto as **Annexure Q**.

48. The untruthfulness of Roux's aforementioned letter is demonstrated in a WhatsApp conversation on 20 January 2024 between Advocate Karen Lapham-Fourie and the Racing Control Executive of the Fourth Respondent wherein, *inter alia,* Advocate Karen Lapham-Fourie stated:

"I was just wondering if it's the Peter matter, I had had a very casual conversation with Nigel Riley about it, but nothing that wasn't in the papers. I don't feel that I am compromised or that it had influenced me in any way - but it's up to you - just thought I had to disclose it."

and

"Everything that was said is in the public domain anyway- he didn't disclose anything. The charge sheet was published and the comments were on Facebook?"

49. A copy of the above conversation is attached hereto as **Annexure R**.

50. Notwithstanding this conversation, I attach hereto further WhatsApp messages as **Annexure S** between Advocate Karen Lapham-Fourie and Adv Riley wherein, *inter alia*, Advocate Karen Lapham-Fourie confirms to him that:

50.1 she had contacted Adv Riley;

50.2 the contact had dealt with, *inter alia*, whether it was normal to publish charge sheets in the Sporting Post news paper;

50.3 the discussion between them had primarily been about Advocate Karen Lapham-Fourie's "confusion" about the legal persona of the Fourth Respondent;

50.4 Adv Riley had informed her that he was acting for the Applicants in the matter.

51. What is also confirmed in the above-mentioned exchanges concerning Advocate Karen Lapham-Fourie was Bolus' statement regarding the Fourth Respondent on 20 January 2024 as not having finalized the appointment of the Initial Inquiry Board, for the hearing of 26 January 2024.

52. On 26 January 2024, we attended at the Inquiry at the offices of the Fourth Respondent. At this juncture, I deem it further apposite to state that at all times neither the Applicants nor our legal representatives had any knowledge of the identity of that Inquiry Board appointed by the Fourth Respondent.

53. Upon our arrival at the Inquiry our legal representatives were informed by the Chairman thereof, attorney Mr Lawrence Sacke ("*Sacke*") that he was advising our legal representatives that they should take instructions from us to determine if we objected to Sacke's participation in the proceedings due to him previously having been on an Inquiry Board where I was the subject matter of the Inquiry and had been found guilty of the offence in respect of that matter.

54. This disclosure and the appearance of Sacke was extremely disturbing as Sacke was well aware that I was one of the subject matters of the Inquiry and as such he would be conflicted considering his previous involvement as stated herein above.

55. Sacke was obviously concerned about his involvement as it was he who brought same

to the attention of our legal representatives. As a consequence of our objection thereto Sacke and the remaining Board Members recused themselves and the inquiry was postponed *sine dies.*

56. In my opinion the Fourth Respondent tends to appoint persons to its Inquiry Boards who will effectively act in accordance with the desires of the Fourth Respondent. The Fourth Respondent is well aware that most horse trainers and jockeys licensed by it are financially unable to take the decision of any Inquiry Board, and the subsequent rubber stamping thereof by the so called Appeal *and/or* Review Board on Appeal *and/or* Review to the High Court *alternatively* the cost of such Appeal *and/or* Review far outweigh the penalty normally imposed by the Board.

57. As I had previously stated on 26 January 2024 the matter did not proceed due to the recusal of the Board.

58. On the topic of the alleged contact by Adv Riley to panel *and/or* board members we instructed Bolus to address correspondence to Roux in order to identify such new individuals. In this regard, Bolus sent emails to Roux on 26 February 2024, 4 March 2024 and 11 March *respectively.* Roux only deemed it necessary to respond to Bolus' inquiries on 12 March 2024. These emails were sent in a further attempt to avoid any delays of the matter especially with regards to the composition of the Board.

59. This incident clearly illustrated the dishonesty of the Fourth Respondent.

60. As a further example of the dishonesty of the Fourth Respondent I attach hereto as **Annexure T** the last page of the transcript recording of the hearing of 26 January 2024. I deem it apposite to state that the Fourth Respondent's attorney Roux, and Advocate Combrink, as well as, its legal advisor Mr Paul O'Sullivan and Roux's associate were all present at the hearing of 26 January 2024. I specifically wish to bring the following paragraph to the attention of the Honourable Court wherein, *inter alia*, the following is said:

"ADV. RILEY Mr. Chairman thank you for that. Mr. Chairman, the agreement that we had between the parties that the matter will be postponed CMDA [sine dies], and then a date for hearing for four days would be agreed on between the parties for all future dates.

CHAIRMAN Very well. That is then on record.

ADV RILEY Thank you, sir. It was also further agreed that the identity of the new board would be disclosed to us in case to avoid these types of situations going forward.

CHAIRMAN Very well."

61. Accordingly, it was agreed that the identity of the Board would be provided to Bolus,

as well as, the dates for any future hearing would be agreed upon between the parties. At no time were Adv Riley's submissions to the Board in this regard about the agreement contradicted by either Adv Combrink, Roux or any other person representing the Fourth Respondent.

62. Notwithstanding this agreement on 15 March 2024, Bolus received an email from Roux wherein the dates for the continuation of the hearing were stated, as well as, the identity of the First, Second and Third Respondents. The dates for the hearing were neither discussed with, nor agreed upon by the Applicants.

63. A copy of the above email is attached hereto as **Annexure U**.

64. On the same date Bolus replied to Roux's above-mentioned email and stated, *inter alia:*

"The agreement on the previous occasion was that the future dates for the reconvening of the inquiry would be agreed between all of the relevant parties. It is unfortunate that you have elected to ignore this agreement and have instead unilaterally decided upon dates.

Accordingly, the Notice that was received earlier today provides for dates that are not agreed between the parties and which are unfortunately not suitable.

In light of the above, please provide our offices with three alternative periods of dates and times for consideration, agreement and/or alignment (should such dates be suitable).

Furthermore, our client is of the opinion that the inquiry will be concluded within 1 to 2 days and that 4 consecutive days is, with respect, both excessive and unnecessary.

In order for our client to consider any objections to the Board especially in light of the farce that occurred previously due to the behaviour of your client, please provide our

offices with the following information in order for our clients to consider any objection/s they may have to the panel:

1. *The CV of each of the panel members;*

2. *Details of all previous inquiries conducted by each of the Board Members including the nature of the charge of each inquiry and the outcome of each inquiry;*

It is also irregular and not contained in the Rules that your client unilaterally dictates and imposes time periods for the bringing of any interlocutory and/or any other application. It is trite that time periods can only be set either by agreement between the parties or by a direction from the panel. Your setting of these time periods would indicate a probable collusion between your client and the Board. At no time have our clients been requested to acquiesce to such dates, nor were they at any time informed regarding the procedure and/or time frames for the bringing of such interlocutory applications.

Your client should be cautioned against such behaviour. Our clients reserve their rights with regards to this apparent collusion."

65. A copy of the above email is attached hereto as **Annexure V**.

66. Roux's response to Bolus on 18 March 2024 is attached hereto as **Annexure W** wherein Roux deliberately misconstrued what was stated in the above-mentioned email and stated, *inter alia*,

"I have checked my notes, as well as confirmed with our counsel on the matter, Advocate Danie Combrinck, and neither of us have any record of an agreement between the legal representatives that three alternative dates would be provided pertaining to the commencement of the inquiry.

We deny that it was stated that you would be offered three dates."

and

"You have no right to demand the CV's of the panel members or details of their prior history. We remind you that it is the NHA's Inquiry, not your or your client's Inquiry and you have no right to set the terms thereof.

Our client is satisfied that it has taken the necessary steps to ensure that there is no conflict of interest pertaining to the new panel members and previous charges which your clients have been involved in. Should there be any alleged conflict of interest and/or objection, please clearly set this out.

The remainder of your mail is not being responded to, as we have instructions not to litigate by correspondence, save to say that your false allegation of 'collusion' is denied."

67. As can be clearly determined, at no time did Bolus allege that three dates would be provided, he merely correctly records that the parties would agree upon the dates for the next hearing. The denial by Roux and the setting of dates unilaterally by the Fourth Respondent clearly demonstrates the disingenuity of both parties and the lack of respect afforded to the Applicants by Roux and the Fourth Respondent.

THE INCIDENT ON 16 AUGUST 2024

68. On 15 August 2024, the matter proceeded at the premises of the Fourth Respondent situated at the Turffontein racecourse. Upon conclusion of the hearing on that day the matter was then set down to continue at 09h00 on 16 August 2024.

69. Shortly prior to the commencement of the proceedings Bolus and Adv Riley attended to the office of the Fourth Respondent's employee Ms Areias in order to make photo copies of a J88 document to be utilized during the hearing that day.

70. Whilst they were waiting for the copies to be made by Ms Areias, Adv Riley overheard a conversation between the Fifth Respondent and the Fourth Respondent's

advisor Mr Paul O'Sullivan wherein, *inter alia*, Mr O'Sullivan was directly instructing the Fifth Respondent as to what he should say during his cross-examination.

71. Shortly after this conversation the Fifth Respondent and Mr O'Sullivan left the room adjacent to the office of Ms Areias and entered into her office space. Adv Riley in the presence of Bolus then confronted Mr O'Sullivan and the Fifth Respondent about their behaviour.

72. Upon the commencement of the Inquiry Adv Riley on our instructions advised the First, Second and Third Respondents of what had transpired and sought that the entire evidence to date of the Fifth Respondent should be struck from the record. A copy of the transcript of that day is attached hereto as **Annexure X**. In particular I refer the Honourable Court to page 3 lines 34 to 44; page 6 lines 31 to 32, as well as, page 10 lines 34 to 51 whereat the following is stated:

Page 3 lines 34 to 44

"ADV RILEY I then heard Mr. O'Sullivan - I couldn't hear the conversation clearly, but I did hear words to the effect of , well, when you're asked this in cross examination, you should do this and that.

CHAIRMAN So when you're asked in cross examination...

ADV RILEY You were to do this and that. I think it was to refer to something. I was a bit shocked be honest.

CHAIRMAN I can appreciate that.

Page 6 lines 31 to 32

ADV RILEY You can't have a scenario where a witness his instructor to say. That's my difficulty here. It was a direct instruction given what he should say in his evidence. That's the difference.

Page 10 lines 34 to 51

"ADV RILEY *You know and how can it be just an equitable that somebody that we know - on his own version has been taking instructions of what to say during cross examination. On his own version. It's not disputed.*

CHAIRMAN: *Well, as I understand what is not disputed, it's the fact that there was this meeting. That's how I understand from Mr. Combrink.*

ADV RILEY: *But I also -*

CHAIRMAN *And from what you said. So...*

ADV RILEY ***but it's also not disputed, sir, when i said i heard instructions being given.***

CHAIRMAN ***Yes yes***

ADV RILEY ***That's not disputed.***

CHAIRMAN *No, no,* ***it's not disputed*** *but it's also not just..."*

My emphasis added.

73. The Honorable Court is also referred to page 11 paragraphs 44 to 57 wherein the following is stated:

"*Adv Riley* *But again, sir, this is a second instance that we know of.*

Chairman *It's the second instance.*

And Riley *Yes*

Chairman *Ja. The first instance was –*

Adv Riley *The reading of the affidavit.*

Chairman *-the reading of the affidavit*

No, no I'm fully aware of that.

Adv Riley *It's almost like we've got a serial crosser."*

74. This exchange relates to a previous admission by the Fifth Respondent that prior to him giving any evidence during the inquiry he had read the transcript of the previous witness Ms Prakash who was the person that attended with the Fifth Respondent at the stable area on 25 November 2023.

75. The relevant exchange between Advocate Riley and the Fifth Respondent also concerns, *inter alia*, the behavior and involvement of the Fifth Respondent with Mr Paul O'Sullivan.

76. A copy of the transcript of that day (11 July 2024) is attached hereto as **Annexure Y**.

77. The Honourable Court is referred to page 17 from lines 11 to 50, as well as, page 23 line 28 to 47 and page 26 line 10 to 17.

Page 17 from lines 11 to 50

"ADV RILEY *Okay, Do you have any knowledge of how Mrs Prakash – or Ms Prakash, sorry – came to make the section 204 statement?*

MR JANSE VAN RENSBURG *Well, the statement was received by our office, but I don't know if, I don't know anything about the witness statement, or that. I can only see here from who the person is who commissioned it.*

AD RILEY *Okay, how did you get hold of it?*

MR JANSE VAN RENSBURG *In this document itself. And I was also CC'd in this document.*

CHAIRMAN *No, the question is, how did you get it? From who? That's the question. From who did you get that 204 statement? From who did you get it?*

MR JANSE VAN RENSBURG — *Well, I got it in this document, and I was also CC'd with the document that was part of an annexure that was directed to somebody else.*

CHAIRMAN — *When was that?*

MR JANSE VAN RENSBURG — *I don't know. Ill have to have a look at the email, what the date was.*

CHAIRMAN — *But who sent the email?*

MR JANSE VAN RENSBURG — *Who sent the email?*

CHAITRMAN — *Yes.*

MR JANSE VAN RENSBURG — *The email was sent by Mr O'Sullivan.*

CHAIRMAN — *That's what Mr Riley wants to know.*

ADV RILEY — *All I wanted to know. Thank you, Mr Chairman. I'm indebted to you immensely. And when did you receive it?*

MR JANSE VAN RENSBURG *I'm not sure the date, but shortly after the last inquiry, or this specific inquiry was adjourned.*

ADV RILEY *Shortly after the 9th.*

MR JANSE VAN RENSBURG *Shortly after the 9th would be correct."*

Page 23 line 28 to 47

"CHAIRMAN *What is want to know is this the evidence of Ms Prakash? The excerpt of Mr Prakash's evidence, which we've got now in Exhibit LL. Unfortunately, its not chronologically numbered, which it should be, the whole, but it appears to be from page 31 to 45. So, you had sight of these excerpts – these excerpts of her evidence?*

MR JANSE VAN RENSBURG *I did, sir.*

CHAIRMAN *So did you read through it?*

MR JANSE VAN RENSBURG *I did.*

CHAIRMAN *And did you read through it prior to you giving evidence at the time in this disciplinary hearing of Ms Prakash was being conducted and the investigation?*

MR JANSE VAN RENSBURG *So I'm not sure if I received this bundle the day before, or on the day of the inquiry itself. I was called as a witness.*

CHAIRMAN *But did you read through it prior to you starting your evidence? That's all I wanted to know.*

MR JANSE VAN RENSBURG *Yes, sir. I did."*

And Page 26 line 10 to 17

"ADV RILEY *now what you – sorry, Sir - now what you told the chairman, and the Board, is that you read all of Ms Prakash's evidence given on the 9th of May, correct?*

MR JANSE VAN RENSBURG *That's correct.*

ADV RILEY *You're thus aware of what her evidence was in toto.*

MR JANSE VAN RENSBURG *Yes."*

78. What is particularly significant about this evidence is that at no time during the testimony of the fifth respondent's direct superior Mr Arnold Hyde was there ever any mention of either Ms Parkesh *and/or* the Fifth Respondent ever having advised Hyde and/or stated to Hyde that they had seen a plastic pipe. This evidence is material as it appears to be a belated attempt by the fourth respondent to make a case against us with regards to the alleged "doping" of our horses (which is emphatically denied). I attach hereto as **Annexure Z** the transcript of Mr Hyde's evidence of 9 May 2024.

79. The Honourable Court is specifically referred to page 43 line 15 to 34; page 45 line 16 to 47; page 46 line 1 to 5; page 51 line 34 to 38; page 52 line 1 to 9, page 55 line 1 to 7;

80. It is quite apparent and extremely significant that at no time, even when he was suspending the Second Applicant on Summer Cup Day does Hyde in any way refer to any sighting of any tube. What is however of more concern is that subsequent thereto

Ms Parkesh and the Fifth Respondent suddenly and without any previous reference thereto in any documents *and/or* press releases refer to a nastro tube.

81. I deem it apposite to state that at no time has any member *and/or* employee of the Fourth Respondent save for the transcriber attended the hearing except to give evidence. The person that has at all times (save for one day when it was only Janse Van Rensburg giving evidence) attended on behalf of the Fourth Respondent was Mr O'Sullivan. I submit that it is highly probable that this sudden new evidence of Ms Prakash and the Fifth Respondent, not previously mentioned by the second highest ranking employee of the Fourth Respondent, came about as a result of further instructions *and/or* coaching of Ms Prakesh and the Fifth Respondent by Mr O'Sullivan.

82. At all times it appears that Mr O'Sullivan has been the representative of the Fourth Respondent. In this regard I attached hereto as **Annexure ZZ** the cover page of the transcript of 8 May 2024 (which also appears in all relevant transcripts) where Mr O'Sulivan is described as the advisor for the Fourth Respondent. I also submit that it is highly probable that Mr O'Sullivan instructed the Fourth Respondent's attorneys as such attorneys have never been instructed by the Fourth Respondent previously, but have on numerous occasions acted in matters where Mr O'Sullivan is involved. Considering, *inter alia*, the absence of any employee of the Fourth Respondent at any of the hearings of the inquiry together with the aforementioned it is submitted that it is in fact Mr O'Sullivan who is running the proceedings for the Fourth Respondent, and

as such should not have been instructing the Fifth Respondent as to what to say during cross examination or indeed discussing the matter with the Fifth Respondent.

83. At all times Mr O'Sullivan has also been instructing Roux and the Fourth Respondent's Counsel with regards to this matter even during the proceedings. It is for this reason that I included most of the correspondence between Roux and Bolus in order to demonstrate what is clearly an antagonistic and unreasonable attitude. However, it appears that notwithstanding this Mr O' Sullivan's behaviour goes to not only instructing the legal advisors but also to the witnesses.

84. In a further demonstration of Mr O'Sullivan being the party running the entire investigation of behalf of the Fourth Respondent I refer the Honourable Court to page 47 lines 32 to 51 and page 48 lines 18 to 47 wherein the following is stated:

Page 47 lines 32 to 51

"ADV RILEY So what you telling us is that this was all done by Mr O'Sullivan's office?

MR JANSE VAN RENSBURG The transcript, yes.

ADV RILEY Do you know who in Mr O 'Sullivan's office did it?

MR JANSE VAN RENSBURG No, I don't know.

ADV RILEY — *Tell me something – how involved have you been in this matter?*

MR JANSE VAN RENSBURG — *Mr Chairman, I forwarded video footage/documentation to Mr O'Sullivan's offices. We then compiled the investigation and documents and files.*

ADV RILEY — *How involved were you in the section 204 notice, or 204 statement?*

MR JANSE VAN RENSBURG — *I wasn't involved with the 204 statements.*

ADV RILEY — *Not at all?*

MR JANSE VAN RENSBURG — *No."*

Page 48 lines 18 to 47

"ADV RILEY — *So do you have any idea whose decision it was*

to consider criminal charges against Prakash?

MR JANSE VAN RENSBURG *No.*

ADV RILEY *You were never consulted?*

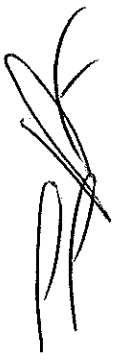
MR JANSE VAN RENSBURG *No.*

ADV RILEY *You're the special, what do you say, senior special investigation, and you're expecting us to believe that somebody directly under you ...How big is your staff again just remind us?*

MR JANSE VAN RENSBURG *Ms Prakash and Mr mathe was the two people reporting to me at the time.*

ADV RILEY *Two people underneath you – fifty percent of your staff was going to be involved in criminal proceedings, and you're expecting us to believe that you knew nothing about it. That's what you're telling us.*

MR JANSE VAN RENSBURG *I wasn't informed of a 204 statement.*



ADV RILEY — *So who would have made that decision? Because you told us that it came from Mr O'Sullivan's office again.*

MR JANSE VAN RENSBURG — *That's correct.*

ADV RILEY — *So who would have made that decision?*

MR JANSE VAN RENSBURG — *I don't know. You'll have to ask...you maybe have to ask Mr O'Sullivan. I don't know who made the decision to do a 204 statement."*

85. I attached hereto the relevant pages of the Transcript as **Annexure ZZ1** and **ZZ2**.

86. I am further advised that this situation is exacerbated by Mr O'Sullivan being an experienced litigant and as such is well versed in what is prohibited whilst any witness is under cross examination. It was also quite apparent that during the proceedings Mr O' Sullivan was in fact instructing the Fourth Respondent's Counsel and was in fact acting as a *de facto* legal representative of the Fourth Respondent.

87. At all times Mr O'Sullivan was well aware that the Fifth respondent was still under cross-examination at the time when he was instructing the Fifth Respondent on what

to say during cross examination.

88. As has been previously demonstrated neither the Fourth nor the Fifth Respondent in any way disputed that Mr O'Sullivan and the Fifth Respondent had committed the behavior complained of by us.

89. On 16 August 2024, the First Respondent requested that the our Counsel and Counsel for the Fourth Respondent provide case law and authorities to support our request that the Fifth Respondent's evidence should be stuck from the record. Due to it being a novel situation it was not anticipated that such a situation would arise and as such our counsel could not at that juncture provide any evidence. Counsel for the Fourth Respondent referred the Board to the case of S vs Spies 2001 SACR a matter from the SCA. However, as Adv Riley correctly pointed out that matter was entirely irrelevant and different to the behavior of the Fourth and Fifth Respondents in our matter, as that matter related to SAPS concocting witness statements prior to the commencement of the hearing, as well as, the Applicant in that matter seeking that the entire matter was dismissed whereas in this instance we merely sought that the evidence of one of the witnesses was struck out.

90. Furthermore, Adv Riley correctly further summarized the difference between the facts in Spies and the present scenario at lines 46 to 57 on page 9 and lines 1 to 12 on page 10 of the transcript of 16 August 2024 wherein, *inter alia*, the following was stated:

Page 9 - lines 46 to 57 and Page 10 - lines 1 to 12

"ADV RILEY *sorry I submit that your submission about space case being completely relevant, he's highly incorrect. In Spies, what happened was, before the proceedings started, the police concocted these witness statements. Before the proceedings started. Here, you've got something entirely different. There's no meeting in the corridors which suggests some sort of just quick decision. This was just carefully thought out. They went to a separate meeting away from here, to a room. I don't know what's in there. I'm assuming it's some type of office, and furthermore, in Spies, what happened was, and one of the criticisms against the defence in that matter was two things. The one, of course, was that they carried on with the trial. They pleaded they carried on, despite the submissions. And secondly, at all times, they were in possession of the evidence - the defense team. It's entirely different to this. This has absolutely no bearing on it at all. It's materially different. In fact, it doesn't even get close to it, but you can't have a situation - as I said - I don't know what the correct formula is because I've*

never, ever been placed in this situation before where you have this collusion.

CHAIRMAN *But can I ask you, do you know of any precedent Mr-*

ADV RILEY *I don't, Sir. I actually looked. I don't know how to do it. That's what I said to you when I started - in my initial submissions - I don't know what to do. It's a unique situation.*

CHAIRMAN *Ja*

ADV RILEY *And that's common cause."*

91. Furthermore, S v Spies dealt with the dismissal of the entire complaint. All that was sought by us was that only the evidence of the Fifth Respondent was struck from the record. I respectfully submit that such an application was reasonable and in the interest of justice.

92. Due to our aforementioned application for the striking of the evidence of the Fifth Respondent the proceedings were postponed for the First, Second and Third Respondents to deliberate on the application. Significantly, neither ourselves, nor the Fourth Respondent were invited to make any further submissions with regards to the subject matter of the application.

93. On 4 September 2024 the Second Respondent emailed the Ruling made by the Board with regards to our application wherein the following was stated:

> *"1. The Panel has considered the arguments made on Friday, the 16th of August 2024 by Advocate Riley, representing AP Peter, P A Peter and M D Peter and Advocate Combrink, representing the National Horseracing Authority ("NHA"), as well as the transcript of the 16th of August 2024, in respect of the application to strike out the evidence of Riaan Janse van Rensburg.*
>
> *2. In accordance with rule 83.1 of the NHA, the Panel has the sole discretion to determine and adopt procedures and formalities in inquiry proceedings.*
>
> *3. The application to strike out the evidence of Riaan Janse Van Rensburg is refused with all questions of cost to be reserved. Reasons for the ruling will be furnished at the conclusion of the inquiry."*

94. A copy of the Ruling is attached hereto as **Annexure YY**.

95. For reasons which will become apparent hereunder it is significant that the Ruling came from one of the Board Members and not from the Fourth Respondent. I deem it apposite to state that this was the normal process when the Board were communicating with either Bolus *and/or* Roux. However, quite suddenly this practice ceased, and

Bolus started to receive communications from the First, Second and Third Respondents via an employee of the Fourth Respondent. This action caused us to doubt the independence of the Board.

96. As a consequence of the Ruling Bolus on our instruction sent an email to the First, Second and Third Respondent's wherein, *inter alia*, he stated the following:

"Our clients reserve their rights with regard to the Ruling of the Board.

3. In order for our clients to be able to proceed with the further cross-examination of Mr. Janse Van Rensburg, it will be necessary for our clients and ourselves to consider the reasons for the Ruling. As such, our clients request that the reasons are provided to our offices on a date which will afford our clients, together with their legal representatives, sufficient time to consider same, and thereafter determine their further cross-examination.

4. A further point which is of concern to our clients is that it appears that the Board mero motu elected to reserve the costs. This is extremely concerning, as no requests for costs was made by either party, nor was any argument led in this regard. Yet again, our clients reserve their rights with regard thereto."

97. A copy of the Letter is attached hereto as **Annexure XX**.

98. In response to Bolus' letter on 23 September 2024 Bolus received a document entitled Reasons for Ruling. Significantly, this document was not supplied to Bolus by the First *and/or* Second *and/or* Third Respondents but instead was supplied by an employee of the Fourth Respondent.

99. A copy of the Reasons is attached hereto as **Annexure WW**.

100. It is respectfully submitted that both the Ruling and the Reasons therefore are irrational, unreasonable and incorrect in, *inter alia*, the following:

100.1 At paragraph 13 it was stated that:

"13. To strike out any evidence at this stage would be premature and would compromise the Inquiry as a whole. The Inquiry Board may at the conclusion of the Inquiry find that this incident indeed compromised the

totality of the Inquiry and or the evidence of Mr. Janse Van Rensburg and/ or both but can only do so at the completion of the Inquiry."

100.2 At paragraph 14 it was stated that:

"14. Second reason why the application was refused is found in the rights that a witness has when accusations of this nature are levelled against him. It will be an injustice not only to the process but also to Mr. Janse Van Rensburg personally not to be afforded the opportunity to explain the incident bearing in mind that Mr Janse Van Rensburg is under cross examination and has not had the opportunity to discuss the issue with the legal representatives of the NHA."

100.3 At paragraph 15 it was stated that:

"15. This incident creates a host of issues that could affect the totality of the Inquiry and the Inquiry Board members are also entitled to be afforded the opportunity to inquire as to the surrounding circumstances relating to the incident which very well may result that the Inquiry Board calls witnesses in this regard."

100.4 At paragraph 16 it was stated that:

"16. Mr Janse Van Rensburg has been in the witness stand for a considerable period and his evidence has been interrogated at length by Mr Riley. However, his evidence is not yet completed and the same will only occur once the cross examination by Mr. Riley is completed and any re-examination by Mr Combrink occur and any questions and investigation by the Inquiry Board members occur."

101. With regards to the above the Board misdirected itself in not considering the following:

101.1 It was totally incorrect that the Fifth Respondent had not had the opportunity to discuss the issue with the legal representatives of the Fourth Respondent. The very nature of the complaint was that the Fifth Respondent had received instructions on how to answer questions put to him during cross examination from Mr O'Sullivan, who was the same party that was conducting the matter on behalf of the Fourth Respondent , as well as advising and instructing Roux and the Fourth Respondent's counsel during the proceedings.

101.2 If the Fifth Respondent felt in any way unfairly compromised he should not have discussed the issue with the Fourth Respondent's legal representatives

but rather instructed a legal representative of his own choosing. At no time did the Fifth Respondent state that he would seek such an opportunity;

101.3 By not striking our the evidence the Board prejudiced the Applicants. It is iniquitous for the Board to state that at the conclusion it may decide that the evidence should be struck due to it having compromised the totality of the inquiry.

101.4 As was stated in the reasons the Board has the power to adopt its own procedures and formalities in its sole discretion. Despite this, the Board failed to conduct any inquiry into the alleged behavior of the Fifth Respondent. As such, and as Adv Riley correctly stated at the time of the application, it is common cause that the Fifth Respondent received instructions as to how he should respond during the continuation of his cross-examination. Furthermore, the representatives of the Fourth Respondent also did not seek that such a process be conducted on that day. Despite there being only one uncontradicted version before the Board at the time of it making its decision it elected not to act thereon but to wait until the Fifth Respondent was examined by the Board as to the surrounding circumstances relating to the incident;

101.5 It is also irrational for the Board to have dismissed the application on, *inter alia*, the grounds that the further evidence, re-examination and any

subsequent inquires thereto by the board of the Fifth Respondent, should continue whereafter the Board would make a ruling regarding the credibility of the Fifth Respondent's evidence at the conclusion of the inquiry. This irrationality therefore necessitates that despite it being common cause that the Fourth Respondent had colluded with the Fifth Respondent with regards to the evidence that he should give as well as the previous admitted behaviour of the Fifth Respondent in him reading Ms Parkesh's evidence, may require that the Applicants had to deal with evidence that was constructed in circumstances that were unjust and contrary to normal practice and public policy. It is somewhat akin to putting the fox back in the henhouse again after he had eaten only some of the chickens i.e. the Board was effectively giving the Fourth and fifth respondents the opportunity to continue with its disgraceful and unjust behavior.

102. With all due respect to the Board such a decision was irrational and instead should have been made on the day of the application 16 August 2024. The Board should therefore have conducted any inquires that it wished to do so before there was any possibility of the Fifth Respondent yet again receiving instructions *and/or* coaching due to, *inter alia*, the lengthy period since the application was made and the next hearing date of 10 October 2024. It is also significant that to date none of the evidence received including that of the Fifth Respondent has been given under Oath. This failure of the Board to deal with the matter on 16 August 2024 has also not acted in a manner that would have shortened the proceedings especially when it is considered

that the Board still had the remainder of the morning and the entire afternoon of 16 August 2024 to conduct such an inquiry. The reasons provided by the Board together with its Ruling are irrational *and/or* incorrect *and/or* unreasonable.

103. Furthermore, the Ruling of the Board in not granting the relief sought in the Application and instead waiting for the conclusion of the totality of the proceedings and/or the evidence of the Fifth Respondent before striking out his evidence will cause substantial prejudice to the Applicants and as such we cannot wait until the termination of the proceeding before launching this Review Application.

104. The Constitution of the Fourth Respondent states, *inter alia*, the following:

> *"19.3 The **INQUIRY REVIEW BOARD** shall review, without a hearing, every finding, decision or penalty which is imposed by an INQUIRY BOARD appointed in terms of clause 18.3.3 and where, although entitled to do so, the PERSON affected has elected not to lodge an appeal."*
>
> *"19.4 The **INQUIRY REVIEW BOARD** may confirm, vary or set aside any finding, decision or penalty of an INQUIRY BOARD provided that no finding, decision or penalty may be varied in a manner which has the effect of increasing the penalty or prejudicing the PERSON concerned. However, should the INQUIRY REVIEW BOARD find that there has been a gross irregularity or illegality in such proceedings or that the finding, decision or penalty of an INQUIRY BOARD was clearly wrong, it shall have the power to set aside the decision of such INQUIRY BOARD and remit the matter for a hearing de novo."*

105. As, in early October 2024 we had not received any notice of the outcome of the Inquiry Review Board with regards to the ruling of the Board, we instructed Bolus to inquire as to the status thereof. In this regard Bolus addressed an email to Roux on 2 October 2024 wherein he stated, *inter alia*, the following:

"At this time it is not our intention to seek any postponement of the inquiry however, our client reserves their rights with regards thereto. However, our clients are in the process of finalising their review application whereafter such an event my well arise.

Notwithstanding the above, and in order to finalise the review application, our clients seek the minutes, as well as, the finding and/or ruling of the Inquiry Review Board with regards to the decision of the Inquiry Board which is the subject matter of the pending review application. In order to assist you in this regard you are referred to Sections 19.3 and 19.4 wherein the following is stated:

*"19.3 The **INQUIRY REVIEW BOARD** shall review, without a hearing, every finding, decision or penalty which is imposed by an INQUIRY BOARD appointed in terms of clause 18.3.3 and where, although entitled to do so, the PERSON affected has elected not to lodge an appeal."*

*"19.4 The **INQUIRY REVIEW BOARD** may confirm, vary or set aside any finding, decision or penalty of an INQUIRY BOARD provided that no finding, decision or penalty may be varied in a manner which has the effect of increasing the penalty or prejudicing the PERSON concerned. However, should the INQUIRY REVIEW BOARD find that there has been a gross irregularity or illegality in such proceedings or that the finding, decision or penalty of an INQUIRY BOARD was clearly wrong, it shall have the power to set aside the decision of such INQUIRY BOARD and remit the matter for a hearing de novo."*

Our clients further require the identity of any and all persons who formed the Review Board with regards to the aforementioned finding of the Review Board.

Kindly provide this information, as soon as possible, in order that the review application can be finalised. Our clients fail to understand why this information was not provided to our clients timeously and/or at all."

106. A copy of the email is attached hereto as **Annexure WW1**.

107. On 3 October 2024 Roux replied to Bolus' email and stated, inter alia, as follows:

"Please confirm whether you have had sight of Rule 86.1, more specifically Rule

86.1.1.4, and revert if you still have any queries.

108. A copy of the email is attached hereto as **Annexure WW2**.

109. The relevant Rule relied upon by Roux state, *inter alia*, the following:

"86. REVIEWS

86.1 The INQUIRY REVIEW BOARD shall review: -

86.1.1 every finding, decision or penalty which is imposed by an INQUIRY BOARD constituted and appointed in terms of CLAUSE 18.3.3 and where , although entitled to do so, the PERSON affected has elected not to lodge an appeal, except:

86.1.1.1 –

86.1.1.2 –

86.1.1.3 –

86.1.1.4 any penalty, decision or finding of any INQUIRY BOARD constituted and appointed in terms of CLAUSE 18.3.3 where the PERSON concerned has been legally represented at the INQUIRY PROCEEDINGS as provided for in Rule 84.2.1;

save where an appeal to an APPEAL BOARD may be or has been lodged as such appeal has not subsequently lapsed."

110. The contents of the Rules referred to by Roux are clearly in conflict with the sections of the Fourth Respondent's Constitution as previously referred to by Bolus. Whilst the Constitution make its peremptory for all findings of any Inquiry Board to be subjected to the Fourth Respondent's internal review procedure, the Rules attempt to qualify what does or does not require to be reviewed by the Review Board.

111. Section 27.3 of the Constitution resolves the aforementioned conflict as it states the following:

"27.3 the RULES which were in force on the date of adopting of this Constitution [2021] shall continue to be of full force and effect and shall be deemed to have been passed in terms of this Constitution, provided that in the event of there being any conflict between such RULES and this Constitution the provisions of the latter shall prevail."

112. To the best of my knowledge Rules 86.1, 86.1.1 and 86.1.1.4 were in effect in 2021 at the time of the adoption the Fourth Respondent's Constitution. Accordingly, an in terms of Section 27.3 the requirements of the Constitution takes precedence over those Rules and as such it was preemptory for the Inquiry Review Board to have reviewed

the ruling of the Board. It was as a consequence of this very situation that Bolus addressed his email of 2 October 2024 to Roux.

113. In response to Roux's email of 3 October and on the same date Bolus addressed a further email to Roux advising him of the contents of Section 27.7 of the Constitution. To date no reply has been received from Roux.

114. A copy of the email is attached hereto as **Annexure WW3**.

115. The behavior of the Board in granting the Fifth Respondent the opportunity to attempt to find reasons to validate his behavior also casts serious doubts about the independence of the entire Board. There is simply no reason to justify its irrational *and/or* unreasonable behaviour with regards to affording the Fifth Respondent the opportunity to explain the incident at a later date, or at all. The Fifth Respondent was present when the Application was made by us and made no attempts to either defend himself against the accusations nor seek legal assistance in that regard, nor deny the allegations.

116. The rational and proper process that should have been followed by the Board was that the incident was dealt with on the same day as the Board could have timeously inquired from any person present at the hearing including Mr O'Sullivan had it required any further information before making a Ruling. This failure is even more concerning as immediately after Adv Riley had made the Application the Board stood

down for a period to consider same. Notwithstanding this the decision to dismiss the application was irrational. My submission in this regard is supported by my earlier submissions.

117. Further incorrect findings by the Board included the following:

117.1 At paragraph 17 the following is stated:

"17. The third reason why the application was refused is found in the fact that the incident relied upon by Mr. Riley and accepted by Mr. Combrink does not alter the video evidence that was presented by both the NHA and Messrs Peter as to the events of the day that forms the subject of the inquiry. The said evidence is objective evidence of the events of the day and of Mr. Jansen van Rensburg and his conduct as well as that of all the other people appearing in the video is before the Inquiry Board. The evidential value of such evidence will be considered at the conclusion of the Inquiry."

117.2 At paragraph 18 the following is stated:

"18. The fourth reason is found in the principles alluded to in the S v Spies & Another (2000) 2 All SA 205 (A) resulting that there can be absolutely no prejudice to Messrs. Peter due to the refusal of the

application."

117.3 At paragraph 19 the Board incorrectly, inter alia, found that there was very little difference between the facts of **S v Spies** where witnesses conspired to give the same evidence prior to a hearing and the facts *in casu* where a witness is told what to say during the hearing. In both instances the credibility of the witness may be compromised but the evidence of the witness is not struck out *in Toto*.

118. The above statements are irrational *and/or* unreasonable and furthermore incorrect. There is no rationality in the Boards finding of the similarity between the Spies matter, where the parties colluded on their evidence **before** the proceedings had even been set down for hearing, and where the collusion had taken place between the parties and the SAPS, and the present matter where the *de facto* controlling mind of the proceedings on the **8th day** of the hearings and on behalf of the Fifth Respondent's employer instructed the Fifth Respondent as to what he should say during cross-examination. At this juncture and unlike in the Spies matter it was also clearly evident to all persons present at the inquiry as to what the theme of our defense was and as such the cross-examination responses could be constructed to attend to destroy our defense. In Spies (and due to the nature of criminal proceedings where the accused does not plead), no defence of the accused was known at the time when the witnesses for the state colluded thereon.

119. It is also incorrect for the Board to state that the video evidence is not disputed by the Applicants. At all times we have denied the veracity of the video evidence due to, *inter alia*, an abridged, edited and amalgamated version together with slow motion replays and written commentary thereon having been uploaded onto YouTube. This video was presented by us to the Fifth Respondent during his cross- examination in order to, *inter alia*, contradict his evidence as to the parties to whom the original alleged video evidence relied upon by the Applicant had been supplied. The only concession made by us with regards to the authenticity of the video evidence that we supplied was that the evidence that we presented by way of the video was that it was an exact copy of what had been uploaded on YouTube. At no time was any concession made by us that it or the video evidence of the Fourth Respondent was a correct recordal of the events. Thus the reliance of the Board thereon is unreasonable and incorrect.

120. It is further irrational *and/or* unreasonable for the Board to state at paragraph 20 the following:

"20. Mr. Jansen van Rensburg should be cross examined on the incident and at the conclusion of the evidence in the Inquiry Mr Riley would be more than entitled to make submissions whether the evidence of Mr Janse van Rensburg should be discarded or not and what weight if any should be given to his evidence."

121. According to the above the Board seeks that our counsel cross-examine the Fifth Respondent about the common cause incident without first having heard the version and evidence of the Fifth Respondent in evidence in chief. Our counsel would have had no opportunity to consider the evidence in chief and as he correctly put to the board during the application he would have been bound to accept any version of the Fifth Respondent that was stated during cross-examination. As I previously stated such a reason for the ruling of the Board is irrational and unreasonable.

122. I am further advised that the isolation of witnesses during their cross examination is an essential part of any legal process. In recognizing the importance thereof both the General Council of the Bar (GCB) and the Legal Practice Council (LPC) expressly prohibit same in their respective Rules. GCB, Rule 4.2 states, *inter alia*, the following:

"Rule 4.2:

4.2.2 It is improper for counsel to interview a witness who is under cross-examination, unless circumstances make such an interview necessary. Where such circumstances exist, counsel who desires to hold the interview must inform his opponent before doing so.

4.2.3 It is in general improper for counsel to interview a witness after the cross-examination is completed and before re-examination."

123. This Rule is similar to Article 55.5 of the Legal Practice Code which provides:

"Once a legal practitioner has called a witness to testify, the legal practitioner shall not again interview that witness until after cross-examination and re-examination, if any, have been completed, unless circumstances arise that make such an interview necessary. When the proper case for such a necessary interview exists, the legal practitioner shall prior to any interview inform the opposing legal practitioner of such need and unless the opposing legal practitioner consents, no such interview shall be held unless the court or tribunal grants permission to do so."

124. Significantly, in the LPC Code the restriction is not only applicable to hearings in court but also to tribunal hearings such as those proceedings which form the genus of this Application.

125. I am further advised that the isolation of the witness is central to preserving the integrity of the litigation process. Internationally courts have frequently quoted Wigmore's famous observation that cross-examination is *"beyond any doubt the greatest legal engine ever invented for the discovery of truth."* The truth discovering purpose of cross-examination presupposes that once under cross-examination, the

witness is left entirely to his or her own devices without comment, direction, encouragement or the like from any other party.

126. Whilst Mr O'Sullivan is not an admitted legal practitioner he is, well versed in legal matters as an experienced litigant, and as has been demonstrated above, been the party driving and conducting the prosecution by the Fourth Respondent (including instructing its legal representatives both during and preceding the inquiry) in the proceedings. As such his behaviour in instructing the Fifth Respondent as to the answers that the Fifth Respondent should provide during cross examination is material and should not be condoned nor accepted.

127. I further submit that the fourth Respondent represented by Mr O' Sullivan and the Fifth Respondent willingly participated in a scheme to prevent the Fifth Respondent from being properly subjected to the cross-examination process, and that therefore the striking out of his evidence was accordingly merited.

128. I also submit that such behaviour of the Fifth Respondent would have caused a misrepresentation the board and as such constitutes a most serious breach of ethics as it would directly effect the administration of justice. Furthermore, it was irrational and unreasonable for the Board to tolerate the conduct of the Fourth and Fifth Respondents despite such conduct being egregious. It was further irrational *and/or* unreasonable for the Board not to punish the behaviour of the Fourth and Fifth Respondents by upholding our Application and striking the entire evidence of the Fifth Respondent.

129. The decision of the Board in dismissing the Application is further irrational and/or unreasonable as it now effectively punishes the Applicants for the disgraceful behavior of the Fourth and Fifth Respondents. This decision also now requires that the proceedings will be unnecessarily prolonged, thereby causing us great financial and mental prejudice, when we were not in anyway, and on anybody is version responsible for the disgraceful behaviour of the Fourth and Fifth Respondent.

CONCLUSION

130. For all of the reasons set out above, I submit that the Board acted irrationally, *and/or* unreasonably *and/or* misdirected itself in dismissing the Application and as such I respectfully submit that the Honorable Court should review and set aside the decision of the Board.

DECLARATORY RELIEF

131. In addition to the relief set out above, and for, inter alia, those reasons stated above, as well as those stated hereunder, I respectfully submit that it would be just and equitable for this court to grant an order with regards to the following

132. Declaring that:

132.1 The behaviour of the Advisers of the Fourth Respondent, in instructing the

Fifth Respondent as to how to respond to the questioning of the counsel for the Applicants during the Fifth Respondent's cross-examination was improper and wrongful.

132.2 The behaviour of the Fifth Respondent in reading the transcript of the witness, Diyara Prakash, prior to him testifying during the Inquiry was improper and wrongful;

132.3 The entire evidence given by the Fifth Respondent during the hearing of the Inquiry on 21 June 2024, 9 July 2024, 10 July 2024, 11 July 2024 and 15 August 2024, be disregarded and not admitted into the record of the Inquiry.

132.4 The Fourth Respondent and the Fifth Respondent jointly and severally pay the wasted costs of the Applicants for the hearing of the Inquiry of 21 June 2024, 9 July 2024, 10 July 2024, 11 July 2024, 15 August 2024, and 16 August 2024, on the scale as between attorney and client.

132.5 The Fifth Respondent may not give any further evidence in the present inquiry, nor in any subsequent inquiry concerning the same or similar charges that are the subject of the Inquiry against the Applicants.

132.6 The Enquiry proceed before another Enquiry Board appointed by the Fourth Respondent in terms of its Rules and/or Constitution ("the new Board").

132.7 The First, Second and Third Respondents are not permitted to be appointed as members of the new Board.

132.8 The evidence of the witnesses as contained in the transcript the Inquiry, save for the evidence of the Fifth Respondent, is placed before the new Board, and shall serve as the evidence of the other previous witnesses to date in the Inquiry.

133. In furtherance of the declaratory relief I wish to state that:

133.1 for those reasons aforementioned, the declaratory relief sought should be granted. It is quite clear that the "instructing" behavior of the fourth respondent represented by its advisor Mr O' Sullivan and the Fifth Respondent was improper and wrongful, as was the behavior of the Fifth Respondent in reading the testimony of the prior witness Ms Prakash, prior to the Fifth Respondent testifying during the Inquiry.

133.2 It would be unjust and unreasonable for the Applicants to bear the costs of the days on which the Fifth Respondent testified and as such same should be paid jointly and severally by the Fourth and Fifth Respondents. Such behaviour was not only improper, but it was also a deliberate, intentional attempt by them to circumvent the essential process of cross examination. It is solely due to their behavior that the striking of the Fifth Respondent's Testimony given by him on 21 June 2024, 9 July 2024, 10 July 2024, 11 July 2024, 15 August 2024 is necessitated, as well as, the wasted costs occasioned by the Application on 16 August 2024.

133.3 It would also be unjust and prejudicial to the Applicants for the Fifth Respondent to give any further evidence in the present inquiry nor in any subsequent inquiry concerning the same or similar charges that are the subject of the present inquiry. In the event that such an opportunity to again give evidence was provided to the Fifth Respondent, he would effectively be getting a second bite at the cherry and be able to provide answers according to the instructions given to him by Mr O' Sullivan.

133.4 It would be unjust and unreasonable for the members of the present inquiry board to continue in such a role. This Application contains much information including correspondence and submissions which in the Applicant's opinion were not placed before the Board including previous proceedings regarding myself, as well as, the events leading up to, during and subsequent to the initial hearing of this matter on 26 January 2024. These events impact on ourselves as well as our legal representatives and furthermore, clearly in my opinion demonstrate the dishonesty of the Fourth Respondent and its legal representatives.

133.5 It is for the same reasons that neither the first *and/or* second *and/or* the third Respondents should be members of any new board appointed by the Fourth Respondent.

133.6 In order to save costs and for the sake of convenience I respectfully submit that there exists no reason as to why the evidence of the other witnesses

cannot be placed before any new board and accepted as the evidence of those witnesses. It would be illogical to re-examine those witnesses, when their evidence including evidence in chief, cross-examination and in reply has already been gathered and the transcripts thereof have been accepted by all of the parties.

WHEREFORE the Applicants pray for an order in terms of the Notice of Motion to which this affidavit is attached.

DEPONENT

SIGNED and sworn to before me at Turffontein on the 5th day of OCTOBER 2024, the deponent having acknowledged that he knows and understands the contents of this affidavit and all the provisions of Act 16 of 1963 and the Regulations promulgated in terms thereof concerning the taking of the oath having been complied with in my presence and within the area for which I have been appointed as Commissioner of Oaths.

COMMISSIONER OF OATHS

Rowan Jarrod Furman
Ex Officio: Practising Attorney
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05/10/2024