OFFICE OF THE JUDGE PRESIDENT

GAUTENG DIVISION OF THE HIGH COURT OF SOUTH AFRICA
P O Box 442, PRETORIA 0001 - Tel 012- 314-9003 - Fax 012-326-4940
Palace of Justice, Church Square, Room 13, First Floor, Pretoria
Private Bag X7, JOHANNESBURG 2001 - Tel 011- 335-0479 - Fax 086-207-1291
c/o Pritchard and Von Brandis Streets, Room 510, Fifth Floor, Johannesburg
E-mail: NWalkinshaw@judiciary.org.za

18 August 2020

In the matter of:-

Case number: 15295/2020

Quentin Donaldson **Applicant**

and

The Legal Practice Council, Gauteng **Respondent**

JUDGE PRESIDENT'S PRACTICE DIRECTIVE IN TERMS OF SECTION 14(1)(a) OF THE SUPERIOR COURTS ACT, ACT 10 OF 2013

1. This is a Directive issued in terms of Section 14(1)(a) of the Superior Courts Act, Act 10 of 2013, read with Section 173 of The Constitution of the Republic of South Africa. The purpose of the Directive is to make provision for the constitution of a Full Court, to sit at first instance to hear and determine an application set to review and set aside a decision by the Respondent to refuse the Applicant's application for conversion from an advocate to an attorney. The further purpose of the Directive is, inter alia, to set timelines for the filing and service of further process regarding the further conduct of this matter as well as the hearing thereof.

2. Background: -

On 14 July 2020 an urgent application in the matter of Quentin Donaldson v LPC Gauteng was set down under case number 2020/15295 in the Gauteng Division of the High Court in Johannesburg for hearing by Judge Lamont. The application relates to the Legal Practice Council's refusal of an application for conversion from an advocate to an attorney.

The application was dismissed due to lack of urgency and the Court further advised that due to the technical nature of the matter, it may have precedence and that the Parties could call for a special admissions Court before which the matter can be enrolled.

The matter involves a dispute between the Parties regarding the interpretation of requirements in terms of section 95(1)(zL) read with section 85(1)(b) of the Legal Practice Act 28 of 2014 and whether such requirements ought to be fulfilled prior to an application for conversion from an advocate to an attorney in terms of the Legal Practice Act.

The Applicant was admitted as an attorney on 12 October 2012 in the Western Cape Division of the High Court. On 06 August 2015 he was admitted as an advocate in the Gauteng Division of the High Court, Johannesburg and became a member of the National Bar Council of South Africa (NBSA). He has been a practicing advocate under the NBSA to date. During this time he also started a labour consultancy business under the name and style of the Labour Counsel which assists corporate clients with labour related matters.

On 11 May 2020 the Applicant submitted an application to the Respondent for the conversion of his status as an advocate to an attorney on the basis that he wanted to diversify his income and further to start a practice which in his view would provide for legal representation for and litigation on behalf of many of the clients from his labour consultancy business.

On 10 June 2020 the Applicant was informed that his application was refused on the following grounds:

(i) He should have completed the legal practice management course as provided for in rule 30.4.4. and submitted proof thereof prior to lodging an application for conversation from advocate to attorney.

(ii) There is nothing in the Legal Practice Act that allows for a practitioner to be exempted from completing the aforementioned course.

(iii) The completion of the course is peremptory and without proof of completion, the Applicant cannot be converted back to an attorney.

The Applicant argues that in terms of the Legal Practice Act, the conversion from advocate to attorney does not solely lie on the completion of the peremptory legal practice management course and that he has a period of 1 (one) year according to s95(1)(zL) read with s85(1)(b) of the Legal Practice Act within which to complete the legal practice management course. He maintains that he has complied with all the requirements in every other aspect as outlined in the Legal Practice Act and that the Respondent placed reliance solely on the wording that the Applicant should provide proof of having completed the practice management course in accordance with Rule 30.4.4.2. He further contends that the Respondent's incorrect interpretation of Rule 30.4.4.2 read with s85(1)(b) of the Legal Practice Act is the only hindrance to him being converted back to an attorney. He therefore submits that for reasons which are incorrect in law and/or which are non-sensical and/or unconstitutional, the Respondent has unlawfully refused his application for conversion from advocate to attorney.

The Respondent based its decision on the following interpretation of Rule 30.4.4.2 read with s85(1)(b) of the Legal Practice Act:

"*30.4.4 where the applicant is an advocate applying to convert his or her enrolment to that of an attorney, proof to the satisfaction of the Council –*

30.4.4.2 that the applicant has attended a legal practice management course as contemplated in section 85(1)(b) of the Act,"

3. The Legal Issues raised:-

3.1 The following issues have been raised and are to be determined by the Full Court:

a. whether practitioners who apply for conversion from advocate to attorney and who were admitted as attorneys and advocates prior to the promulgation of the Legal Practice Act 28 of 2014, are exempt from completing the peremptory legal practice management course;

b. the correct interpretation as intended by the Legislature of the requirement to complete a practice management course in as far as it relates an application for conversion from advocate to attorney in terms of Rule 30.4.4.2 read with s85(1)(b) of the Legal Practice Act; and

c. any other matter that may be raised for determination.

4. Directive:-

4.1 Therefore, in terms of section 14(1)(a) of the Superior Courts Act 2013, Act 10 of 2013, I hereby constitute a Full Court for purposes of hearing and disposing of the issues referred to above as well as any other issue that may be raised for determination by the Full Court.

4.2 This Directive is issued by service via electronic email communication on:

a. the Parties involved in the matter;
b. the South African Law Reform Commission

4.3 Service of this Directive shall further be effected as follows:

a. on the Ministry of Justice and Correctional Services

4.4 For purposes of service and filling of any process envisaged in this Directive such service and filing shall be by electronic email communication provided that the appropriate proof of delivery shall be provided. For purpose of filing with the Court the following email address shall be used – NWalkinshaw@judiciary.org.za.

4.5 Copies of papers already filed in the matter referred to the Full Court will be provided to any party requiring same but such request should be communicated

to the Office of the Judge President via the email address provided in this Directive by no later than 14:00 on 28 August 2020.

4.6 Any interested party who wishes to be admitted as *amicus curiae* in this matter, are directed to serve and file their applications, setting out the basis why they wish to be so admitted as well as the legal arguments/ heads of argument, they intend to advance in support of their applications by 14:00 on 21 September 2020, via email communication to the email address provided.

4.7 The Applicants shall indicate their consent/objection to any application for admission as *amicus curiae* on or before 29 September 2020. In the event of an opposition/objection, the basis thereof must be provided as well as such legal argument as the Applicants wish to advance in this regard.

4.8 The Applicants are to file their heads of argument, on or before 05 October 2020, with the Office of the Judge President by email communication to the email address provided. The Respondents shall file their heads of argument by no later than 12 October 2020. Other parties, who shall have received consent as well as granted consent to be admitted as *amici*, must serve and file their legal argument/heads of argument by 14h00 on or before 19 October 2020.

4.9 Thereafter, the further conduct of the matter shall be case-managed by a Judge to be designated by the Judge President. The case management shall include the hearing of any objections to any application for admission as *amicus curiae*.

4.10 The date on which the Full Court will hear the matter referred to it is 23 October 2020.

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JUDGE PRESIDENT OF THE GAUTENG DIVISION OF THE HIGH COURT OF SOUTH AFRICA