



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**Ronald Bobroff & Partners Inc v Juanne Elize De La Guerre;  
South African Association of Personal Injury Lawyers v Minister of Justice and  
Constitutional Development and Another**

**CCT 122/13  
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**Date of judgment: 20 February 2014**

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### MEDIA SUMMARY

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

Today the Constitutional Court delivered judgment in respect of two applications for leave to appeal that relate to the same issue, namely the constitutionality of the Contingency Fees Act (Act).

At issue was whether it is justifiable for legal practitioners to charge contingency fees outside of what the Act provides. Part of the debate related to whether the Legislature's non-regulation of agreements concluded by lay persons, where one party undertakes to promote litigation financially or otherwise in return for a share in the proceeds, was rational.

At common law legal practitioners were not allowed to charge their clients a fee calculated as a percentage of the proceeds that the clients might be awarded in litigation. The Act changed this by regulating the percentage chargeable on a contingency basis and the circumstances in which these fees can be charged. Notwithstanding the provisions of the Act, certain Law Societies made provision, in their rules, for members to charge in excess of the percentages prescribed by the Act.

Bobroff and Partners (Bobroff) was one of the firms which charged more than the Act permitted in accordance with the rules of its professional association. In particular, Ms De La Guerre was charged 30% as a contingency fee, instead of the maximum of 25% allowed under the Act. After being awarded damages in litigation, Ms De La Guerre challenged the excess charge at the North Gauteng High Court, Pretoria (High Court). The South African Association of Personal Injury Lawyers (Personal Injury Lawyers) also brought an application challenging the constitutionality

of the Act as a whole, in the alternative, certain sections of it. Both cases were heard simultaneously by the Full Bench of the High Court.

The High Court found in favour of Ms De La Guerre in her application and upheld the constitutionality of the Act. Both the High Court and the Supreme Court of Appeal refused to grant leave to appeal.

In the Constitutional Court, the Personal Injury Lawyers and Bobroff applied for leave to appeal along largely the same lines as they argued in the High Court. Ms De La Guerre, the Minister of Justice and Constitutional Development and the Road Accident Fund all opposed the applications for leave.

The Constitutional Court unanimously found that the Legislature's decision to regulate contingency fee agreements in respect of only legal practitioners was not irrational. The Court held that the fact that regulation for lay persons may also be wise does not mean that the regulation of legal practitioners specifically should be regarded as unwise. Thus, the Court found no merit to the challenge as a whole. In respect of the challenge to particular provisions of the Act, the Court held that this was a challenge based on a limitation to fundamental rights. The Court found that the matter concerns the right of access to justice by legal practitioners' clients and not a right of the legal practitioners. Since there was no evidence showing that the rights of their clients had been infringed, this challenge was rejected.

The application for leave to appeal was dismissed with costs.