



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL

26 September 2011

STATUS: Immediate

MDA V THE LAW SOCIETY OF THE CAPE OF GOOD HOPE (534/10)

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

The Supreme Court of Appeal (the SCA) today dismissed the appeal with costs.

The appeal was against an order of a full bench of the Eastern Cape High Court, sitting at Mthatha (Petse ADJP, Miller J concurring) ordering the appellant to make his accounting records of his attorney's practice available for inspection by the Law Society of the Cape of Good Hope.

The essential issue before the SCA concerned the ambit of the investigation that the Law Society may undertake, in terms of s 70(1) of the Attorneys Act 53 of 1979. The appellant contended that the Law Society may not conduct a general forensic audit of his practice for the purpose of enquiring into allegations of misconduct on his part. In support of the latter contention the appellant submitted that ss 70(1) and 78(5), upon which the Law Society purported to rely to conduct a wide-ranging investigation into the affairs of his practice, do not authorise this. Instead, he submitted, s 70(1) permits the Law Society only to inspect material pertaining to specific complaints against him, and s 78(5), only to inspect accounting records concerning his trust account, nothing else. The SCA stated that whether a council is considering a possible professional misconduct enquiry, under s 70(1), or the supervision of a practitioner's trust accounts, under s 78(5), both provisions expressly permit the council to inspect all the records and documents concerning the practice. The SCA disagreed with the appellant's submission on s 70(1), stating that the section has a specific purpose, which is to place a council in a position to decide whether or not to hold an enquiry, which is why the Legislature permitted a broader

inspection under s 70(1) than it did under s 71(2). The SCA held that there was also no merit in the appellant's objection to the Law Society relying on s 78(5), for if his contention were correct it would mean that a council may not request documentary material regarding any allegation of misconduct when it concerns a practitioner's failure to keep proper accounting records, which would be absurd. This is why the section authorises inspection of more than merely the 'accounting records' of the practice. There were clear grounds for the Law Society to invoke both ss 78(6) and 70(1), so that a thorough inspection of the appellant's practice could be conducted and the SCA dismissed the appeal with costs.

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