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potential of correctional supervision in terms of s 276(1)*(h)* of the CPA as an alternative sentencing option. This requires a shift away from the retributive framework traditionally employed by courts toward one that recognises the restorative potential of such sentences and the importance of communal accountability and reintegration.

THORNDIKE'S LAW OF EFFECT AND ITS INFLUENCE ON LEGAL PRACTITIONERS' ETHICS: *LEMBORE v MINISTER OF HOME AFFAIRS*

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The Lembore v Minister of Home Affairs *case highlights the unethical practice of recycling affidavits in court applications, a practice that the courts repeatedly condemn. Legal practitioners continue this misconduct despite clear judicial instructions not to do so. To understand this persistence, we turn to behavioural theory by examining Thorndike's law of effect. By doing so, we suggest that sanctions alone are insufficient to curb unethical conduct; instead, a dual approach is needed. This dual approach comprises external adjustments that include eliminating situational opportunities, enhancing regulatory oversight, and ensuring swift enforcement of sanctions. It also includes internal adjustments which require a mindset shift, where legal practitioners prioritise justice over profit. Without these reforms, unethical practices will persist, and cases such as* Lembore *will continue to emerge. Breaking this cycle demands both systemic change and professional introspection to restore ethical integrity in the legal profession.*

Legal practitioners' ethics – recycled legal instruments – duty not to mislead the court

'Lawyers who do wrong frequently do very well.' (Daniel S Kleinberger 'Wanted: An ethos of personal responsibility — Why codes of ethics and schools of law don't make for ethical lawyers' (1988) 21 *Connecticut LR* 365 at 369.)

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INTRODUCTION

It could be said that the word 'crisis' has been overused when describing the state of ethics in the legal profession in South Africa (Krish Govender 'Ethics: A losing battle against national and global storms' 2024 (March) *De Rebus* 49; Michael Robertson & Helen Kruuse 'Legal ethics education in South Africa: Possibilities, challenges and opportunities' (2016) 32 *SAJHR* 344). However, the dismal state of ethical conduct within the legal profession suggests that there is a crisis. In 2025, there were approximately 33 929 practising attorneys in South Africa (see *https://www.lssa.org.za/about-us/about-the-attorneys-profession/statistics-for-the-attorneys-profession/*, accessed on 9 July 2025). In 2024, more than 100 legal practitioners were struck off the roll for misconduct, while another 150 legal practitioners were placed on suspension (Roy Cokayne 'More than 100 legal practitioners struck off the roll' *Moneyweb* 13 November 2024, available at *https://www.moneyweb.co.za/news/south-africa/more-than-100-legal-practitioners-struck-off-the-roll/*, accessed on 4 March 2025). More recently, the Legal Practitioners' Fidelity Fund ('LPFF') released a list of 59 legal practitioners who were convicted of fraud and theft between 2018 and 2025 (see *https://www.fidfund.co.za/wp-content/uploads/2025/03/LPFF-Convicted-Defaulters.pdf*, accessed on 12 April 2025). The Fund's CEO indicated at the time that a further 561 claims of theft and fraud were currently active in their system (see Karyn Maughan 'Fidelity Fund: 25 lawyers jailed for theft over 7 years — 561 now accused of stealing' *News24* 8 April 2025, available at *https://www.news24.com/news24/southafrica/news/fidelity-fund-25-lawyers-jailed-for-theft-over-7-years-561-now-accused-of-stealing*-20250408, accessed on 12 April 2025). The list of the particulars of disciplinary hearings against legal practitioners also makes for some depressing reading (see *https://lpc.org.za/members-of-the-public/particulars-of-disciplinary-hearings/*, accessed on 4 March 2025). While the ratio of total numbers of practitioners to those who have been struck off the roll and/or have been suspended from practice may seem low (see Karyn Maughan '21 123 complaints against SA's lawyers — but LPC says only 175 have been barred from practising' *News24* 26 September 2023, available at *https://www.news24.com/news24/southafrica/news/21-123-complaints-against-sas-lawyers-but-lpc-says-only-175-have-been-barred-from-practising-20230926*, accessed on 4 March 2025), these statistics must be seen in relation to a regulatory authority that has increasingly been adjudged to be performing woefully in carrying out its mandate (Pierre de Vos 'Concerted effort needed from legal profession to fix "incompetent" Legal Practice Council' *Daily Maverick* 20 August 2024, available at *https://www.dailymaverick.co.za/article/2024-08-20-concerted-effort-needed-from-legal-profession-to-fix-incompetent-legal-practice-council/*, accessed on 4 March 2025; Tony Beamish 'Ombud lambasts Legal Practice Council' *GroundUp*

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17 October 2024, available at *https://groundup.org.za/article/legal-services-ombud-lambasts-legal-practice-council/*, accessed on 4 March 2025).

The word 'crisis' is even more applicable when one reads judgments such as *Lembore v Minister of Home Affairs* [2024] ZAGPJHC 749 ('*Lembore*') (the relevant judgment is the original pdf version available at this reference; the judgment posted on the SAFLII website replicates in error the earlier leave to appeal judgment previously reported as [2024] ZAGPJHC 502). The facts of the *Lembore* case are particularly disheartening because the courts are beginning to sound like a stuck record: chastising errant legal practitioners for the same unethical conduct that was canvassed and denounced previously in almost all court divisions (see eg *Sibiya v Director-General: Home Affairs* 2009 (5) SA 145 (KNP); *Tekalign v Minister of Home Affairs* [2018] 3 All SA 291 (ECP) and other cases referred to below). *Lembore*'s case deals with the problem of legal practitioners re-using standard form affidavits across multiple applications. The use of templates in the legal profession is long-standing and not unusual. In fact, templates are essential for law firms who aim to streamline their processes and to work efficiently — often to reduce client costs. However, if one considers the facts in *Lembore*, it appears that neither cost-savings nor efficiency motivated the legal practitioner. Moreover, it is one thing to use templates for pleadings and contracts, but quite another to use them for personal documents such as affidavits.

In what follows, we assess the *Lembore* case to try to understand the context and circumstances of the legal practitioner's conduct. From there, we try to understand why legal practitioners continue to use affidavits in this manner, despite the clear directives prohibiting this conduct, which are set out in the South African Code of Conduct for all Legal Practitioners, Candidate Legal Practitioners and Juristic Entities of 2019 in GN 168 *GG* 42337 of 29 March 2019 ('Code of Conduct'), and the courts' constant rebuking of practitioners for this unethical conduct. We examine whether Thorndike's law of effect could explain the conduct. Thorndike's law describes the basic but powerful idea that responses that produce a satisfying effect in a particular situation become more likely to occur again in that situation, and responses that produce a discomforting effect become less likely to occur again in that situation (E L Thorndike 'The law of effect' (1927) 39 *The American Journal of Psychology* 212). We argue that Thorndike's law of effect provides valuable insight as to why legal practitioners continue to act in unethical and unprofessional ways.

LEMBORE: THE FACTS

The *Lembore* case originated from six urgent applications filed by asylum seekers from Ethiopia and Somalia in the Gauteng Local Division of the High Court, Johannesburg, who sought to be released from detention facilities.

Judgment in the main application was handed down on 8 February 2024 (para 1: for this judgment see 2024 (5) SA 251 (GJ)). However, the issue of costs was postponed to give the court an opportunity to address certain concerns regarding the abuse of court process (paras 1–2). The court's concerns stemmed from the troubling similarities between the applications, where affidavits were used with materially similar substantive averments (para 13). This homogeneity extended not only to grammatical errors and paragraph structures but was of such a nature that they appeared to have been replicated six times in the process of copying and pasting from a template (para 2). The affidavits differed only in superficial details, such as names and countries of origin (para 13) and failed to encapsulate individualised factual contexts. These deficiencies highlighted not only a lack of diligence on the part of the attorney who prepared the affidavits but also raised questions about the accuracy of the affidavits. Based on these similarities, the court did not believe that the affidavits reflected the personal experiences of the applicants and were, as a result, untrustworthy (para 14).

The replication of the content of the affidavits was symptomatic of a larger pattern. All the applications were instituted by the same law firm, which prompted the court to investigate the matter further (para 2). The court's investigation revealed that the same law firm had instituted 66 similar matters over a two-year period, most of which exhibited the same templated approach (para 15). This, Mlambo JP suggested, was aimed at misleading the court in that '[t]heir conduct can only be regarded as deliberate and displayed a lack of care for the interest of their clients and those they cited as respondents' (para 28). Furthermore, the court held that this conduct was tantamount to an abuse of the court process and that the attorneys had intentionally misled the court by submitting generic affidavits that were devoid of personalised content (para 14).

As a result, the court referred the legal practitioner to the Legal Practice Council ('LPC') for further investigation (para 29). Secondly, due to what the court called a deliberate placing of false information before the court and the claiming of fees for work that was not actually done, the court directed that the matter be brought to the attention of the National Director of Public Prosecutions to establish whether any crimes had been committed (para 29). Thirdly, the court ordered a costs order de bonis propriis against the attorney, to indicate the seriousness of the practitioner's infractions (para 23). Finally, the court directed that a copy of the order be sent to the Minister of Justice and Constitutional Development to ascertain whether the State Attorney should have noticed the similarities and tendered costs without due consideration of the matters (para 29).

LEMBORE: EXPANDING THE 'COTTAGE INDUSTRY'

As indicated above, the *Lembore* matter is not the first time that legal practitioners have made use of templates in questionable ways.

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Mlambo JP highlighted a few examples: *Mthimkhulu v Rampersad (BOE Bank Ltd, Intervening Creditor)* [2000] 3 All SA 512 (N) (where several friendly sequestrations with exactly the same averments except for a person's name were submitted: para 6); *Ex Parte Arntzen (Nedbank Ltd as Intervening Creditor)* 2013 (1) SA 49 (KZP) (where a single affidavit was used in multiple matters with the only difference being the applicant's name and country of origin: para 7); *Tekalign v Minister of Home Affairs* (supra) (where similar affidavits were used in refugee applications and the standardised affidavits were described as being of 'poor quality': para 8), and *Megabo v Minister of Home Affairs* [2019] ZAECGHC 108 (where identically worded affidavits were used in multiple matters, which resulted in the court's questioning whether it could trust the affidavits' contents, or whether the affidavits contained information that was designed to mislead the court: para 12).

In *Lembore*, like the cases mentioned above, the applicants' narratives alleged political and religious persecution, yet the descriptions that were provided to support these allegations were indistinguishably replicated across the cases, undermining the credibility of the applications (para 9). There were also repeated language, grammar and spelling errors in the papers (para 20). These concerns were not in and of themselves necessarily problematic, but the court found it 'unacceptable … for these mistakes to be replicated in almost all of a single law firm's applications' (para 20). While Mlambo JP specifically disavowed the role of the 'grammar police' (he specifically stated that he did not intend to 'provide an English lesson' (ibid)), he found that it was the cumulative effect of the errors that ultimately 'demonstrate[d] beyond doubt that no new drafting took place but a cut and paste exercise was employed in all the different matters, only changing personal details' (ibid).

The court described the conduct as akin to a 'cottage industry' that resulted in exploiting vulnerable asylum seekers who were unlikely to have understood the affidavits or the information to which they were deposing (paras 14 and 21). The term 'cottage industry' has been used metaphorically in several courts to describe the repetitive use of a template across multiple applications and an almost mechanical reproduction of documents without individual tailoring. *Ex Parte Arntzen* (supra), addressing friendly sequestration applications, describes a 'cottage industry' as using 'a standard form with almost identical averments' which is 'drafted by a small set of attorneys who have chosen to specialise in such applications' (ibid para 11). The use of the term is particularly apt given its historical roots in the Industrial Revolution, when small-scale, home-based craft production gave way to mass manufacturing in factories. In modern settings, the phrase often draws a contrast between standardised, large-scale output and individualised efforts. The *Oxford English Dictionary* notes that since 1911, the expression is often used in a disparaging sense

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in that the enterprise or activity is conducted in pursuit of a particular group's own interests or concerns (*Oxford English Dictionary* sv 'cottage industry (n), sense 2).

The term has now developed a South African legal usage as the 'recycling of legal documents' in court proceedings (see eg *Sibiya v Director-General: Home Affairs* (supra) paras 37 and 49, referring to the applications in the social security cases as part of a 'production line'; *Ex Parte Concato & others* 2016 (3) SA 549 (WCC) para 13 and *Mthimkhulu v Rampersad* (supra) at 514, referring to friendly sequestration applications; *Goodfind Properties (Pty) Ltd v Kennedy* [2024] 1 All SA 751 (WCC) para 78, referring to evictions; *Trustees for the time being of the National Bioinformatics Network Trust v Jacobson* [2009] 8 BLLR 833 (LC) para 6, referring to disciplinary procedures in the labour market; and *Bartmann AAC & Bartmann MME t/a Khaya Ibhubesi v De Lange & another* [2009] JOL 23566 (LC) para 37, referring to labour-related matters and expressing concern that the 'cottage industry' has spread to the Labour Court).

The 'cottage industry' reference often suggests a lack of professional diligence and personalisation in the applications. Significant risks are associated with using such mass-produced documents. Chetty J, in *Khanyile v South African Social Security Agency (SASSA)* [2019] JOL 46282 (KZP) para 13, noted that '[i]t is no secret that many unscrupulous practitioners sought to develop this into a cottage industry, running up unnecessary costs by dragging the defendant to court for matters that could easily be resolved through administrative channels'. Chetty J's comments reflect the root of the problem in these matters. While one can understand a legal practitioner's desire to earn more fees in an effective and efficient manner, their ethical compass becomes skewed when efficiency turns into dishonesty in an attempt to generate additional fees, which, in turn, results in the abuse of the court system. This was certainly the case in *Lembore*. Within the mass-produced affidavits there was no explanation as to how the affidavits were deposed to in English when the applicants spoke 'broken English' at best (*Lembore* para 28). Such mass-produced legal documents may misrepresent or exploit clients because the documents fail to address their unique circumstances. This results in disingenuous applications being presented to the court and, consequently, an abuse of court processes and the misleading the court (para 21). Indeed, such actions may go beyond the misleading of the court and can infiltrate other areas of practice, including situations where clients are charged for work that was not actually done and where the charges for this work are included in bills of costs: (see *Lembore* para 29 and *Tekalign* (supra) paras 21–7).

The courts have frequently punished legal practitioners for this misconduct by imposing punitive costs orders on them. In *Lembore*, a costs order de bonis propriis was made against the attorney (cf *Mkhatshwa v*

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Mkhatshwa 2021 (10) BCLR 1182 (CC) para 24). The expression comes from bona propria, meaning one's assets or one's own property. A costs order de bonis propriis was first handed down in South Africa in *In Re Potgieter's Estate* 1908 TS 982, where the court suggested that it was justifiable to make an order of such nature against a litigant who is acting in a fiduciary capacity where their conduct in litigation is mala fide, negligent or unreasonable. While the measure has been characterised as drastic (see *Vermaak's Executor v Vermaak's Heirs* 1909 TS 679), it appears that costs orders have had little effect on changing unethical conduct in the legal profession. We believe that the reason for this may be found in a behaviouristic approach to the problem.

POSITIVE AND NEGATIVE REINFORCEMENT OF BEHAVIOUR

The *Lembore* case, like the other cases discussed in this note, illustrates a blatant disregard for established ethical standards in the legal profession, and potentially takes the matter beyond ethics into criminality. However, Abel has commented in the context of a legal practitioner's wrongdoing that 'if the threat of criminal punishment does not deter, professional discipline is unlikely to do so' (Richard L Abel *Lawyers on Trial: Understanding Ethical Misconduct* (2011) 456). So why do some legal practitioners continue to act in this way? The answer to this may be found in understanding legal practitioners' conduct from the perspective of behavioural psychology. In this context, we look to Thorndike's attempts to explain human behaviour by means of his theory of the 'law of effect' (John W Donahoe 'Edward L Thorndike: A selectionist connectionist' (1999) 72 *Journal of Experimental Analysis of Behavior* 451 at 451). This law of effect predicts behaviour and habits by drawing a tangible link between a particular situation and the positive or negative response to the situation. The law of effect explains that 'satisfying [or positive] results strengthen, and discomfort [or negative results] weakens, the bond between situation and response' (Stephen Tomlinson 'Edward Lee Thorndike and John Dewey on the science of education' (1997) 23 *Oxford Review of Education* 365 at 369). In this context, a person learns their behaviour and habits from both the situation and the type of response experienced from the situation (see Eliot Hearst 'After the puzzle boxes: Thorndike in the 20th century' (1999) 72 *Journal of the Experimental Analysis of Behavior* 441 at 442). Such behaviour is strengthened in so far as the situation and the response are repeated (Norman M White 'Reward or reinforcement: What's the difference?' (1989) 13 *Neuroscience & Biobehavioural Review* 181 at 182).

In its best light, the attorneys in *Lembore* and other similar matters set out to use standardised affidavits in a multiplicity of similar (but by no means identical) matters to increase (perceived or real) efficiencies and

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convenience. This approach is positively reinforced by the benefit or trade-off for this convenience, which is an increase in fees and profitability for their practice. Put differently, the incentive of an increase in fees and profitability of using standardised affidavits reinforces a legal practitioner's behaviour. The conundrum is that such positive reinforcement is, however, at odds with the ethical and professional duties that are expected of a legal practitioner. Take for instance Fabricius J's caution that legal practitioners 'are expected to pursue their client's rights and interests fearlessly and vigorously without undue regard for their personal convenience' (*Multi-Links Telecommunications Ltd v Africa Prepaid Services Nigeria Ltd: In Re Telkom SA Society Ltd v Blue Label Telecoms Ltd* 2014 (3) SA 265 (GP) para 34). Such personal conveniences could also include the efficiencies and even the profitability of a matter. Yet, the expectation is that a legal practitioner's conduct should 'always [be] within the context of set ethical rules that pertain to them, and which are aimed at preventing practitioners from becoming parties to a deception of the [c]ourt' (ibid). This duty rests on the ethical duty of honesty and integrity (s 3.1 of the Code of Conduct; *Kekana v Society of Advocates of SA* 1998 (4) SA 649 (A) at 655G–H; *Vassen v Law Society of the Cape of Good Hope* 1998 (4) SA 532 (SCA) at 538G; *Jasat v Natal Law Society* 2000 (3) SA 44 (SCA) para 12).

A legal practitioner's duty not to mislead the court covers a wide scope (see in general s 57.1 of the Code of Conduct). Misleading of the court may occur by the legal practitioner's commission or omission (*Mzayiya v Road Accident Fund* [2021] 1 All SA 517 (ECL) para 86; *Zuma v President of the Republic of South Africa* 2024 (1) SACR 660 (GJ) paras 25–6). In particular, Kroon AJ noted in *Mzayiya* (supra) para 83 that '[a] legal practitioner has a pre-eminent duty to the court not to embark on a litigation plan that will mislead the court and this includes misleading the court on evidentiary and legal points'. The use of standardised affidavits in the context of a 'cottage industry' is certainly a business decision and arguably within the litigation plan in so far as bringing the applications before the court is concerned. Yet, the evidentiary nature of the affidavits that record the distinctive features of the matter cannot be standardised, since each deponent's version must be a unique and bespoke account of events. Any attempt then to standardise them would, at its core, be misleading to the court in that, at the very least, a standardised affidavit would inevitably omit relevant factual material that ought to be placed before the court and would create the misleading impression that the affidavit provides a comprehensive and accurate factual account of the circumstances relevant to the matter. Additionally, such conduct could (and almost invariably will) result in transgressing s 3.12 of the Code of Conduct, which limits legal practitioners to charging 'reasonable' fees. Charging fees for drafting affidavits and for attending consultations for that purpose when, in

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reality, no meaningful work is done in that regard would be inherently unreasonable and unethical.

Drawing from the law of effect, the situation (being the breach of ethical duties through misleading the court and charging fees that should not be charged) results in a negative reinforcement by means of cost orders de bonis propriis against legal practitioners, disciplinary hearings, sanctions, disbarment, and even criminal charges. The challenge of negative reinforcement is that it does not have the same impact on change as does positive reinforcement. In subsequent research, Thorndike found that his original proposition of the law of effect was only partially correct. Positive and negative reinforcements to a situation do not have the same impact. In fact, consistent negative reinforcement has a marginal tangible effect (if any); however, consistent rewards or positive responses certainly have the impact of strengthening associations and changing behaviour (White op cit at 182). Put differently (Hearst op cit at 443):

> '[P]unishment [is] nowhere near as effective in reducing the probability of a response to a stimulus as [is the] reward in increasing it. If punishment had an effect, it was indirect; punishment might possibly increase the variability of behavio[u]r and allow a response to emerge that could be rewarded.'

It appears, then, that positive reinforcement increases the likelihood of a particular response. Yet, when considering the use of standard affidavits, the positive reinforcement is found in the consequences of such unethical behaviour — increased fees and profitability — while the unethical behaviour is managed through negative reinforcement by means of costs orders de bonis propriis against legal practitioners and referrals to disciplinary and crime-fighting institutions.

In line with Thorndike's theory, given that the positive reinforcement of increased fees and profitability appears to outweigh the negative reinforcement, how can we change the pattern? In relation to the challenge of legal practitioners and money laundering, Benson et al recommend 'making adjustments to the legitimate process that thwart the ability of individuals to act parasitically in relation to the legitimate process' (M L Benson, T D Madensen & J E Eck 'White-collar crime from an opportunity perspective' in Sally S Simpson & David Weisburd (eds) *The Criminology of White-Collar Crime* (2009) 175 at 185). These adjustments must be both internal and external.

The external adjustment is for institutions such as the Department of Home Affairs, the Road Accident Fund, the Commission on Restitution of Land Rights, and particularly the State Attorney to reduce the 'situational opportunity' for abusing the system. Mlambo JP identifies this adjustment in the *Lembore* case by questioning why the State Attorney (representing the respondents) did not identify the issues with the affidavits. It also requires the LPC, as the regulatory authority, to respond quickly and effectively to these referrals. This is no easy task given the challenges that the LPC

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currently faces, and which were described in the introduction. Some solace, but also some direction, can be taken from other jurisdictions. The cut-and-paste approach by legal practitioners, particularly in immigration cases, is not a specifically South African phenomenon (see May Bulman 'Rogue immigration solicitors exploiting vulnerable migrants by charging thousands for "substandard" service' *Sunday Independent* 8 May 2018, available at *https://www.independent.co.uk/news/uk/home-news/immigration-solicitors-exploit-migrants-rogue-substandard-lawyers-a8325706.html*, accessed on 25 April 2025; see also Sean Rehaag, Julianna Beaudoin & Jennifer Danch 'No refuge: Hungarian Romani refugee claimants in Canada' (2015) 52 *Osgoode Hall LJ* 705 at 755–67). In England and Wales, for example, the court in *Sathivel, Ajani and Ncube, R (On the Application Of) v Secretary of State for the Home Department* [2018] EWHC 913 (Admin) complained of applications which fell 'substantially below acceptable standards of conduct' (ibid para 68) and which were 'cut and paste' from 'templates' (ibid para 9). In Canada, researchers found that counsel would 'prepare inadequate narratives for Hungarian Romani clients, often by including brief boilerplate narratives that failed to address central aspects of the claims' (Rehaag et al op cit at 755). However, it is particularly the response time by the regulatory authorities in dealing with these matters that have made a difference (see eg *http://www.canadianromanialliance.com/posts-2/2017/4/25/toronto-lawyer-suspended-over-handling-of-roma-refugee-cases*, accessed on 28 April 2025). The LPC in South Africa should strive to emulate this efficiency.

The internal adjustment is more complex. Although making money and earning a profit is not problematic in itself (in this regard, we are not advocating pure altruism in legal practice: see W Bradley Wendel 'Morality, motivation, and the professionalism movement' (2001) 52 *South Carolina LR* 557 at 568–71) the adjustment requires individual legal practitioners in the profession to turn away from '[t]he misguided view of money [as] the sole goal of practice, sole measure of success and sole measure of self-worth' (quoted in W Gravett '"I am not overcompensated enough": The moral compass of the American lawyer' 2012 *Advocate* 43 at 43). As has been said in the United States, this misguided view 'is directly and indirectly responsible for many of the problems in practice today' (Patrick J Schiltz, quoting the North Carolina Bar, in 'On being a happy, healthy, and ethical member of an unhappy, unhealthy, and unethical profession' (1999) 52 *Vanderbilt LR* 871 at 903). Simply put: 'If a lawyer's life is dominated by the game — and if his success in the game is measured by money — then his life is dominated by money. For many, many lawyers, it's that simple' (Schiltz ibid at 906). Yet, the role of a legal practitioner is much more than servicing a money-making machine. Legal practitioners also play a part in advancing (or, in some unfortunate instances, inhibiting) justice. Put differently, justice cannot

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be achieved without legal practitioners doing their part, which includes acting ethically and complying with professional duties. Unfortunately, many legal practitioners have lost sight of their greater role in society. Wendel (op cit at 557) notes that '[d]oing the right thing is not simply a matter of responding relationally to the costs and benefits of a course of action that are structured by the relevant institutions. … Rather, the essence of professionalism requires attending to the moral dimensions of lawyering and seeking motivations in the intrinsic values that inform professional life.' After all, achieving justice for one's client is, in itself, a positive reinforcement rivalling that of money-generation and profiteering. The existing external adjustments that are found in the Code of Conduct and the guidance provided by the courts assist in regulating the internal adjustments of the individual legal practitioner, and should serve as a reminder of the expectations of the legal practitioner's ethical and professional conduct.

CONCLUSION

In *Grundler NO v Zulu* [2023] ZAKZDHC 7 para 37, Shapiro AJ said:

> 'There is a rising trend in the legal profession of practitioners demonstrating disrespect (if not outright contempt) for courts and the judiciary. One does not need to look far to find examples of this sort of behaviour, from the ranks of senior counsel to the most junior of candidate attorneys. It manifests not only in how practitioners interact with opponents and judges in and out of court but also in the launching of *prima facie* spurious applications, lacking in factual or legal foundation, that are designed to "snatch bargains", achieve ulterior objectives, delay and/or obstruct. It is a "win at all costs" attitude that does a disservice to the profession and to the country and sets an appalling example to the public at large. It ignores not only the oath that all lawyers take upon their admission but also the distinction between the duty that practitioners owe to their clients and the separate duty that they owe to the Court.'

The repetition of this sort of unethical conduct (which is illustrated in the *Lembore* case) exacerbates the ethical concerns that Shapiro AJ raised and leads to the same (or, at the very least, similar) results. Despite courts strongly rebuking legal practitioners, mulcting them in costs and referring them to the LPC and other regulatory institutions, legal practitioners continue this same questionable ethical conduct. The lure of repeating ethical blunders may be found in the lower costs of using mass-produced documents, which, in turn, results in additional fees. This so-called shortcut to generating fees stems from a desire to increase wealth, and such a desire for money breeds a certain level of dishonest conduct, which ultimately produces an undesirable result: the misleading of the court and the consequent breach of ethical and professional duties.

Breaking this cycle of unethical conduct cannot solely rest on the sanctions that may be brought against the legal practitioner. Clearly,

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sanctions (in themselves) serve as a poor deterrent for repeated unethical behaviour. Rather, the behaviour of legal practitioners should be addressed through more robust external adjustments where situational opportunities are removed (or at the very least reduced), greater regulatory oversight is provided (which may include updates to the Code of Conduct and guidance notes) and where regulatory bodies ensure the efficient and speedy resolution of sanctions. Some positive actions have recently been taken. For example, the LPFF has signed a special memorandum of understanding with the Special Investigation Unit ('SIU') (see Thabi Shomolekae 'SIU, Legal Practitioners Fidelity Fund sign MoU to investigate fraud, corruption in legal profession' *Polity* 17 April 2025, available at *https://www.polity.org.za/article/siu-legal-practitioners-fund-sign-mou-to-investigate-fraud-corruption-in-legal-profession-2025-04-17*, accessed on 23 April 2025). However, the most important step is for legal practitioners to make internal adjustments, which requires a mind and attitude shift from being solely money-focused to becoming more client-focused and justice-oriented. This can occur only when legal practitioners place more worth and value on the administration of justice than on money-generation and profiteering. These internal and external adjustments are needed to break this cycle of unethical conduct and get back to basics, failing which the *Lembore* case (and many other ethical mishaps) are doomed to be repeated.

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TO CONTRIBUTORS

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