

MISCONDUCT AND WRONGFUL ACTS

SACPLAN is the proverbial "watchdog" of the profession and, by law, is required to investigate allegations of professional misconduct raised against registered persons as defined in the Planning Professions Act, 2002 (Act 36 of 2002). Also, SACPLAN is obliged to, of own volition, investigate such matters if there is a reasonable suspicion that professional misconduct has occurred or a wrongful act has been committed which may involve a registered person. This applies to all the categories of registration contemplated in the Act i.e.:

- ❖ Professional planners
- ❖ Technical planners
- ❖ Candidate planners

Peter Dacomb reports that a growing number of complaints of alleged misconduct and matters associated therewith has been brought to the attention of SACPLAN in recent times. Whilst this is partly understandable given the fast growing numbers of registered persons under the Act, it is also somewhat concerning for the profession in general. Understandably, the majority of the complaints filed with SACPLAN involve consulting professional planners in private practice and members of the Association of Consulting Professional Planners (SAACPP).

In the majority of cases, a dispute between an instructing client and the consulting planner results in a complaint being lodged with SACPLAN alleging professional misconduct. In other cases, complaints are received from non-clients (say homeowners associations or objectors to a planning application), who feel aggrieved by the manner in which a planner has conducted himself/herself. More recently, the Courts have, via the Department of Justice, referred matters to SACPLAN to investigate, alluding to possible misrepresentation of facts in a dispute. Important lessons may be learnt from the complaints that are under investigation by SACPLAN and may assist consulting planners and also, to a lesser extent, planners employed in the various spheres of government (and elsewhere) to ensure that their conduct remains beyond reproach.

The following broad categories of complaints have been received by SACPLAN for further investigation:

- ❖ A breach of confidentiality at the expense of the instructing client
- ❖ Non-disclosure of a potential clash of interest by the planner considered to be prejudicial to the interests of the instructing client
- ❖ Failure to timeously attend to an instruction (i.e. failure to submit an application/appeal or similar by a set date and allegations of general tardiness)
- ❖ Failure of a planner to fulfil financial obligations by neglecting to settle the invoice of a subcontracted consultant
- ❖ A misrepresentation of facts to the potential detriment of affected parties
- ❖ Planners in municipal employ doing private consulting work and possibly abusing their positions in doing so

As appears from the various sworn affidavits filed with SACPLAN as part of the complaints of alleged misconduct, a number of important lessons emerge which should be taken to heart by all registered planners faced by similar circumstances. These include:

■ Build a proper paper trail

The keeping of proper records and diligent recording (by correspondence) of instructions, amendments to instructions, appropriate dates and a correct interpretation of the understanding between the parties (client/planner) remain extremely important. Various misunderstandings, based on inadequate records/written explanations appear to have been the cause of a large number of complaints against registered planners.

■ Tangibilize the intangible

The nature and extent of the professional brief to the planner requires to be carefully described and reduced to writing in understandable terms, leaving little if any latitude with regard to the interpretation thereof. The responsibility of the planner, as opposed to the responsibility of other participating professional consultants

(conveyancers, land surveyors, project managers, architects, engineers, market analysts, geotechnical consultants, environmental impact assessment practitioners, etc) must be properly distinguished. This often gives rise to confusion/misunderstanding on the part of the client. Disputes often focus on incorrect assumptions with regard to where the responsibilities of the instructed planner start and stop. Proper written communication and record-keeping and, if possible, written agreements to such effect remain extremely important.

■ Indicative allegations

A large number of the complaints on record with SACPLAN are clearly of a vindictive nature and present as a last gasp attempt by the complainant to "get at" the consulting planner for whatever reason. Where members of the public or other interest groups raise objections to new development proposals and feel aggrieved by the result of the final decision by the relevant authority, there is often an attempt at retribution. The planner, acting for the developer, becomes the focus of the complainant's attention. In most such instances, the matter is expeditiously dismissed. However, in other matters where prima facie evidence suggests that there may have been failure on the part of the planner to properly give effect to his/her obligations, SACPLAN is obligated to take the matter further and to conduct a proper investigation which may include a disciplinary hearing.

■ Pay what is due

It often occurs that a planner co-ordinates the involvement of a "sub-contractor" such as land surveyors, traffic engineers and the like. In some instances the client requires of the planner to manage payment to the sub-contracted parties and payment is often made to the planner who is expected to settle the invoices of the sub-contracted parties. Tardiness to effect prompt payment after receiving it from the client often results in complaints by the sub-contractor. A planner's fiduciary responsibility must not be compromised by failure in this regard. It brings the profession into disrepute.

■ Declare upfront

A potential clash of interest, in taking a brief from a client, may later result in a dispute and allegations of misconduct. The Rules of SACPLAN, including the Code of Conduct oblige all planners to declare any such interest upfront (put it in writing and let the client decide).

■ Don't serve two masters

A number of complaints relate to planners in municipalities doing private work. The allegations suggest that any such planner may abuse the privilege of being an employee of the decision maker. The complainants also suggest that, even where work is done in other areas (not in the jurisdiction of the municipality where the planner is employed), it remains untenable for a government employee, paid via tax-money, to use his/her time (already paid for) to compete with planners in private practice. This cannot be justified in any language.

These are some of the matters which require to be considered by planners to remind all concerned of what professional responsibility is all about.

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