

***IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA***

***Case No: CCT/36/00***

In the matter between:

***GARRETH ANVER PRINCE***

Applicant/Appellant

and

***THE PRESIDENT OF THE LAW SOCIETY OF THE  
CAPE OF GOOD HOPE***

First Respondent

***THE LAW SOCIETY OF THE CAPE OF GOOD HOPE***

Second Respondent

***THE SECRETARY OF THE LAW SOCIETY OF THE  
CAPE OF GOOD HOPE***

Third Respondent

***THE MINISTER OF JUSTICE***

Fourth Respondent

***THE ATTORNEY-GENERAL OF THE CAPE OF  
GOOD HOPE***

Fifth Respondent

***SUPPLEMENTARY AFFIDAVIT OF  
FRANK WALTER KAHN***

I, ***FRANK WALTER KAHN***, do hereby state under oath as follows:

1. I have already deposed to affidavits in this matter, and I am duly authorized to make this further statement on behalf of the 5<sup>th</sup> Respondent.

***BROAD PERSPECTIVE:***

2. Before dealing with specific practical problems, I would like to first stress a broader picture against which possible exemptions for Rastafari must be seen, as

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this would, in my respectful view, have an indirect bearing on the practical problems.

3. Apart from being the Director of Public Prosecutions for the Western Cape, I am also the Chairperson of the National Drug Advisory Board, and my National Drug Master Plan was accepted by the Cabinet as a White Paper. Among the many bodies and persons who assisted me was the Medical Research Council (MRC), to which I will refer hereunder.
4. Violent (and often senselessly brutal) crime is of great concern to me, and it features heavily in the minds of the general public.
5. The broad society is at risk. Almost daily innocent children and bystanders are killed in the cross-fire between gangsters on the Cape Flats. Shopkeepers, security guards and motorists on the N2 near the airport, are killed almost without reason. A Regional Court Magistrate was murdered on his driveway, and another Regional Court Magistrate's assassins were apprehended at her front door. Members of my staff and some Judges have 24-hour bodyguards. A perception of general lawlessness prevails amongst the general public.
- 6.1 As has been pointed out by *Mr Slabbert* on *pages 29- 32* of his heads of argument, much of the violent crime committed in the Western Cape is committed by persons under the influence of the "wit pyp", and this Honourable Court is respectfully urged to once again read the extracts taken from these cases which appear in *Annexures 9 - 36* of his heads of argument.

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- 6.2 As far as the public is concerned (which includes myself and the S A Police Service), there is a firm link between cannabis (in the form of a "wit pyp") and the commission of violent crime. Any perceived diminishing of the dangers of cannabis is going to further

the perception that the law protects the criminal only.

- 6.3 I attach hereto a survey by the MRC (marked *FWK 1 - 5*) which confirms the relationship between cannabis and violent crime.
7. Seen against this broad background it is submitted that any exemptions from the various drugs laws granted to the Rastafari, while still holding the general populace liable under those laws, would send a most disasterous message to the already fearful public (but it would certainly be welcomed by the gangsters and drug-traffickers).
8. But there is another aspect to the broad picture, and that is the vulnerability of children, especially school children. In my National Drug Master Plan (*supra*) the following extract appears on *pages 19 - 20*:

*“More localised research, however, conducted in 1997 among a representative sample of 2 779 grade 8 and 11 students of all races from 38 high schools in Cape Town undertaken by the University of Cape Town (UCT) and the MRC (Flisher, Parry, Evans Lombard & Müller, 1998), found rates of lifetime use of cannabis as high as 32 per cent in males in grade 11. Lifetime use of glue appears to be fairly high, but, except for females in grade 11, is lower than that of cannabis. Excluding*

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*glue-sniffing amongst females, rates of drug use were higher among grade 11 students than students in grade 8.*

*A similar study was undertaken among 7 340 high school students in 16 schools in Cape Town in 1990 (Flisher *et al*, 1993). While the study designs are not entirely comparable, the*

*lifetime use of cannabis among grade 11 students appears to have doubled over the seven years in both males and females. Binge-drinking levels also rose considerably in both grades.*

*In a study using data from the United States National Longitudinal Survey of Youth, Yamada, Kendix and Yamada (1996) found that increases in the incidence of frequent drinking, liquor and wine consumption, and frequent cannabis use significantly reduce the probability of high school graduation.*

*Specific treatment services need to be targeted at young people as their needs are likely to be different from those of adults. For example, young people hold a dependent position in family and society; they are more influenced by peers and popular culture; they often need education or vocational training; and are more likely to be using other drugs.*

*The National Youth Commission (NYC) was established by the Youth Act, 1996, and is based in the Office of the Deputy President. This body's primary aim is assisting the Government in planning a comprehensive youth development policy with reference, **inter alia**, to substance abuse."*

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9. What sort of message would an exemption send to school children? It would most probably be: "*Oh well, it (dagga) can't be so bad. If the Rasta can smoke it, why can't I?*"
10. The children would surely not understand the constitutional reasons for the exemption. They would see it as a judicial endorsement of the acceptability of cannabis.

11. The danger of diminishing (in the children's eyes) the harmful effects of cannabis is not of mere academic interest only. *Mr Slabbert* has already dealt with the "gateway" or "stepping stone" progression by children from the use of cannabis to the use of more dangerous drugs (*page 20* of his heads of argument).
12. Coming to the final aspects of the broad picture, I would like to emphasize the overwhelming evidence that cannabis is a harmful and hallucinogenic drug which is subject to world-wide control, and this Honourable Court is respectfully urged not to lose sight of this.
13. It is submitted that it is in principle wrong to permit 8 000 - 12 000 persons (the Appellant's figures - *para 3.16* of his affidavit) to lawfully use this harmful drug, whilst still holding the general population liable to prosecution. It is respectfully submitted that the public in general, and the law enforcement agencies in particular, would feel that the lofty ideals of the Constitution have been eroded whilst the general sense of lawlessness has been encouraged.

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14. I myself, and my prosecutors, have often been subjected to hostile cross-examination and accusations about the state of lawlessness in the country. The general perception is that the Constitution protects the criminals only. Now I know, and this Honourable Court knows, that the state of lawlessness is not the Constitution's "fault", but the fact remains that that is the public's perception. It is my very real fear that an exemption would fortify and encourage this perception.
15. An exemption is also going to make my task, as well as those of my prosecutors, more difficult, because we will be accused of applying double standards.

- 15.1 An example springs to mind. In terms of sec 3 of the Abattoire Hygiene Act(121/1992), animals can only be slaughtered at an “approved abattoir”. Farmer X slaughtered his sheep on his farm, loaded them on to his cold-storage truck, and transported them to Cape Town. After he had been apprehended on the N1, he made representations to me, saying that although he had slaughtered the sheep on his farm, the carcasses were frozen and thus in a hygienic condition. He pointed out the unfairness of his prosecution, whereas in the informal settlements there were scores of road-side traders selling raw and freshly butchered meat, with swarms of flies buzzing around. Why did I not prosecute them, he asked. [For the record, I proceeded with the prosecution, but this is an example of how the public perceive the administration of justice as favouring those who openly flaunt the law.]
- 15.2 Whereas farmer X’s situation occurs very rarely, I do receive many representations, especially from young people and students, in connection with

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charges of possessing cannabis. These representations are dealt with on their respective merits, but now I can foresee that a further “leg” is going to be added to the representations, namely, “*Why prosecute me when the Rastafari can smoke with impunity?*” Magistrates, when passing sentence, are going to be asked the same question. Furthermore, will dealer A, who sold cannabis to a Rastafari, be entitled to a lesser sentence because he sold to a “legal” user, but when he sells to the stockbroker the full measure of the law is meted out to him?

- 15.3 This Honourable Court has also been seized with a similar problem in ***PRETORIA CITY COUNCIL v WALKER 1998(2) S A 363 (CC)***.
16. In concluding this broad picture, I would point out the following. ***Mr Slabbert*** has already dealt with the Republic’s international obligations, which deals with our broad obligations to the international community. Nearer to home are the Protocol signed by (then) President Mandela (***page 41*** of the heads of argument), as well as (then) President

Mandela's introduction to my National Drug Master Plan, which is attached hereto, marked *FWK 6*.

17. It is respectfully submitted that this Honourable Court must give very serious weight to this Government's undoubted commitment to meeting its international obligations as well as to eradicating the national "drug problem". Cannabis is obviously a great part of the "drug problem".

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### **PRACTICAL PROBLEMS:**

#### **IN TRODUCTION:**

- 18.1 My main practical concerns are ones of controls and effective policing. This Honourable Court has asked for facts on which I have based my broad averment of "grave practical problems", but this is an entirely new field and "facts" are just not generally available. All I can do is to respectfully point out wholly probable and practical scenarios, and pose the questions as to how those events are to be controlled and policed in practice.
- 18.2 I would set out my practical concerns into the following broad categories:
- (a) Can the Rastafari control the situation internally, especially in relation to their children?

(b) How will the State (Department of Health, the Courts and my prosecutors, and the S A Police Service) be able to cope with, and effectively control, the advent of an exemption?

19. Many of the Appellant's solutions appear to be practical, but a closer examination of his proposals dispels this initial appraisal, in my respectful view.

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**INTERNAL CONTROL BY THE RASTAFARI:**

20.1 The following points are taken from the Appellant's supplementary affidavit:

Except for the three smaller Houses, the two larger Houses [The Nyahbinghi Order and the Universal Movement of Rastafari, which between them have about 70% of the 8 000 - 12 000 Rastafari as members] have formal structures and governing bodies.

20.2 The Nyahbinghi House's Constitution provides for, *inter alia*, the following:

- (i) adherence to the Bible (King James version);
- (ii) no persons under 18 may smoke ganja;
- (iii) neither polygamy nor fornication are allowed [**page 104** of the affidavit].

20.3 The Universal Movement of Rastafari also has a Constitution, and their Code of Conduct recognises Christ [**page 85** of the affidavit].

21. Although it does not appear in the Constitution, the Nyahbinghi Order permits sistern, but not other women or children, to participate in the Chalice, and the Universal Movement of Rastafari permit no women to be present at spiritual meetings [affidavit,



*paras 2.9.7 and 3.10.6*].

22. Thus, apart from the obvious differences (such as the dreadlocks, the smoking of ganja, the adherence to the teachings and speeches of His Imperial Majesty Haile Selassie, etc.), the Rastafari Religion is no different from the other traditional

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churches which also have formal structures and governing bodies, and whose members adhere to the Bible.

23. But the mere existence of a Constitution, the registration of members, formal structures and governing bodies still does not meet the practical problem of “control”, especially in respect of children, and these structures are not guaranteed to prevent criminality or the abuse of dagga.
24. The Jew, the Anglican, the Roman Catholic and the Dutch Reform members, for example, all have strong formal structures and governing bodies, but their members, in contravention of the Bible, still commit murder, theft, adultery, and smoke dagga.
25. Despite the Appellant’s own evidence [*page 46 para 4.11*] and his quotation from Ras Maxi that “*it is self-evident that no adult Rastafari would allow an immature youth to smoke the holy herb in any form*” [affidavit, *page 32 para (b)*], the Appellant himself appeared on an etv programme where very young children were participating in the Chalice [*page 49 para 65.6* of the heads of argument]. The press photograph [*annexure 89* of the heads of argument] showing a father giving his 4-year old daughter a puff of cannabis, further illustrates the dangerous vulnerability of young children.
- 26.1 The Appellant does not furnish any figures, but between the 8 000 - 12 000 members there must be several thousand children living with their parents, and surely the children of non-Rastafari parents visit the homes of Rastafari children.

- 26.2 It is clear from the Appellant's evidence [*paras 4.8 - 4.9*] that cannabis in one form or another should be used daily. It is inconceivable that any child who is exposed to this drug on a daily basis will not be affected thereby. The "switch" from smelling the aroma, drinking it in tea, bathing in it, to actually smoking it (with or without their parents' knowledge or consent), is an entirely natural progression, especially as they are no doubt taught that the drug is holy and it is an essential tenet of their religion.
- 26.3 In my respectful view the (presently illegal) exposure of children to this drug is a cause for concern. Legalizing this exposure can only increase the already grave risks to the children, and it is submitted with the greatest respect that this Honourable Court would be failing in its duty to protect vulnerable children and adolescents should it grant the Appellant's prayers. Foreign courts have not hesitated to protect children when the parents are not doing so, and this Honourable Court is respectfully urged to follow their example.
27. The use of cannabis is not confined to religious ceremonies in Tabernacles. According to the Appellant it can also be used in the following circumstances:
- (i) *"where two, three come together in His name;*
  - (ii) *in private;*
  - (iii) *in the privacy of the home;*
  - (iv) *whenever a "member feels the need to be in contact with Jah with the aid of our sacred God-given plant". [Affidavit, pages 43 - 45.]*

28. Furthermore, every day should start with the “*smell of the holy herb*”, and it appears as if it is almost obligatory to smoke the cannabis [*Affidavit, paras 4.9 - 4.10*].
29. This all boils down to the fact that the Rastafari use cannabis whenever and wherever they want to.
30. In my respectful view an exemption in these circumstances is not warranted
31. In my respectful view there are not sufficient internal controls to allow this Honourable Court to find with confidence that, in practice, there -
- (a) will be children or adolescents placed at risk;
  - (b) will be no abuse of the cannabis, especially as it is meant to be used on a daily basis, whenever the member feels the need “*to be in contact with Jah*”
- should an exemption be granted.
32. In practice the Rastafari’s Constitution, formal structures and governing bodies allow for no more control over the use of cannabis by the members and their children, than Mr Cohen’s or Mrs Van der Merwe’s religious structures, etc. allow them to control the use of cannabis by their children.

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33. How, then, am I to apply the law? I have previously referred to representations sent to me, very often by young people and adolescents. A typical scenario is the following:

a group of students celebrate their successful examinations, or, as is often the case, they are just in “high spirits”. They are caught smoking

cannabis. At the moment, depending upon the circumstances, I would prosecute all of them, some of them or none of them. But should one of them be a Rastafari who has been exempted and the circumstances warranted a prosecution of all of the group, would it be fair to prosecute only the others? Or, to be fair to the others I decide not to prosecute anyone. But this latter step fetters my discretion, and does not make for the sound administration of justice.

- 33.1 In conclusion on this leg (the “internal controls”) it is submitted that the new evidence discloses no solution to the practical problems of protecting the children or preventing the abuse of the drug. [By “abuse” I mean personal abuse as well as selling it illegally to others.] On the contrary, it is submitted that an exemption could increase the danger to vulnerable children, especially in the private homes of members, where the S A Police Service would not be able to exercise any kind of control (over the now lawful use) whatsoever.
- 33.2 An exemption would increase the risk to children for another reason: the now lawful (for Rastafari) transportation and cultivation of cannabis would make this drug available on a vastly increased scale.

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**WILL THE S A POLICE SERVICE AND COURTS BE ABLE TO CONTROL THE SITUATION?**

34. This Honourable Court is respectfully referred to the affidavit of *Senior Superintendent Mason* in this regard.
35. I myself, as Director of Public Prosecutions, would also experience some difficulties should an exemption be granted.
36. Due to their concerns about the purity and quality of the cannabis, the Rastafari in the Western Cape wish to continue to be able to purchase their cannabis in the Transkei,

Swaziland or Lesotho, and then be able to transport it to the Western Cape, later to be shared amongst themselves. [The Appellant does not advise this Honourable Court where the members in Gauteng, the Free State or other provinces obtain their cannabis from.] They also obtain their supplies from “locals” in Khayelitsha, Guguletu and Langa. They also wish to be able to cultivate their own crops “*legally, both collectively and individually (under such supervision and regulation that is deemed necessary)*”.

37. I have practical and legal problems with these proposals, as an example would illustrate.
38. If the exemption is for the use and possession of dagga only, what do I do when Rastafari X’s car, transporting a cargo of dagga bought from B in the Transkei, is stopped outside Mossel Bay on the N2? X will say to the policeman, or to me, that he is transporting the dagga for his own religious purposes. Must the police-

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man accept his word or must he escort X from Mossel Bay to Cape Town to ensure that the dagga is indeed to be used by the Rastafari and not sold to others? Do I waive his prosecution for a contravention of section 5(b) of Act 140 of 1992 (dealing in dagga)? What about B? Surely I, or my colleague in the Eastern Cape, cannot waive the prosecution against B? It is not fair, nor logical, to prosecute B and not X.

39. Can X employ an outside agent to purchase and transport his dagga from Lesotho or the Transkei? Would the agent also be exempt from prosecution?
40. But the Appellant seeks a wider exemption, and to accommodate him this Honourable Court would have to “legalise” the whole chain so as to enable X to use, possess, import, purchase, transport, cultivate and supply dagga. This is so far-reaching that in my view it would threaten and undermine the whole administration of the various drugs Acts as well as the National Drug Master Plan referred to *supra*, not to mention our international obligations.

41. But apart from that aspect, how does one control the whole situation? Even if X carries a permit in his pocket which he flashes to the policeman at Mossel Bay, how does the policeman know that the dagga will not be sold to someone else? Or must he just wave X's car on, but arrest the next illegal drug transporter?
42. Apart from being allowed to import and transport the dagga, Appellant also asks that Rastafari be permitted to grow dagga collectively or individually. X would thus be able to grow dagga in his garden, but what control is there to ensure that

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X does not sell same "on the side"? Must a policeman inspect his garden regularly?

Or X and 10 other members grow it collectively at one of their settlements. Must the field be fenced in to prevent non-Rastafari from stealing the dagga, because surely gangsters and thieves will be sorely tempted to gain access to this ready supply of cannabis.

43. Even should the crop be made secure against thieves, what control would there be over the proceeds of the crop?
44. With the greatest respect, I also have a legal reservation whether this Honourable Court is able to grant such a far-reaching exemption.
45. This matter can be addressed in greater detail at an appropriate time if necessary, but my submission can be very broadly explained as follows:

**The Drugs Act, 140/1992:**

46. X, whether a Rastafari or not, can obtain cannabis from a doctor, dentist, pharmacist or veterinarian, provided he uses or possesses it for medicinal purposes (that is, for the “*treatment or prevention of a disease or for some other definite curative or therapeutic purpose*”) or for the purposes of administering it to an animal [section 4(b)(i-ii)]. X, or the animal, must be under the care of a doctor, veterinarian, etc.

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47. Section 4(b)(iv) sets out a long list of persons who can acquire, buy, import, cultivate, collect, manufacture, use, possess, supply, sell, transmit or export cannabis, but this must be “*in accordance with the requirements or conditions of the (Medicines) Act or regulations, or any permit issued....under the Act or regulations*”.
48. Section 4(b)(v) provides for a similar situation in respect of employees of certain persons acting in the course of their employment and in accordance with the requirements or conditions of the Medicines Act.
49. Section 4(b)(vi) allows for a person who “*has otherwise come into possession of (cannabis) in a lawful manner*”, to possess it. It should be noted that this sub-section only permits possession, and not use as well.

**The Medicines Act, 101/1965:**

50. Section 22A(10)(a-b) permits the use, possession, manufacture, import, collection, cultivation or export of cannabis for “*analytical or research purposes*”, provided the Director-General has issued a permit on the recommendation of the Council.
51. An exemption for the use of cannabis by adult Rastafari (and it has already been submitted that Appellant actually proposes an exemption for adult male Rastafari) for religious purposes, does not “fit in” at all with the above schemes of the Acts.

- 52.1 It is thus my respectful view that the far-reaching exemption prayed for by the Appellant goes far outside the specific and detailed confines and purpose of the two Acts. It would mean that this Honourable Court would have to “read in” a further exemption for religious purposes, and this would drastically alter the main schemes of the Acts.
- 52.2 This Honourable Court is respectfully referred to the affidavits of *Ayanda Ntsaluba, Onica Cecilia Maphai and Ingrid Madel van Vuuren*, for an insight from the Department of Health’s perspective.
53. It is submitted that only Parliament is able to alter the purpose and scheme of the Acts.
54. To counter the 5<sup>th</sup> Respondent’s submission that an exemption would cause a massive influx of new members to the Rastafari religion, the Appellant says the following [see *paras 3.9.10; 3.10.9; 3.15.5.2; 4.12; 3.15.5.4*]:
- (a) the RNC is starting to compile a list of *bona fide* Rastafari;
  - (b) Rastafari can recognize persons who pretend to be Rastafari;
  - (c) Rastafari will be made available to act as assessors in Courts or in some other capacity;
  - (d) a new member must attend religious ceremonies, register and pay monthly subscriptions.



55. But the question is not whether one Rastafari can recognize another Rastafari. The problem is, how does the policeman, who arrests a Rastafari at 02h00 on a Saturday morning, know whether X is a genuine Rastafari, or an imposter or a fraud? How does the Court on Monday morning ascertain the true situation without a trial-within-a-trial? What if X is arrested in some out-of-the-way town such as Sutherland, which does not even have a permanent prosecutor? [See *para 56 infra*.] The following scenario is quite possible:
- 55.1 X, a Rastafarian, feels the need to communicate with Jah, and he goes up the mountain, as Appellant has suggested in *para 4.3*, to smoke his cannabis. He is joined by B, an Anglican, who merely wants a quick “fix”. Both are arrested. There will now have to be a trial-within-a-trial, with X calling in his assessors, to determine X’s *bona fides*.
- 55.2 Or, one of Cape Town’s many drug lords gets some of his minions to go through the process of becoming Rastafari, and once they are registered they live (as some drug lords in fact do) in one of Cape Town’s “posh” suburbs, such as Welgemoed, where they will now happily be able to cultivate their own dagga in their garden. Imagine a Court or a policeman trying to pierce this “corporate veil”. The “assessor” will produce the register, and the drug lord’s minions will be set free.
56. There are 56 magisterial districts in my area of jurisdiction, ranging from Springbok up the West Coast, Beaufort West in the North and Knysna along the East Coast. It is a massive area, with shortages of prosecutors, policemen and

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transport a matter of grave concern. For instance, the following courts have no permanent prosecutors, and neighbouring towns have to send one of their prosecutors to help out once or twice a week:

Port Nolloth; Garies; Williston; Fraserburg; Sutherland; Uniondale;

Hopefield and Laaiplek.

Effective control of exemptions and the establishing of *bona fides* is going to be virtually impossible in these centres.

57. In the larger centres there are more courts and prosecutors, but the volume of work is straining the courts to their limits. For example, in the Metropolitan Cape Town there are the following District Courts sitting daily:

**Districts Courts:**

Only some courts will be mentioned in this sampling:

Mitchells Plain .....	8 courts daily
Wynberg .....	11 courts daily
Cape Town .....	10 courts daily
Bellville .....	5 courts daily
Goodwood .....	6 courts daily
Kuils River .....	4 courts daily.

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A typical daily roll for each District Court is the following:

5 - 8 trial cases [such as assault G.B.H, theft, culpable homicide (motor vehicle), malicious injury to property, possession of firearms, possession of dagga, etc];

one to 2 part-heard trials;

one formal bail application, i.e. where the State opposes bail and both

sides will be leading evidence;

3 cases to be remanded again for further investigation;

4 persons were arrested yesterday and the 4 new cases are on the roll today for further postponement. The accused invariably ask for bail, and this must be dealt with;

3 cases in which the investigations have been completed and the cases are to be postponed for plea and trial.

58. Thus, even in the larger centres the effective control of exemptions and the establishing of *bona fides* is going to further strain the Courts' resources, given the state of the Court rolls.

As examples, the following Courts deal with new possession of dagga cases per month:

Cape Town .....	65
Mitchells Plain .....	
Bellville .....	145
Kuils River .....	

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Thus, even at present levels, the Courts are going to struggle to deal with the situation.

59. A further problem relating to practical control is the matter of the form of the exemption. Will it be a "blanket" exemption, or an individual permit issued to the 8 000 - 12 000 Rastafari?

**"Blanket" Exemption:**

60. A "blanket" exemption still raises all the problems set out herein above, which will not be repeated.

**Individual Permits:**

61. The Appellant refers to the affidavits of *Messrs Nelson* and *Conroy* in *para 7.2* of his affidavit. Those witnesses describe permits issued to American citizens in respect of “medical marijuana”.
62. He avers that, from these affidavits, *“it is evident that there have not been practical difficulties in the implementation and administration of medical exemptions....nor have such exemptions led to any grave difficulties in policing or undermined the authorities’ efforts to combat drug abuse and trafficking.”*

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63. This averment is denied. It is submitted that the affidavits do not prove what the Appellant avers they do. In any event, those permits refer to “*medicinal marijuana*”, which is completely different from the exemption the Appellant proposes.
64. Furthermore, the efficacy of “*medical marijuana*” is still a hotly-disputed area (*page 34* of *Mr Slabbert’s* heads of argument), and there is not sufficient clarity on this matter so as to form the basis of an exemption on this ground.
65. In any event, the Drugs Act makes provision for the controlled use of “*medical marijuana*”.
66. As far as individual permits in general are concerned, the following questions are raised:
- (a) what form should the permit take?
  - (b) who is going to administer and monitor the scheme?
  - (c) how is fraud going to be neutralized?

67. In *para 3.11.9* of his affidavit the Appellant avers that “*the RNG, or its local structures, would administer the exemption....*” He is silent on the following aspects:

(a) what form the exemption should take, apparently leaving it up to this Honourable Court to decide thereon:

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(b) what expertise the RNC has to implement, control and organize what will be a countrywide administrative function;

(c) how the RNC would in fact administer the whole operation. Baldly stating that the RNC or its local structures would “*administer the exemption*” is easily said, but unless this Honourable Court knows what the organizational structures are, the whole administration of the exemptions could sink into chaos.

68.1 Another problem is the ready and constant availability of “assessors” in cases where *bona fides* are in issue. An analogous example will illustrate the problem.

Over the years private instances have approached my colleagues and I with technical innovations, such as speed-testing equipment. One of the issues that was not negotiable was the availability of the firms’ expert witnesses, and this was always promised. Invariably the promise was honoured - until the firms realized that their experts had to be in Johannesburg the one day, in Clanwilliam the next day, George the next day, and so on. Cases were postponed several times awaiting the expert witnesses, who were now finding the expense and inconvenience of attending Court all over the country to be somewhat irksome. Many prosecutions foundered when the Court and the defence objected to further postponements, and the State had to close its case.

68.2 What happens on a Monday morning when Rastafari have been arrested over the

weekend in Johannesburg, Fraserburg, Cradock, Malmesbury, etc? Based on past experience, exactly the same thing as happened with any expert witnesses, will

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happen with the “assessors”. Do the “assessors” have time, money and transport to be available countrywide on a permanent basis?

**TO SUM UP:**

69. In the premises it is denied that -

- (a) in law this Honourable Court is able to grant the wide-ranging exemption proposed by Appellant;
- (b) there will not be grave practical problems in implementing and controlling the exemption;
- (c) the exemptions would not undermine the administration of the respective Acts or the government’s efforts to fight drug abuse and trafficking;
- (d) the Rastafari have the infrastructure and organizational expertise to administer the exemptions;
- (e) the Rastafari have sufficient internal controls to prevent abuse of the drug or to protect vulnerable children and adolescents;
- (f) the diminishing of the dangers of the hallucinogenic drug (which would be the inevitable result of an exemption, it is submitted) would not have an adverse effect on the administration of justice, or would not result in the increased use of the drug.

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70. Where the accompanying affidavits have not been properly signed or attested to, leave is humbly sought to file them in their present state, and the originals will be filed as soon as they are available. Lack of resources and time constraints have not permitted the timeous signing of all the affidavits. Some deponents have requested costs, but this prayer is not pursued.
71. It is thus humbly prayed that this Honourable Court should not grant any exemptions.

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***F W KAHN SC***  
DEPONENT

Sworn to and signed in my presence, at ***CAPE TOWN*** on this        day of ***FEBRUARY 2001*** by the deponent who swore that the contents of this declaration are true, and who further declared that he -

- (a) knows and understands the contents hereof;
- (b) has no objection to taking the prescribed oath;
- (c) considers the prescribed oath to be binding on his conscience.

.....  
***ANITA LOTZ***  
***Ex officio*** COMMISSIONER OF OATHS  
OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS  
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