IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO: CCT36/00

In the matter between:

GERRETH ANVER PRINCE **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**

SUPPORTING AFFIDAVIT

I, the undersigned,

INGRID MADEL VAN VUUREN

do hereby declare under oath and say:-

1.

1.1 I am an adult female, a Chief Medicine Control Officer in the Directorate of Medicines Administration in the Department of Health. My offices are at Hallmark, Proes Street, PRETORIA.

1.2 All facts deposed to herein by me are, unless the context otherwise indicates, within my personal knowledge and are, according to my personal knowledge and belief, both true and correct.

1.3 I have been empowered by the Director-General of the Department of Health to depose to this affidavit.

1.4 I joined the Department of Health during 1985 and I have been working at Temba and Kalafong Hospitals. During 1991 I was transferred to the present offices as a Senior Pharmacist. I hold a Diploma in the Pharmacy from the Technicon, Pretoria. As from 1991 I have been involved in narcotic and psychotropic substances control within the Department in terms of Medicine and Related Substance Control Act No. 101 of 1965 (The Medicine Act). As from 1996 I was promoted to the present position. In 1998 I got involved in scheduling and catagorization of drugs job in terms of the Medicine Act. I have also been involved in the compilation of

the report to the Minister on the decriminalization of cannabis in 1998, a copy of which is attached hereto as Annexure "VA". I have special knowledge of the Department's policy on the control of drugs.

1.5 I have read the judgment of the Honourable Mr Justice Ngcobo, Mr Prince and The Director-General. I hereby wish to put the following submissions before the court.

2.

Cannabis has been classified as Schedule 8 drug on the basis of, amongst others, the assessment by the Medicines Control Council. The Medical Control Council when classifying drugs has the following in regard:

2.1 Substances with no recognised medicinal use and which are liable to abuse or which have the capacity to produce a state of dependence and/or central nervous system stimulation or depression resulting in hallucinations or disturbances in motor function or thinking or behaviour or perception or mood. "*No recognised medicinal use*" also includes substances of which the risks involved in their use, are outweighed by the availability of safer drugs.

2.2 If there is sufficient evidence that the substance is being or is likely to be abused as to constitute a public health and social problem warranting specific control.

3.

The evaluation of a drug is based on scientific evidence and this evaluation requires specialised and expert knowledge of the subject. The Department of Health uses the technical expertise of the panel of experts of the Medicines Control Council to assess a drug and advise on the appropriateness to include a drug in an appropriate Schedule. At international level this function is fulfilled by the World Health Organisation and cannabis has been classified as a Schedule1 and 4 drug of the 1961 Convention. The general guidelines for scheduling are the following:

3.1 Safety;

3.2 Need for professional advise/supervision;

3.3 Control;

3.4 Public health;

3.5 Usage;

3.6 International drug regulation.

4.

On safety the following are considered:-

4.1 The inherent safety characteristics of a medicine or substance in general is looked at. The more toxic the compound, the higher the schedule becomes;

4.2 The nature and severity of side effects which may require close monitoring or further investigation;

4.3 The number and severity of contra-indications in certain conditions and with other drugs;

4.4 The existing schedule status of a compound which is contained in a medicine already registered under the same or different pharmacological classification;

4.5 Long term safety.

5

On Professional advise or supervision the following are considered:-

5.1 The complexity or severity of the conditions for which the medicine is indicated. Medicines used for complex disease and /or severe life threatening conditions require advanced clinical therapeutic knowledge. Access is restricted through prescription or use by the appropriate health professionals and the duration of therapy limited to permit revaluation. Necessity for an accurate diagnosis. The access of medicine used for the treatment of disease conditions which require an accurate diagnosis are restricted through prescription or use by an appropriate health profession.

5.2 Socio-economic factors may be considered. For example, the need for drugs to be available for professions practising primary health care;

5.3 Demographic and epidemiological factors may be taken into account;

5.4 Education or public perceptions that may lead to incorrect or correct use.

6.

Under usage the following are considered:

6.1 Requirement for maintenance of treatment. Specific accessibility and availability of medicines or substances used chronically;

6.2 Dosage form and complexity of route of administration. The use of formulations or dosage forms of medicines which require specialised knowledge or skill are restricted to appropriate health professions;

6.3 The effect of overuse or indiscriminate use due to the absence of professional advice;

6.4 The need for the availability of professional advice when the product is supplied.

7.

On control the following are considered:-

7.1 Requirements in terms of International Drug Conventions Substances with an abuse or habit forming potential are placed in higher Schedules;

7.2 The possibility of abuse or misuse of a substance;

8.

On public health the following are considered:-

8.1 The availability of certain drugs for use during emergencies may be excluded from higher Schedules under specific conditions;

8.2 Essential needs of society. The need for availability of essential medicines by society will necessitate a categorisation into lower Schedules

9.

9.1 Safety to the handler of the medicine. Reduced accessibility or increased control measures will be afforded to substance with increased risk to the health of the substance

9.2 Veterinary medicines. Safety for the consumer of animal products namely withdrawal periods. Veterinary medicines with an extended conflict with standard management practises will require increased control measures to ensure compliance and safety to the consumer;

9.3 Environmental safety. Substances which are potentially hazardous to the environment will be placed into higher schedule category;

9.4 Special storage procedures. Specialised storage conditions (eg extreme temperature) may necessitate control by certain professions.

9.5 Packaging and labelling which may have safety implications.

10.

On international drug regulation the schedule status in other countries is considered.

11.

It will be extremely impossible to follow these guidelines when permitting the Rastafarians to use cannabis which is not a medicine. I must add that even the cultivation of hemp which is a type of cannabis with a low concentration of toxic substances and which is used for the production of fibres and which is grown under strict conditions in South Africa has not yet been approved. The research on hemp, although permitted and continuing, has not yet received recognition by the authorities in a manner that it can be cultivated in a large market scale.

12.

It should further be noted that cannabis is a botanically based drug and cannot be evaluated in terms of the normal requirements for medicines namely safety, quality, purity and efficacy and is therefore not regarded as medicine.

13.

Cannabis contains 8 different psychoactive substances (tetra-hydro cannabinols) at varying concentrations depending on the origin of the plant. It is these substances which are dependence producing and which when they are not separated from each other, are dangerous to the health of the consumer. There is one of the substances which has a medicinal value. However, it must be extracted from the natural dagga plant scientifically for it to be used. The substance itself is a drug. Otherwise dagga in its pure natural form with all the substances combined is dangerous.

14

14.1 Cannabis grown in South Africa could be amongst the strongest in the world. (Seemingly Mr Prince advocates for the strongest cannabis.) South South Africa is the signatory of the 1961 Convention and, according to the Convention, the legitimate cultivation of cannabis will have to take

place under government control and monopoly. As I have read the Affidavit of Mr Prince this is not what he wants. He wants cannabis to be obtained from the regular illegal suppliers. This will be a breach of the obligation South Africa has in terms of the convention.

14.2 Further, the Medicines Act is aimed at restricting the use and possession of drugs only to specific responsible professions/qualified people and only for defined purposes. These people are qualified with accredited universities and, in the case of professionals, registered with professional councils. In the case of cannabis only research permits are issued and only to suitably qualified individuals from bona fide research organisations. The non -compliance by individuals with a permit of possession of drugs results in disciplinary action by a statutory body in the case of the health professions. The statutory bodies of the health professions act as an independent watchdog over the professions to ensure ethical, responsible and professional conduct with respect to the handling of drugs. Since their profession could be at stake this acts as a powerful incentive for professionals to comply with the Act.

14.3 In the case of Rastafarians, the Department does not have the support of an independent control organisation that could assist in ensuring proper control. The Department of Health would have to try and control a group of

people belonging to a religion – a field outside the Department of Health's scope.

14.4 Further, the exemption will hamper the objectives of the Act as well as South Africa's obligations in terms of International Drug Conventions. The aim of the Act is to limit the use on possession of the narcotic drugs to medical and scientific purposes only and, in the case of cannabis which is not recognised as a medicine, its use and possession is limited only to scientific purposes in order to protect public health.

14.5 There is sufficient scientific evidence that cannabis is being abused and is likely to be abused as to constitute a public health and social problem. Giving exemption to Rastafarians will increase the availability and supply of cannabis. Increased availability will invariably lead to an increase of abuse unless controlled exceptionally well.

14.6 Drug abuse is a complex public health and social problem affecting not only the abuser but the whole society. This means that the exemption given to Rastafarians could create public health problems that affect the whole society. If there is a legal use there must be legal production and supply.

14.7 South Africa has no knowledge of the cultivation and proper control over the cultivation of a narcotic drug. The minimum requirements in terms of the 1961 Convention on narcotic drugs will be difficult and expensive for South Africa to comply with. Furthermore cannabis grows like a weed throughout a large area of South Africa and it is also controlled in terms of certain agricultural laws. It will be extremely difficult to confine the plants growing to certain legalised areas and also to ensure that Rastafarians would get the cannabis only from those legal sources for which the controls required would be expensive and impractical.

14.8 The international Conventions do not provide for the use of drugs for religious purposes and apart from South Africa not complying with the obligations of the Conventions. South Africa might look uncooperative if such a controversial decision as exempting the Rastafarians from prosecution for smoking cannabis is taken in South Africa. Surely the rest of the world cannot be wrong in their restrictions on the availability of drugs in order to prevent public health problems. The control imposed by the Act enables South Africa to comply with the general obligations in terms of the International Drug Convention. See Annexure “VB” which is a report I compiled on the cultivation of hemp for more information in this matter.

WHEREFORE I also pray for the dismissal of the application.

_____

DEPONENT

I CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED THAT HE/SHE UNDERSTANDS THE CONTENTS OF THE DECLARATION WHICH WAS SWORN TO/AFFIRMED BEFORE ME ON THIS _____ DAY OF _____ 2001. THERE HAS BEEN COMPLIANCE WITH THE REQUIREMENTS OF THE REGULATIONS CONTAINED IN GOVERNMENT GAZETTE R1258, DATED 21 JULY 1972 AS AMENDED.

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COMMISSIONER OF OATHS