

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

CASE NO: 31396/2017

In the application for admission as amicus curiae of:

CENTRE FOR APPLIED LEGAL STUDIES

Applicant

In re: the matter between:

WALTER, SUZANNE

First Plaintiff

HARCK, DIETHELM GUNTHER

Second Plaintiff

WALTER, SUZANNE N.O.

Third Plaintiff

HARCK, DIETHELM GUNTHER N.O.

Fourth Plaintiff

GRUBB, LYNNE N.O.

Fifth Plaintiff

SODERHOLM, KAREN N.O.

Sixth Plaintiff

and

THE MINISTER OF HEALTH

First Defendant

**THE MINISTER FOR JUSTICE AND
CORRECTIONAL SERVICES**

Second Defendant

**THE HEALTH PROFESSIONAL COUNCIL OF
SOUTH AFRICA**

Third Defendant

**THE NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS**

Fourth Defendant

**THE PARLIAMENT OF THE REPUBLIC OF
SOUTH AFRICA**

Fifth Defendant

**NOTICE OF MOTION:
APPLICATION TO BE ADMITTED AS AN AMICUS CURIAE,
AND TO ADDUCE EVIDENCE**

PLEASE TAKE NOTICE that the Centre for Applied Legal Studies (“**CALS**”) hereby makes application to the above Honourable Court for an order in the following terms:

1. CALS is admitted as an *amicus curiae* in the above proceedings in terms of rule 16A of the Rules of this Court;
2. CALS is granted leave to:
 - 2.1. Submit written argument in the above matter;
 - 2.2. Present oral argument at the hearing of the above matter;
 - 2.3. Adduce evidence through calling expert witnesses and admission of documentary evidence.
3. Further and/or alternative relief.

TAKE NOTICE FURTHER that the founding affidavit of **SHEENA JUSTINE SWEMMER**, together with the annexures thereto, is filed together with this notice and will be used in support of this application.

TAKE NOTICE FURTHER that CALS will accept notice and service of all processes in these processes at the address set out hereunder and will also accept electronic service at sheena.swemmer@wits.ac.za.

Dated at Johannesburg on this 19th day of FEBRUARY 2019.



CENTRE FOR APPLIED LEGAL STUDIES (CALS)

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**TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT
JOHANNESBURG**

AND TO: Tshabalala Attorneys, Notaries & Conveyancers

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Ref: 6709/17/P4/PAC094

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Vuyoletu Mntonintshi

From: Vuyoletu Mntonintshi
Sent: 19 February 2019 10:22 AM
To: 'jazmin@tshabalala.com'; 'law@modukalaw.co.za'; 'PCartwright@justice.gov.za'; yolanda@tshabalala.com
Cc: Sheena Swemmer; Lee Anne Bruce
Subject: Walters and others v Minister of Health and others case number 31396/2017
Attachments: CALS Amicus Application in Walters and others v Minister of Health and others 19022019 GP.pdf

Dear All

The above refers.

Please find the hereunder listed documents for service;

1. Notice of Motion, and
 . Founding Affidavit

Regards

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IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

CASE NO: 31396/2017

In the application for admission as amicus curiae of:

CENTRE FOR APPLIED LEGAL STUDIES Applicant

In re: the matter between:

WALTER, SUZANNE First Plaintiff

HARCK, DIETHELM GUNTHER Second Plaintiff

WALTER, SUZANNE N.O. Third Plaintiff

HARCK, DIETHELM GUNTHER N.O. Fourth Plaintiff

GRUBB, LYNNE N.O. Fifth Plaintiff

SODERHOLM, KAREN N.O. Sixth Plaintiff

and

THE MINISTER OF HEALTH First Defendant

**THE MINISTER FOR JUSTICE AND
CORRECTIONAL SERVICES** Second
Defendant

**THE HEALTH PROFESSIONAL COUNCIL OF
SOUTH AFRICA** Third Defendant

**THE NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS** Fourth
Defendant

**THE PARLIAMENT OF THE REPUBLIC OF
SOUTH AFRICA** Fifth Defendant

FOUNDING AFFIDAVIT

Handwritten initials/signature
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I, the undersigned,

SHEENA JUSTINE SWEMMER

do hereby state under oath that:

I. INTRODUCTION

1. I am an adult female practising as an attorney at the Centre for Applied Legal Studies ("CALS"), situated at 1 Jan Smuts Avenue, Braamfontein. I am duly authorised to depose to this affidavit and to institute this application on behalf of CALS, the applicant for admission of oral and written argument and to adduce evidence as *amicus curiae* in the present matter.

2. CALS is a civil society organisation based at the University of the Witwatersrand. CALS is also a law clinic, registered with the Legal Practice Council and acts in connecting academia and social justice. The University of the Witwatersrand is a juristic person and tertiary education institution registered in terms of the Higher Education Act No 101 of 1997, as amended.

3. CALS' functions have been approved by the Vice Chancellor of the University of the Witwatersrand in terms of its rules, policies and procedures.

4. CALS seeks to intervene as *amicus curiae* in this matter in order to make oral and written submissions, and to adduce evidence before the Court through the leading of expert witnesses and the presentation of documentary

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evidence, to assist the Court by making submissions that are novel and relevant to this matter. CALS has received consent from all the parties to intervene.

5. The facts contained herein are to the best of my knowledge both true and correct and, unless otherwise stated or indicated by the context, are within my personal knowledge.

II. THE INTEREST OF CALS IN THESE PROCEEDINGS

6. CALS is committed to the protection of human rights through the empowerment of individuals and communities and the pursuit of systemic change. CALS' vision is a socially, economically and politically just society where repositories of power, including the state and the private sector, uphold human rights.

7. The purpose of CALS is to practice human rights law and social justice work with a specific focus on five intersecting programmatic areas, namely Basic Services, Business and Human Rights, Environmental Justice, Gender, and the Rule of Law. CALS adopts an intersectional and gendered understanding of human rights violations and is conscious of the transformation agenda in South Africa.

8. CALS relies on a range of strategies including research, advocacy, and strategic litigation to further its aims and objectives. To this end, CALS has

been a party to a number of court proceedings in the past, including having been admitted as an *amicus curiae* in *S v Makwanyane*,¹ *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others*,² *August and Another v Electoral Commission and Others*,³ *Carmichele v Minister of Safety and Security and Another*,⁴ *S v Jordan and Others (Sex Workers Education and Advocacy Task Force and Others)*,⁵ *S v Engelbrecht*,⁶ *Volks NO v Robinson and Others*,⁷ *Masiya v Director of Public Prosecutions, Pretoria and Another*,⁸ *Agri South Africa v Minister for Minerals and Energy*,⁹ *National Commissioner of Police v Southern African Human Rights Litigation Centre and Another*¹⁰ and *Law Society of South Africa and Others v President of the Republic of South Africa and Others*.¹¹

9. CALS intervened as *amicus curiae* in *Minister of Justice and Correctional Services and Others v Estate Late Robert James Stransham-Ford and Others*¹² in support of the arguments made on behalf of the estate of the late Mr Stransham-Ford. CALS sought to extend the legal arguments on the rights to dignity and life, to include the right not to be treated in a cruel, inhumane or degrading way, and not to be tortured, with reference to international law: that the absence of a right to assisted dying can amount to torture or cruel

¹ 1995 (6) BCLR 665 (CC).

² 1999 (1) SA (CC).

³ 1999 (3) SA 1 (CC).

⁴ 2001 (4) SA 938 (CC).

⁵ 2002 (6) SA 642 (CC).

⁶ 2004 (2) SACR 391 (W).

⁷ 2005 (5) BCLR 446 (CC).

⁸ 2007 (5) SA 30 (CC).

⁹ 2013 (4) SA 1 (CC).

¹⁰ 2015 (1) SA 315 (CC).

¹¹ (CCT67/18) [2018] ZACC 51 (11 December 2018).

¹² 2017 (3) SA 152 (SCA).

and unusual punishment.

10. CALS recognises that the matter before this Honourable Court raises important and intersectional constitutional issues, including the rights to equality (section 9), life (section 11), human dignity (section 10), bodily and physiological integrity (section 12(2)) and health (section 27). It raises important principles of comparative and international law.

11. CALS supports the relief sought by the Plaintiffs:

11.1 for declaratory relief declaring the common law prohibition on physician assisted suicide, *and* physician assisted euthanasia, (a physician assisted death in prescribed circumstances) unconstitutional;

11.2 for declaratory relief that the Third Defendant's rule against a physician assisted death in all circumstances, is unconstitutional, and set aside; and

11.3 directing the Fifth Defendant to enact legislation, (following a robust and participatory legislative process to determine the necessary and appropriate checks and balances), for the implementation of the recognition of a constitutional right to a physician assisted death in prescribed circumstances.

12. CALS seeks leave to intervene to adduce legal argument, and oral and

documentary evidence on the right to health in particular, towards legal recognition for:

12.1 a right to palliative care as primary health care, for all terminally-ill South Africans; and

12.2 a right to a physician assisted death, for all terminally-ill South Africans, who meet a legislatively prescribed criteria, who may choose such for themselves.

III. CONSENT FROM PARTIES

13. On 3 December 2018 CALS requested consent from all the parties to the above matter in terms of 16A (2) of the Uniform Rules of Court to enter as an *amicus curiae* in the above action. This included a request to make oral and written submissions, and to adduce evidence through calling expert witnesses and the admission of documentary evidence. The letter is attached as annexure "CALS 1".

14. On 5 December CALS received consent to be admitted as *amicus curiae* from the First, Second and Fourth Defendants. Confirmation is attached as annexure "CALS 2".

15. On 6 December 2018 CALS received consent to be admitted as *amicus curiae* from the First to Sixth plaintiffs. Confirmation on behalf of all the

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plaintiffs is attached as annexure "CAL S 3".

16. On 8 January 2019 CALS received consent to be admitted as *amicus curiae* from the Third Defendant, subject to the proviso that CALS does not oppose an application to adduce evidence in rebuttal. Confirmation is attached as annexure "CAL S 4".

IV. ARGUMENTS CALS SEEKS TO ADVANCE

17. CALS respects the inherent dignity of all persons, regardless of physical or mental health, ability or disability, religious view or otherwise, or the aspirations or hopes that they have for themselves, or the choices that they make for themselves in furtherance of those hopes or aspirations.

18. CALS respects all life, and the decisions of all persons who are terminally-ill, to succumb to a natural death.

19. CALS considers the right to life sacrosanct. In support of the right to life, CALS respects the choice for all persons to determine to their own views and values, and to have those meaningfully interpreted, respected, and upheld, by the rule of law.

20. CALS will argue that a right to a physician assisted death does not diminish the value of a person's life or dignity. The right to die is concerned with individual dignity and choice in dying, and thus the determination of what a

valuable life (and death) consists of is dependent on an individual's views and choice for herself, and her own perception of her inherent dignity.

21. CALS will argue that respect for the autonomy of persons requires the law to recognise, respect and give effect to (within prescribed parameters) a person's informed and considered choice in dying.

22. CALS is primarily concerned with the individual's choice whether or not to end their prolonged suffering in order for their death to be aligned with what the individual chooses as a dignified death for themselves.

23. CALS will argue that the nature and basis of the right to health in terms of section 27 of the Constitution is applicable to the rights of the dying and the role of the physician when death is imminent.

24. CALS refers to physician assisted death to include the terms 'physician assisted suicide' and 'physician assisted euthanasia'. CALS interprets 'physician assisted suicide' as a physician prescribing medication to a patient, at the patient's express and informed request, which a patient takes voluntarily, in order to alleviate their suffering and hasten their death. CALS interprets 'physician assisted euthanasia' as a physician administering medication to a patient, at the patient's express and informed request, which alleviates a patient's suffering and hastens their death.

25. Without the lawful option of a physician assisted death, a terminally-ill patient

is only afforded autonomy to refuse medical treatment and nutrition to hasten the end of life and suffering that may not be alleviated through palliative care, or may only be alleviated through unconscious sedation. For a patient who wishes for a physician assisted death, the pain and suffering that a terminally-ill patient experiences during that time, is an infringement of the right to health, and to dignity.

26. The denial of a physician assisted death is an unjustifiable limitation on the right to health and its intersection with other rights in the Bill of Rights.

27. Legal principles, and not pragmatic considerations, must determine a declaration of a constitutional right to a physician assisted death. Pragmatic considerations on the implementation of this right, qualifying and excluding factors, oversight of implementation, reporting and more, ought to thereafter properly be determined by Parliament after a participatory process.

28. Choice in death decisions are ones that are based on a respect for individual dignity and autonomy. In light of this, CALS submits that societal views must be considered yet cannot be definitive in determining whether or not a right exists, or in the case of an existing right, whether or not the right has been unreasonably limited.

29. CALS submits that the obstacle of unequal access to basic health care services and the inadequacy of accessibility to palliative and comfort care in South Africa cannot justify the limitation of a broader right to control the

manner and time of one's death through the right to health care, for those who freely choose it and qualify for such assistance.

30. Rather, this is a compelling reason to provide both better end of life care and universal access to this care, irrespective of financial considerations. The inadequacy of medical care cannot justify inflicting further indignities on dying patients by restricting their right to die as they see fit.

31. Practical objections to physician assisted dying ought to apply equally to passively hastening death by letting underlying diseases kill people through inadequate access to health care. The appropriate moral and practical response to practical objections is not prohibition of physician assisted dying, but instead an expanded right to high quality end of life health care services. It follows that high quality end of life care should be an essential part of basic health care services.

32. CALS submits that the law can protect vulnerable terminally-ill persons, by ensuring that strong procedural safeguards governing assisted dying are in place, with necessary and appropriate checks and balances.

V. THE EVIDENCE WHICH CALS SEEKS TO ADDUCE

33. CALS intends to introduce evidence from foreign and local experts including ethicists, palliative care providers and physicians:

33.1 presenting perspectives around medical ethics and patient autonomy

- 34.1 the respective enabling legislation in those jurisdictions and their perspectives on the law and practice;
- 34.2 the qualifying and excluding factors considered for patients requesting physician assisted deaths; and
- 34.3 the checks and balances implemented in those countries to ensure the protection of vulnerable patients, to monitor, record, and protect from abuse in the implementation of their respective laws.
35. To the extent that it may not be covered by any of the parties, CALS will introduce a record of the laws in place in additional countries and states that have legalised assisted dying or euthanasia.
36. CALS intends to introduce evidence from South African experts including ethicists, palliative care providers and physicians on:
- 36.1 why palliative care ought to be provided as a primary health care basic right for every terminally-ill South African;
- 36.2 how physician assisted death could be implemented in South Africa, notwithstanding the grave inequality in access to health care services;
- 36.3 how physician assisted death could be implemented in South Africa in a manner that would ensure the protection of vulnerable people, with

necessary safeguards, checks and balances; and

36.4 how physician assisted death for terminally-ill patients who meet prescribed criteria, can be aligned with physicians' professional ethics.

VI. WHY CALS OUGHT TO BE PERMITTED TO ADDUCE EVIDENCE

37. The Constitutional Court has settled the position that *amici curiae* are permitted to adduce evidence where this will be of assistance to the court. In *Children's Institute v Presiding Officer of the Children's Court, District of Krugersdorp and Others*¹³, the Constitutional Court pertinently stated that:

"Properly interpreted, Rule 16A is in my view permissive and allows for an amicus to adduce evidence. Both a textual and purposive interpretation of the Rule supports this conclusion. In any event, even if Rule 16A does not provide for evidence to be adduced by an amicus, section 173 of the Constitution gives courts the inherent power to regulate their own process and this includes the ability to allow amici to adduce evidence if the interests of justice so demand."

38. The Constitutional Court noted that rule 16A read as a whole provides courts with a great deal of discretion when determining whether to admit *amici curiae*, as well as the terms and conditions under which they may participate in the proceedings, and that the only limitation on a court's discretion to

¹³ 2013 (2) SA 620 (CC) at para 17 ("**Children's Institute**").

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dispense with any of the requirements in rule 16A would be whether it is in the interests of justice to do so.¹⁴ The Constitutional Court held that the term “submissions” contained in rule 16A ought to be interpreted “to include written or oral argument, or evidence”,¹⁵ and that properly construed, the phrase “terms and conditions as it may determine” in rule 16A(8) empowers a high court to admit any submissions by an *amicus curiae* and to determine, guided by what is in the interests of justice, whether those submissions will include (i) written argument, and if so, to what extent; (ii) oral argument, and if so, the duration thereof; and (iii) the nature and extent of the evidence sought to be led, and if so, under what conditions.¹⁶

39. In *In re Certain Amicus Curiae Applications: Minister of Health and Others v Treatment Action Campaign and Others*:¹⁷ The Constitutional Court held that:

“The role of an amicus is to draw the attention of the Court to relevant matters of law and fact to which attention would not otherwise be drawn. In return for the privilege of participating in the proceedings without having to qualify as a party, an amicus has a special duty to the Court. That duty is to provide cogent and helpful submissions that assist the Court.”

40. It is precisely this that CALS seeks to do in the present matter. I respectfully submit that the evidence sought to be adduced through calling expert

¹⁴ *Children’s Institute* at paras 19-20.
¹⁵ *Children’s Institute* at para 22 (emphasis added).
¹⁶ *Children’s Institute* at para 23.
¹⁷ 2002 (5) SA 713 (CC) at para 5.

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witnesses and the admission of documentary evidence by CALS will be of assistance to this Honourable Court, and that the interests of justice favour CALS being permitted to adduce such evidence.

VII. THE APPLICATION MEETS THE REQUIRMENTS OF RULE 16A

41. Under Rule 16A of this Court's Rules, an applicant for admission as *amicus curiae* must satisfy the Court that it has an interest in the matter, that its submissions are relevant to the proceedings and different to those that will be advanced by the parties.

42. These requirements are met in this case:

42.1 It is relevant for the Court to hear the expert evidence of ethicists, palliative care providers and physicians from jurisdictions which have legalised physician assisted dying on their experiences on the enabling environment, implementation of such law, and oversight of its implementation.

42.2 CALS is not presently aware that any party may be placing such evidence before the Court.

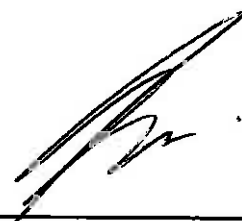
42.3 It is relevant for the Court to hear the expert evidence from South African ethicists, palliative care providers and physicians on how physician assisted death could be implemented in South Africa, notwithstanding the

grave inequality in access to health care services; and, in a manner that would ensure the protection of vulnerable people, with necessary safeguards, checks and balances.

42.4 CALS is not presently aware that any party may be placing such evidence before the Court.

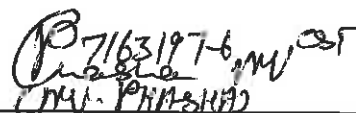
42.5 It is relevant for the Court to consider the present matter in the context of CALS' argument that palliative care ought to be accessible as primary health care for all terminally-ill South Africans.

43. I further respectfully submit that the interests of justice favour CALS being permitted to adduce such evidence.



SHEENA JUSTINE SWEMMER

SIGNED and SWORN to BEFORE ME at JOHANNESBURG this 19th day of ~~FEBRUARY~~ 2019, the deponent having acknowledged that she knows and understands the contents of this affidavit, that she has no objection to taking the prescribed oath and that she considers the said oath to be binding on her conscience.



COMMISSIONER OF OATHS



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Centre for Applied
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3 December 2018

To: Tshabalala Attorneys, Notaries & Conveyancers

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To: State Attorney Cape Town
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Ref: 6709/17/P4/PAC094

Dear Madam/Sir

RE: Request for consent in terms of Rule 16A to intervene in:
Walters & Others v Minister of Health & Others; Case number 31396/2017 SGHC

1. The Centre for Applied Legal Studies (CALS) is a civil society organisation based at the School of Law at the University of the Witwatersrand. CALS is also a law clinic, registered with the Law Society of the Northern Provinces. As such, CALS connects the worlds of both academia and social justice. CALS' vision is a socially, economically and politically just society where repositories of power, including the state and the private sector, uphold human rights. CALS operates across a range of programmes including: basic services, business and human rights, environmental justice, gender and rule of law.
2. Historically CALS has entered as *amicus curiae* in numerous matters concerning the protection, fulfilment and realisation of rights contained in the South African Constitution. Examples of such interventions include (but are not limited to) the matters of: *S v*

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Makwanyane;¹ *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others*;² *Carmichele v Minister of Safety and Security*;³ *S v Jordan and Others (Sex Workers Education and Advocacy Task Force and Others)*;⁴ *Volks NO v Robinson and Others*;⁵ *Masiya v Director of Public Prosecutions Pretoria (The State) and Another*;⁶ and *Law Society of South Africa and Others v President of the Republic of South Africa and Others*.⁷

3. CALS furthermore intervened in *Minister of Justice and Correctional Services and Others v Estate Late Robert James Stransham-Ford and Others*⁸ ('Stransham-Ford') in the Supreme Court of Appeal in support of the arguments made on behalf of the estate of the late Mr Stransham-Ford, arguing for declaratory relief holding that there is a Constitutional right to a physician assisted death in certain circumstances, subject to a legislative process to determine the necessary checks and balances on the implementation of such a right.
4. CALS seeks consent from the parties in accordance with section 16A of the Uniform Rules of Court to intervene as *amicus curiae* in *Walters, Suzanne & Others v Minister of Health & Others*. CALS seeks to present oral and written submissions, and to adduce evidence through calling expert witnesses and the admission of documentary evidence.
5. CALS seeks to advance legal argument that:
 - 5.1. A right to die in no way diminishes the value of a person's life. The right to die is concerned with individual dignity and choice in dying, and thus the determination of what a valuable life (and death) consists of is dependent on individual views thereof.
 - 5.2. Respect for the autonomy of persons requires that we respect a person's informed and considered choice in dying. In instances where an individual is suffering from a terminal

¹ (CCT3/94)[1995] ZACC 3; 1995 (6) BCLR 665; 1995 (3) SA 391; [1996] 2 CHRLD 164; 1995 (2) SACR 1.

² (CCT11/98) [1998] ZACC 15; 1999 (1) SA 6; 1998 (12) BCLR 1517.

³ (CCT 48/00) [2001] ZACC 22; 2001 (4) SA 938 (CC); 2001 (10) BCLR 995 (CC).

⁴ (CCT31/01) [2002] ZACC 22; 2002 (6) SA 642; 2002 (11) BCLR 1117.

⁵ (CCT12/04) [2005] ZACC 2; 2005 (5) BCLR 446 (CC).

⁶ (CCT54/06) [2007] ZACC 9; 2007 (5) SA 30 (CC); 2007 (8) BCLR 827.

⁷ (20382/2015) [2018] ZAGPPHC 4; [2018] 2 All SA 806 (GP); 2018 (6) BCLR 695 (GP) (1 March 2018); *President of the Republic of South Africa v LSSA & Others* CCT 67/18 heard on 30 August 2018.

⁸ (531/2015) [2016] ZASCA 197; [2017] 1 All SA 354 (SCA); 2017 (3) BCLR 364 (SCA); 2017 (3) SA 152 (SCA).



illness and would like to hasten their death through the assistance of a physician certain strong procedural safeguards governing assisted dying must be in place;

- 5.3. The rationale for a right to die is specifically that the right in question is a right to hasten one's death when faced with a terminal illness. It is primarily concerned with the individual's choice whether or not to end their prolonged suffering in order for their death to be aligned with what the individual chooses as a 'dignified death' for themselves. Choice in death decisions are ones that are based on a respect for individual dignity and autonomy. In light of this, societal views must be considered yet are not definitive in determining whether or a right exists, or in the case of an existing right, whether or not the right has been unreasonably limited;
- 5.4. The nature and basis of the right to health in terms of section 27 of the Constitution includes the rights of the dying and the role of the physician when death is imminent. Article 25 of the Universal Declaration of Human Rights, Article 12 of the International Covenant on Economic, Social and Cultural Rights and Article 16 of the African Charter on Human and Peoples' Rights also have application;
- 5.5. The denial of the right to die is an unjustifiable limitation on the right to health and its intersection with other rights in the Bill of Rights;
- 5.6. The obstacle of unequal access to basic health care services and the inadequacy of palliative and comfort care available in South Africa cannot justify the limitation of a broader right to control the manner and time of one's death through the right of access to health care, for those who freely choose it and qualify for such assistance; Rather, this is a compelling reason to provide both better end of life care and universal access to this care, irrespective of financial considerations. The inadequacy of medical care cannot justify inflicting further indignities on dying patients by restricting their right to die as they see fit. Practical objections to physician assisted dying ought to apply equally to passively hastening death by letting underlying diseases kill people through inadequate access to health care. The appropriate moral and practical response to practical objections is not prohibition of physician assisted dying, but instead an expanded right to high quality end of life health care services. It follows that high quality end of life care should be an essential part of basic health care services;



- 5.7. Basic principles, and not pragmatic considerations, must determine a declaration of a constitutional right to an assisted death. Pragmatic considerations on the implementation of this right, qualifying and excluding factors, oversight of implementation, reporting and more, ought thereafter properly be determined by parliament;
6. CALS intends to introduce evidence:
- 6.1. From global and local experts on the co-existence of comprehensive palliative care and physician assisted death, that physician assisted death does not replace or detract from comprehensive palliative care;
- 6.2. Presenting perspectives around medical ethics and patient autonomy as supporting patient driven end-of-life decisions;
- 6.3. That access to the option of a physician assisted death can be a comfort for terminally ill persons forms part of a spectrum of their palliative care options for those individuals who may choose it, whether or not such patients may ever proceed with such an option;
- 6.4. On law and practice in permissive jurisdictions pertaining to:
- 6.4.1. The qualifying and excluding factors considered for patients requesting physician assisted deaths; and
- 6.4.2. The checks and balances implemented in those countries to ensure the protection of patients.
7. We therefore hereby request your consent for CALS be admitted as *amicus curiae* in order to advance the legal arguments and adduce the evidence referred to above, through calling of witnesses, the admission of documentary evidence, and written and oral submissions.
8. CALS will not cause any delay and will comply with the time frames for the progression of this matter as agreed amongst the parties and determined by the case management of this matter.



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9. Kindly notify us in writing by close of business on 14 December 2018 whether your clients consent to our admission.

Sincerely yours,



Sheena Swemmer

Attorney: Centre for Applied Legal Studies

Email: Sheena.Swemmer@wits.ac.za



MUP
SS

Vuyoletshu Mntonintshi

"CALS 2"
28

From: Cartwright Paul <PCartwright@justice.gov.za>
Sent: 05 December 2018 11:13 AM
To: Vuyoletshu Mntonintshi; NoNhlapho
Cc: jazmin@tshabalala.com; law@modukalaw.co.za; Sheena Swemmer; Lee Anne Bruce; Keightley Raylene
Subject: RE: Walters and others v Minister of Health and others case number 31396/2017

Dear All,

I can confirm that the office of the State Attorney, as attorneys of record for the 1st, 2nd and 4th Defendants, has no objection to CALS intervening / joining the proceedings as *amici*.

Regards
P A Cartwright
State attorney
Johannesburg

From: Vuyoletshu Mntonintshi [<mailto:vuyoletshu.mntonintshi@wits.ac.za>]
Sent: 05 December 2018 09:11 AM
To: NoNhlapho
Cc: jazmin@tshabalala.com; Cartwright Paul; law@modukalaw.co.za; Sheena Swemmer; Lee Anne Bruce; Keightley Raylene
Subject: Walters and others v Minister of Health and others case number 31396/2017

Dear Nomvula Nhlapho

The above matter refers.

Please find the attached letter addressed to Honourable Justice Keightley.

Regards

Mr Vuyoletshu Mntonintshi
Candidate Attorney
Centre For Applied Legal Studies
University of The Witwatersrand
T +27 (0) 11 717 6000
C +27 (0) 11 717 6000
Private Bag 3 | Wits 2050 | South Africa

CALS
Centre for Applied Legal Studies

UNIVERSITY OF THE WITWATERSRAND
JOHANNESBURG

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Handwritten initials/signature

"CAL3"

29

Vuyoletu Mntonintshi

From: Jazmin Pandy <jazmin@tshabalala.com>
Sent: 06 December 2018 08:42 AM
To: PCartwright@justice.gov.za
Cc: Vuyoletu Mntonintshi; NNhlapho@judiciary.org.za; Law@modukalaw.co.za; Sheena Swemmer; Lee Anne Bruce; RKeightley@justice.gov.za; yolanda@tshabalala.com
Subject: Walters and others v Minister of Health and others case number 31396/2017

Dear All,

I also confirm that my clients consent to CALS joining the action as an *amici*.

Yours faithfully,

Sent by Jazmin Pandy
For: Reginald Tshabalala

Kindly be advised that our offices will close on Friday, 14 December 2018 and reopen on Wednesday, 9 January 2019.

Important Notice: Please note that we will never change our bank account details by email. We urge you to contact our office to verify banking details prior to making any payments or deposits.

Tshabalala Attorneys, Notaries & Conveyancers
Tel: +27(0) 11 783 5677
Fax: +27(0) 11 783 8734
1st Floor, 3 Gwen Lane
Sandton, Johannesburg
Gauteng
South Africa
P O Box 67900
Bryanston
2021
www.tshabalala.com

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From: Cartwright Paul <PCartwright@justice.gov.za>
Sent: Wednesday, 05 December 2018 11:13
To: Vuyoletu Mntonintshi <vuyoletu.mntonintshi@wits.ac.za>; NoNhlapo <NNhlapho@judiciary.org.za>
Cc: jazmin@tshabalala.com; law@modukalaw.co.za; Sheena Swemmer <Sheena.Swemmer@wits.ac.za>; Lee Anne Bruce <LeeAnne.Bruce@wits.ac.za>; Keightley Raylene <RKeightley@justice.gov.za>
Subject: RE: Walters and others v Minister of Health and others case number 31396/2017

SA Mub

From: Sheena Swemmer
Sent: 08 January 2019 01:09 PM
To: Gina Snyman; Vuyolethu Mntonintshi; Lee Anne Bruce
Subject: Fwd: Request for consent in terms of Rule 16A to intervene in: Walters & Others v Minister of Health & Others; Case number 31396/2017 SGH
Attachments: image003.jpg

Sent from my iPhone

Begin forwarded message:

From: Milly Moduka <Milly@modukalaw.co.za>
Date: 08 January 2019 at 12:34:30 SAST
To: Sheena Swemmer <Sheena.Swemmer@wits.ac.za>
Subject: **RE: Request for consent in terms of Rule 16A to intervene in: Walters & Others v Minister of Health & Others; Case number 31396/2017 SGH**

Good day

We refer to the above matter as well as your email dated 3rd December 2018.

Kindly be informed that the third defendant(HPCSA), hereby consents to CALS's request to be admitted as an *amicus curiae* and address written and oral submissions in this matter.

The HPCSA is also minded to consent ,and not oppose an application by CALS to adduce evidence on condition that CALS consents to and will not oppose an application by the HPCSA(if any) to adduce evidence in rebuttal.

We apologize for the late response.

Kindest Regards

Milly Moduka



Tel: (012) 753 3282 / (012) 323 1137

Fax: (086) 552 5426

Email: law@modukalaw.co.za

Web: www.modukalaw.co.za

Address: BONDEV OFFICE PARK

Handwritten initials/signature in the bottom right corner.

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

CASE NO: 31396/2017

In the Application for admission as amicus curiae of:

CENTRE FOR APPLIED LEGAL STUDIES

Applicant

And

WALTER, SUZANNE

First Respondent

HARCK, DIETHELM GUNTHER

Second Respondent

WALTER, SUZANNE N.O.

Third Respondent

HARCK, DIETHELM GUNTHER N.O.

Fourth Respondent

GRUBB, LYNNE N.O.

Fifth Respondent

SODERHOLM, KAREN N.O.

Sixth Respondent

THE MINISTER OF HEALTH

Seventh Respondent

**THE MINISTER FOR JUSTICE AND
CORRECTIONAL SERVICES**

Eight Respondent

**THE HEALTH PROFESSIONS COUNCIL OF
SOUTH AFRICA**

Ninth Respondent

**THE NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS**

Tenth Respondent

**THE PARLIAMENT OF THE REPUBLIC OF
SOUTH AFRICA**

Eleventh Respondent

In re: the matter between:

WALTER, SUZANNE	First Plaintiff
HARCK, DIETHELM GUNTHER	Second Plaintiff
WALTER, SUZANNE N.O.	Third Plaintiff
HARCK, DIETHELM GUNTHER N.O.	Fourth Plaintiff
GRUBB, LYNNE N.O.	Fifth Plaintiff
SODERHOLM, KAREN N.O.	Sixth Plaintiff

And

THE MINISTER OF HEALTH	First Defendant
THE MINISTER FOR JUSTICE AND CORRECTIONAL SERVICES	Second Defendant
THE HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA	Third Defendant
THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	Fourth Defendant
THE PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA	Fifth Defendant

9TH RESPONDENT'S NOTICE OF INTENTION TO OPPOSE

KINDLY TAKE NOTICE THAT the 9TH RESPONDENT hereby gives notice of its intention to oppose the Application dated 19TH FEBRUARY 2019.

AND TO:

**CENTRE FOR APPLIED LEGAL
STUDIES (CAL S)**
Applicant
1ST Floor DJ du Plessis Building
West Campus, University of the Witwatersrand
1 Jan Smuts Avenue
Braamfontein
Tel. 011 717 8609
Fax: 011 717 1702
Email: sheena.swemmer@wits.ac.za

"per email"

AND TO:

**TSHABALALA ATTORNEYS, NOTARIES AND
CONVEYANCERS**
Attorneys for the 1st to 6th Respondents
1st Floor, 3 Gwen Lane
Sandton, Johannesburg
REF.: Mr T R Tshabalala/jp/G0910
TEL.: 011 783 5677
FAX: 011 783 8734
E-MAIL: jazmin@tshabalala.com

"per email"

AND TO:

STATE ATTORNEY (JHB)
7th, 8th & 10th Respondents' Attorneys
10th Floor, North State Building
95 Market Street, Corner
Kruis Street, Johannesburg
REF: 6709/17/P4/PAC 094
REF: PA CARTWRIGHT
TEL: 011 330 7796
FAX: 086 507 5177
E-MAIL: PCartwright@justice.gov.za

"per email"

AND TO:

STATE ATTORNEY (CAPE TOWN)
11TH Respondent Attorneys
04th Floor, Liberty Life Ctr
22 Long Street
Cape Town
REF: 2267/17/P5
TEL: 021 441 9200
FAX: 021 421 9364
E-MAIL: schotia@justice.gov.za

"per email"

In re: the matter between:

WALTER, SUZANNE	First Plaintiff
HARCK, DIETHELM GUNTHER	Second Plaintiff
WALTER, SUZANNE N.O.	Third Plaintiff
HARCK, DIETHELM GUNTHER N.O.	Fourth Plaintiff
GRUBB, LYNNE N.O.	Fifth Plaintiff
SODERHOLM, KAREN N.O.	Sixth Plaintiff

And

THE MINISTER OF HEALTH	First Defendant
THE MINISTER FOR JUSTICE AND CORRECTIONAL SERVICES	Second Defendant
THE HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA	Third Defendant
THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	Fourth Defendant
THE PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA	Fifth Defendant

FILING COVER

DOCUMENT: 9TH RESPONDENT'S OPPOSING AFFIDAVIT

DATE ON ROLL: NOT YET ALLOCATED

THUS SIGNED AND DATED AT CENTURION, PRETORIA ON THIS THE 16TH
DAY OF APRIL 2019.



MODUKA ATTORNEYS

9TH Respondent's Attorney

Bondev Office Park

Deus Exorno A, 1st Floor

Cnr Willem Botha & Wierda Road

Eldoraigne, Centurion

REF.: MS MODUKA/MHPCSA 0062/17/lmk

TEL.: 012 940 1951

E-MAIL: law@modukalaw.co.za

Care of **SELEBOGO INC**

1st Floor, Marble Towers

208-212 Jeppe Street

JOHANNESBURG

TEL.: 011 838 9000

**TO: THE REGISTRAR OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG**

AND TO:

**CENTRE FOR APPLIED LEGAL
STUDIES (CALs)**

Applicant

1ST Floor DJ du Plessis Building

West Campus, University of the Witwatersrand

1 Jan Smuts Avenue

Braamfontein

Tel: 011 717 8609

Fax: 011 717 1702

"per email"

Email: sheena.swemmer@wits.ac.za

AND TO:

**TSHABALALA ATTORNEYS, NOTARIES AND
CONVEYANCERS**

Attorneys for the 1st to 6th Respondents

1st Floor, 3 Gwen Lane

Sandton, Johannesburg

REF.: Mr T R Tshabalala/jp/G0910

TEL.: 011 783 5677

FAX: 011 783 8734

"per email"

E-MAIL: jazmin@tshabalala.com

AND TO:

STATE ATTORNEY (JHB)

7th, 8th & 10th Respondents' Attorneys

10th Floor, North State Building

95 Market Street, Corner

Kruis Street, Johannesburg

REF: 6709/17/P4/PAC 094

REF: PA CARTWRIGHT

TEL: 011 330 7796

"per email"

FAX: 086 507 5177

E-MAIL: PCartwright@justice.gov.za

AND TO:

STATE ATTORNEY (CAPE TOWN)

11TH Respondent Attorneys

04th Floor, Liberty Life Ctr

22 Long Street

Cape Town

REF: 2267/17/P5

TEL: 021 441 9200

"per email"

FAX: 021 421 9364

E-MAIL: schotia@justice.gov.za

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

Case No: 31396/2017

In the application of:

CENTRE FOR APPLIED LEGAL STUDIES Applicant

In the matter of:

SUZANNE WALTER First Plaintiff

DIETHELM GUNTER HARCK Second Plaintiff

SUZANNE WALTER N.O. Third Plaintiff

DIETHELM GUNTER HARCK N.O. Fourth Plaintiff

LYNNE GRUBB N.O. Fifth Plaintiff

KAREN SODERHOLM N.O. Sixth Plaintiff

and

THE MINISTER OF HEALTH First Defendant

**THE MINISTER FOR JUSTICE AND
CORRECTIONAL SERVICES** Second Defendant

**THE HEALTH PROFESSIONS COUNCIL
OF SOUTH AFRICA** Third Defendant

**THE NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS** Fourth Defendant

**THE PARLIAMENT OF THE REPUBLIC OF
SOUTH AFRICA** Fifth Defendant

THIRD DEFENDANT'S ANSWERING AFFIDAVIT

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I, the undersigned,

ADVOCATE PHELELANI KHUMALO

do hereby make oath and state that:

1. I am an adult male and the General Manager: Legal Services of the Health Professions Council of South Africa ("the HPCSA"). I am authorised to depose to this Affidavit on behalf of the HPCSA.
2. The HPCSA is the third defendant in the proceedings the applicant seeks to join as *amicus curiae* ("the action"). I depose to this affidavit on behalf of the HPCSA.
3. The facts contained herein are, unless the contrary is indicated, within my personal knowledge and are, to the best of my belief, both true and correct. The facts contained herein relating to the present proceedings and the documents filed of record in the present proceedings, as well as the Stransham-Ford proceedings, are confirmed by the HPCSA's attorney Mrs Nkagiseng Matshediso Millicent Moduka ("Mrs Moduka"), whose confirmatory affidavit is attached hereto marked "AA1".
4. Where what I state constitutes a submission of law, it is stated on the advice of the HPCSA's legal representatives.

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INTRODUCTION

5. The applicant, the Centre for Applied Legal Studies ("CALS"), essentially seeks two forms of relief:

5.1 First, to be admitted as an *amicus curiae*, and as such to adduce written and oral argument at the hearing of the action.

5.2 Second, to "*adduce evidence through calling expert witnesses and admission of documentary evidence*".¹

6. I am advised and I submit that an *amicus curiae* is ordinarily allowed to assist the court by making written and oral arguments on the subject-matter of the case before the court.

7. It is not ordinarily allowed to present evidence in that case – particularly not if the case is a trial.

8. CALS' request for the second form of relief is therefore an extraordinary request. And, if CALS is admitted as an *amicus curiae*, it will not be entitled to the second form of relief simply because it has been admitted as an *amicus curiae*.

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¹ Notice of motion, paragraph 2.3.

9. The HPCSA has, like all of the other parties to the action, consented to CALS being admitted as an *amicus curiae*. As such, the HPCSA also has no objection to CALS submitting useful written and oral argument in the action.
10. But, as I will explain below, the HPCSA has not consented to, and presently opposes, CALS' application for leave to adduce evidence in the action.
11. The HPCSA opposes both the manner in which CALS applies to adduce evidence in the main action, and the open-ended nature of the relief sought in paragraph 2.3 of its Notice of Motion.
12. CALS is not a party to the main action.
13. CALS is not even an organisation dedicated to medical, health care, and end-of-life care or even end-of-life issues. It is not staffed and run by people who profess to have qualifications, knowledge or expertise in these fields.
14. CALS has no legal interest in the main action.
15. CALS may notionally, using its resources and research capabilities, be able to source information or experts that may be of assistance to the court. Any organisation staffed by lawyers and researchers dedicated to the task could do the same.

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16. It does not follow that the evidence which CALS seeks to adduce will be useful or helpful. That assessment can only be made after all of the parties have discovered and have filed expert notices and summaries.
17. In this regard, the plaintiffs, the State and the HPCSA have not yet filed all of their expert notices and summaries. None of the parties have yet discovered. There is also a pending application by DignitySA to be joined as a party (or apparently failing that, an *amicus*), and that organisation has notified the court of the expert evidence it is capable of placing in front of the court.
18. The parties have delayed, but this is not material given that the only plaintiff that remains in the action, Mr Harck, has an atypical form of motor neurone disease in that the decline in his condition is slow. As is set out in the expert report of Dr Cameron filed of record by the HPCSA, Mr Harck is still very capable and leads an independent life.
19. In order to avoid unduly burdening these papers, the aforesaid report and any further reports referred to in this affidavit (or in argument) will be made available to the court at the hearing of this application.
20. In the circumstances, the time at which the court will be in a position to assess the usefulness and difference of the evidence of an *amicus* has not yet come.
21. In addition, as will be dealt with below, the failure of CALS to place the evidence in front of the court with sufficient particularity, has prevented the court from being in a position to properly assess the nature, content, and

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quality of the expert evidence that CALS intends to introduce – apart from making a proper assessment of whether that evidence will be useful and different compared to the evidence to be adduced by the parties.

THE HPCSA DID NOT CONSENT TO CALS ADDUCING EVIDENCE

22. Ms Swemmer, the deponent to CALS' founding affidavit, says that the HPCSA conditionally agreed to CALS adducing evidence in the action.² This statement is inaccurate.
23. Ms Swemmer's statement is based on the email the HPCSA's attorney sent to her on 8 January 2019 (i.e. annexure "CALSA4"). For the sake of completeness, I quote the relevant part of that email:

"Kindly be informed that the third defendant (HPCSA), hereby consents to CALS's request to be admitted as an amicus curiae and address written and oral submissions in this matter.

The HPCSA is also minded to consent, and not oppose an application by CALS to adduce evidence on condition that CALS consents to and will not oppose an application by the HPCSA (if any) to adduce evidence in rebuttal."

24. Mrs Moduka, the HPCSA's attorney, wrote this email on the instructions of the HPCSA.

² Founding affidavit; para 16

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25. It is clear from the email that the HPCSA did not consent to CALS adducing evidence in the action. The email said expressly that the HPCSA would be "*minded to*" consent. The HPCSA said, in other words, that it would be inclined to consent to CALS' request. That does not mean that the HPCSA in fact consented to CALS' request.
26. The HPCSA expressed its position in these terms precisely because CALS had not yet prepared its evidence and placed it before the parties or the court in a proper application to adduce evidence.
27. The HPCSA anticipated that CALS' application to adduce evidence would, at the very least, identify the experts it wished to call and explain how the evidence of those experts would be different and useful to the court in the action.
28. The HPCSA also anticipated that CALS would, at the very least, attach to its founding affidavit the documentary evidence it wished to lead and explain in that affidavit why those documents would be different and useful to the court adjudicating the action.
29. The HPCSA anticipated, in other words, that CALS' application to adduce evidence in the action would, at least, satisfy the essential requirements for that relief to be granted.

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30. But CALS' application does not meet these requirements. That is the essential reason why the HPCSA opposes CALS' application to adduce evidence in the action in the present application.

THE HPCSA'S OPPOSITION TO THIS APPLICATION

31. As summarised above, the HPCSA opposes CALS' application to adduce evidence in the action because:
- 31.1 CALS fails to sufficiently identify the evidence it intends adducing;
- 31.2 CALS fails to explain how this evidence is different from the evidence that the parties to the action will adduce at the action; and
- 31.3 CALS fails to explain how the evidence it wishes to adduce will help the court in adjudicating the action.

CALS fails to sufficiently identify the evidence it intends adducing

32. Ms Swemmer says that CALS intends adducing evidence alleges from experts *"including ethicists, palliative care providers and physicians"*.
33. This raises a series of basic but crucial questions which CALS' application does not answer. These questions include:
- 33.1 Who, exactly, are these experts?

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- 33.2 How many experts are there?
- 33.3 How long does CALS anticipate it will take to lead the evidence of these experts?
- 33.4 On what basis is it alleged that these witnesses are experts? In other words, what particular education, experience, or expertise do these witnesses have? (There are unfortunately a large number of persons who are actually not experts but activists who parade as experts and are used by parties to influence international and domestic tribunals on this controversial issue).
- 33.5 Precisely what type of experts are these witnesses? For instance, if the expert is a "physician", what type of "physician" is he or she and wherein does his or her expertise lie? If the expert is an "ethicist", in what particular field(s) of ethics does he or she profess to have expertise? And why will such ethicist's evidence be useful given the disparity of opinion held by "ethicists"?
34. Ms Swemmer says that CALS intends adducing evidence on a range of topics. But in each instance:
- 34.1 The topic is described in the most general, sweeping and vaguest of terms. For instance, Ms Swemmer says that CALS intends adducing evidence on –

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34.1.1 "*perspectives around medical ethics*";

34.1.2 "*the nature of certain terminal illnesses*"; and

34.1.3 "*a record of the laws in place in additional countries and states that have legalised assisted dying or euthanasia*".

34.2 The topic is entirely devoid of content. In other words, CALS fails to explain (or, at least, to summarise) what testimony its witnesses will actually give at the hearing of the action.

35. It follows that CALS has simply failed to address the most basic questions that its application calls it to answer: who are its intended expert witnesses and what is the evidence they intend to present to the court?

36. The same considerations apply to CALS' averment that it intends to adduce evidence of a documentary nature. If CALS seriously intends to adduce this evidence it would surely have been a very simple matter for it to attach the documents to its founding affidavit. Or, if that would have made its application too voluminous, tender its inspection. But CALS' application is silent on the nature and number of these documents.

CALS fails to explain how its evidence is different from the evidence that the parties to the action will adduce at the action

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37. Given that CALS has failed to sufficiently identify and explain the evidence it intends adducing, it has, by necessary implication, also failed to explain how its evidence is different from the evidence that the parties to the action will present.
38. Indeed, it is impossible for CALS – or any other prospective *amicus curiae* – to show at this stage in the action how its evidence will be different from the evidence of the parties to the action.
39. This is due to the fact that it is not yet sufficiently clear what evidence the parties to the action will actually present in the action.
40. Moreover, insofar as documentary evidence is sought to be adduced by CALS, it is to be noted that none of the parties to the main action have discovered those documents that are relevant to the issues in dispute.
41. As such, it cannot yet be determined whether CALS' evidence will be different from the evidence presented to court by the parties to the action.

CALS fails to explain how the evidence it wishes to adduce will help the court in adjudicating the action

42. Given that CALS fails to –
- 42.1 sufficiently identify the evidence it intends adducing;

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- 42.2 explain how its evidence is different from the evidence that the parties to the action will adduce at the action; and
- 42.3 explain how its evidence could make a useful contribution to the adjudication of the action.
43. CALS has therefore not placed the court in a position to exercise its discretion whether it should allow CALS to adduce evidence.
44. Correlatively, CALS is not able to assure the court or the parties that the presentation of its evidence will not unnecessarily duplicate evidence or prolong and complicate a complex and difficult action that has the potential to become unnecessarily protracted and unmanageable. (In this regard, I am advised that the court will be referred in argument to decisions in foreign jurisdictions that serve as examples of how the court may easily be unduly overburdened – indeed inundated).
45. I am advised and I submit that the test CALS must ultimately meet in this application is whether its evidence will assist the court in deciding the action. For the reasons set out above, CALS fails this test.

ANSWER *SERIATIM*

46. I now turn to deal with the averments in CALS' founding affidavit *seriatim* insofar as these have not already been expressly or impliedly deal with by what I have stated above.

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47. Any allegation contained in the founding affidavit that is not specifically addressed must be taken to be denied.
48. To the extent that any allegations contained in the founding affidavit are inconsistent with what has been set out in this affidavit, these allegations must be taken to be denied.

Ad paragraph 9

49. CALS applied for leave to introduce evidence in the appeal in Stransham-Ford.
50. The SCA, in Stransham-Ford, however, did not grant CALS such evidence in the appeal, and did not rely on such evidence.
51. The SCA similarly refused the applications of the State and the HPCSA.
52. The only evidence admitted by the SCA and relied upon in its decision was the new evidence submitted by the HPCSA in the form of an affidavit by Dr Cameron relating to the medical condition, palliative care and circumstances of the death of Stransham-Ford.
53. The evidence adduced by CALS in the form of affidavits from three experts from the Netherlands and Oregon was criticised by the HPCSA because of a lack of objectivity and the failure, in the case of Dr Suzanne Van Der Vathorst from the Netherlands, to disclose, acknowledge and deal with publicly

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available statistics that were adverse to her pro-euthanasia position. CALS filed affidavits responding to the HPCSA's criticisms that sought to demonstrate that the criticisms were unjustified.

54. The point of drawing this to the court's attention is to highlight that it cannot be assumed that the evidence that will be adduced by an *amicus* will in fact be of any real quality or usefulness to the court, just because the evidence deals with the subject matter in the action. And while parties on the opposing sides of the action may be entitled to bring experts as of right, an *amicus* must actually demonstrate the quality and usefulness of the evidence it seeks to adduce, before being given leave to adduce such evidence.

Ad paragraph 12.1

55. CALS seeks to adduce evidence in respect of a legal recognition to "*a right to palliative care as primary health care, for all terminally-ill South Africans*".
56. But I am advised that there is and will not be any dispute between the parties in this regard.
57. I accept that CALS wishes to adduce evidence in support of the recognition of the right to physician assisted death in South Africa.
58. But it's present application is premature and not properly made.

Ad paragraphs 17 - 32

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59. I note the arguments sought to be advanced by CALS. These arguments will be dealt with at the hearing of the action, in due course.

Ad paragraph 33-36 (Generally)

60. I have already dealt with the main defects in CALS' application and I respectfully refer in this regard to what I have stated above. I am advised and I submit, with respect to CALS, that these are decisive for the present application.
61. This does not mean that CALS may not in due course bring a proper application for leave to adduce evidence as an *amicus*.
62. In what follows I draw the court to further factors that make it inappropriate to grant CALS' present application for leave to adduce evidence at this stage.
63. I will also not deal with those motivations by CALS that I am advised will be dealt with by counsel in legal argument.

Ad paragraph 33.2-33.3

64. There are three palliative care experts that will already give evidence to the court on behalf of the plaintiffs, the State and the HPCSA.
65. Only the summary of Dr David Cameron has been filed (which already deals with some of the issues raised).

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Ad paragraph 33.4

66. I do not think that it will be an issue in dispute that notwithstanding the provision of palliative care, there will be a small number of patients who persist in their request for death.

67. Dr Cameron's report is to that effect.

Ad paragraph 33.5

68. It is also not certain, at this stage, that the availability of physician assisted suicide gives subjective comfort to suffering patients, although they may not ever resort to it, will be an issue between the parties.

Ad paragraph 34

69. There are already two experts from the Netherlands that will give evidence (on behalf of the plaintiffs and the HPCSA).

70. The plaintiffs have not yet filed the expert summary for their expert.

71. It is not apparent why CALS should be granted leave to bring a further expert from the Netherlands.

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72. It is also not yet certain what experts from what countries the State will bring, and in that event, whether the plaintiffs will not adduce expert evidence in rebuttal.

73. In addition, for the reasons set out above, the court is not able to assess whether the other foreign experts referred to herein are in fact experts, are independent or objective (as opposed to being blind activists), and will offer evidence that will be of assistance to the trial court.

Ad paragraph 35

74. I am advised that this evidence is likely to be adduced by the parties.

Ad paragraph 36

75. As indicated above, three palliative care experts practising in South Africa will be giving evidence (for the plaintiffs, the State and HPCSA). Save for Dr Cameron, their reports are not yet filed.

76. The HPCSA has filed, and intends to file, summaries of other expert physicians (Dr Cooper, Dr Ahlers, Dr Letlape) and at least one social worker (Dithuso Monare) on the South African situation.

77. The State and the plaintiffs are likely to file supporting or opposing experts.

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78. It is in any event not possible for the court to determine whether the vaguely described expert evidence that CALS says it will adduce herein will satisfy the requirements for leave to adduce evidence by an amicus.

Ad paragraphs 37 - 43

79. The balance of the affidavit constitutes legal argument which I am advised will be dealt with in legal argument.

CONDONATION

80. To the extent that condonation may be necessary for the purposes of filing this affidavit, the HPCSA requests that such condonation be granted:

80.1 On 3 April 2019, CALS addressed a letter to the Honourable Judge Keightley and enquired, inter alia, whether the matter should be set down on an unopposed basis. A copy of this letter is annexed, marked "AA1".

80.2 It was at this stage that the HPCSA's attorney (Mrs Moduka of Moduka Attorneys) realised that as a result of an administrative error at their offices, the present application was not circulated to the broader legal team for consideration.

80.3 The present application was circulated to the legal team on 4 April 2019.

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80.4 On 5 April 2019, Mrs Moduka addressed a letter to the Honourable Judge Keightley and informed her, and the other parties, of the administrative oversight, and undertook to deliver the HPCSA's answering affidavit within 7 days. A copy of this letter is annexed, marked "AA2".

CONCLUSION

81. This court is not in a position to assess whether, and to what extent, CALS may adduce evidence in the main action.
82. HPCSA accordingly prays that CALS be required to seek leave to adduce expert evidence –
- 82.1 after the parties to the main action have delivered all of their experts' summaries;
- 82.2 after the parties have exchanged documentary evidence by way of discovery, and
- 82.3 when it is in a position to comprehensively articulate (in precise terms) the nature of evidence it seeks to adduce, together with specific details surrounding the expert evidence sought to be introduced.

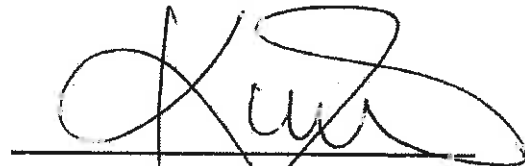
FP
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ADVOCATE PHELELANI KHUMALO

Signed and sworn to before me, at PRETORIA on this the 16th day of APRIL 2019, by the deponent who has acknowledged that he knows and understands the contents of this affidavit, that he has no objection to taking the prescribed oath and that he considers the prescribed oath to be binding on his conscience.



COMMISSIONER OF OATHS

NOMSA URSULA SEFANYETSO
Commissioner of Oaths
Practising Attorney R.S.A.
1064 Arcadia Street
Unit G01, Metropolitan Life Building
Hatfield

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

'AAI'
60

CASE NO: 31396/2017

In the Application for admission as amicus curiae of:

CENTRE FOR APPLIED LEGAL STUDIES

Applicant

And

WALTER, SUZANNE	First Respondent
HARCK, DIETHELM GUNTHER	Second Respondent
WALTER, SUZANNE N.O.	Third Respondent
HARCK, DIETHELM GUNTHER N.O.	Fourth Respondent
GRUBB, LYNNE N.O.	Fifth Respondent
SODERHOLM, KAREN N.O.	Sixth Respondent
THE MINISTER OF HEALTH	Seventh Respondent
THE MINISTER FOR JUSTICE AND CORRECTIONAL SERVICES	Eight Respondent
THE HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA	Ninth Respondent
THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	Tenth Respondent
THE PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA	Eleventh Respondent

ME. Am

In re: the matter between:

WALTER, SUZANNE	First Plaintiff
HARCK, DIETHELM GUNTHER	Second Plaintiff
WALTER, SUZANNE N.O.	Third Plaintiff
HARCK, DIETHELM GUNTHER N.O.	Fourth Plaintiff
GRUBB, LYNNE N.O.	Fifth Plaintiff
SODERHOLM, KAREN N.O.	Sixth Plaintiff

And

THE MINISTER OF HEALTH	First Defendant
THE MINISTER FOR JUSTICE AND CORRECTIONAL SERVICES	Second Defendant
THE HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA	Third Defendant
THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	Fourth Defendant
THE PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA	Fifth Defendant

CONFIRMATORY AFFIDAVIT

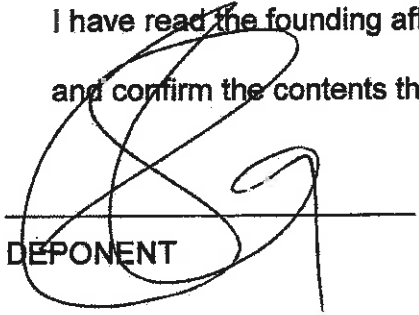
I, the undersigned,

NKAGISENG MATSHEDISO MILLICENT MODUKA

ME. mm


Do hereby make oath and state that:

1. I am an adult female attorney, practising under the name and style of Moduka Attorneys at Bondev Office Park, Centurion, Pretoria in the Gauteng Province.
2. The contents of this affidavit are all within my personal knowledge and are true and correct.
3. I have read the founding affidavit of Advocate Phelelani Khumalo and confirm the contents thereof in as far as same refers to me.



 DEPONENT

SIGNED AND SWORN BEFORE ME AT Witbank ON THIS THE 16 DAY OF APRIL 2019 AFTER THE DEPONENT DECLARED THAT SHE KNOWS AND UNDERSTAND THE CONTENTS OF THIS AFFIDAVIT AND HAS NO OBJECTION TO TAKING THE PRESCRIBED OATH AND CONSIDERS IT BINDING ON HER CONSCIENCE.

~~COMMISSIONER OF OATHS~~ 19 00

 Magac Evans Mpele
 J. Mshelbe
 J. Mshelbe
 COT





"AA2"
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Attorneys & Administrators of Estates

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FIRST FLOOR, BONDEV OFFICE PARK
CORNER WILLEM BOTHA & WIERDA ROAD
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Our Ref : MS MODUKA/MHPCSA/0062/17/lmk
Your Ref : CASE NUMBER – 31396/2017

Date: 2019/04/05

JUDGE R KEIGHTLEY
HIGH COURT OF SOUTH AFRICA
JHB LOCAL DIVISION
CNR PRITCHARD & KRUIS
JOHANNESBURG

C/O: NOMVULA NHLAPO
PER EMAIL: NNhlapo@judiciary.org.za

Dear Judge Keightley

RE: SUZANNE WALTERS & OTHERS // MIN OF HEALTH & OTHER

1. We refer to the letter addressed to you by the Centre for Applied Legal Studies ("CALs") on 3 April 2019.
2. The Health Professions Council of South Africa ("HPCSA") intends to oppose one aspect of CALs' application, namely the unqualified relief it seeks in relation to leave to adduce evidence at trial.
3. Due to an administrative oversight in our offices, CALs' application was not distributed to the legal team for their consideration until yesterday, after CALs' letter to you was sent to us. It is for this reason that the HPCSA's response to the application is belated.
4. The HPCSA will file a Notice of Intention to Oppose simultaneously herewith, and will file its short Answering Affidavit within 7 days.

Partners : Nkagiseng Millicent Moduka B Proc, LLB. (Unisa)
Consultant: Nomsa Ursula Sefanyetso B.Proc (Conveyancer) , Marlise Botha B Com , LLB
Candidate Attorney: Jacob Tshwarelo Tlhoaele

- 64
5. After CALS has filed its Replying Affidavit, the attorneys will correspond with each other and with your offices in relation to set down.
 6. In the circumstances, we respectfully request that the matter not be allocated for hearing in chambers or on the unopposed roll in the interim.

Yours Faithfully



Per N.M.M MODUKA

COPIED TO

CENTRE FOR APPLIED LEGAL STUDIES (CALS)

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EMAIL: Sheena.Swemmer@wits.ac.za yuyolethu.mntonintshi@wits.ac.za

TSHABALALA ATTORNEYS, NOTARIES AND CONVEYANCERS

Plaintiffs' Attorneys

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Partners : Nkagiseng Millicent Moduka B Proc, LLB. (Unisa)
Consultant: Nomsa Ursula Sefanyetso B.Proc (Conveyancer) , Marlise Botha B Com , LLB
Candidate Attorney: Jacob Tshwarelo Tlhoale

STATE ATTORNEY

First, Second and Fourth Defendants' Attorneys

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Kruis Street, Johannesburg

REF.: 6709/17/P4/PAC 094

REF.: PA CARTWRIGHT

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Partners : Nkagiseng Millicent Moduka B Proc, LLB. (Unisa)
Consultant: Nomsa Ursula Sefanyetso B.Proc (Conveyancer) , Marlisa Botha B Com , LLB
Candidate Attorney: Jacob Tshwarelo Tlhoale

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IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

CASE NO: 31396/2017

In the application for admission as amicus curiae of:

CENTRE FOR APPLIED LEGAL STUDIES

Applicant

In re: the matter between:

WALTER, SUZANNE

First Plaintiff

HARCK, DIETHELM GUNTHER

Second Plaintiff

WALTER, SUZANNE N.O.

Third Plaintiff

HARCK, DIETHELM GUNTHER N.O.

Fourth Plaintiff

GRUBB, LYNNE N.O.

Fifth Plaintiff

SODERHOLM, KAREN N.O.

Sixth Plaintiff

and

THE MINISTER OF HEALTH

First Defendant

**THE MINISTER FOR JUSTICE AND
CORRECTIONAL SERVICES**

Second Defendant

**THE HEALTH PROFESSIONS COUNCIL OF
SOUTH AFRICA**

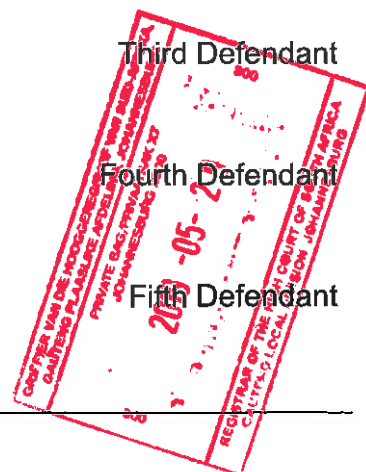
Third Defendant

**THE NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS**

Fourth Defendant

**THE PARLIAMENT OF THE REPUBLIC OF
SOUTH AFRICA**

Fifth Defendant



FILING NOTICE

KINDLY TAKE NOTICE: that the following document is presented for filing;

1. CALS Replying Affidavit.

Dated at **JOHANNESBURG** on the 29th May 2019.



CENTRE FOR APPLIED LEGAL STUDIES (CAL S)

1st Floor DJ Du Plessis Building

West Campus, University of the Witwatersrand

1 Jan Smuts Avenue

Braamfontein

Ref: S Swemmer

Tel: 011 – 717 8609

Fax: 011 – 717 1702

Email: Sheena.Swemmer@wits.ac.za

TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT

AND TO:

Tshabalala Attorneys, Notaries & Conveyancers

Plaintiffs' Attorneys

1st Floor, 3 Gwen Lane

Sandton, Johannesburg

Tel: +27(0) 11 783 5677

Fax: +27(0) 11 783 8734

Email: jazmin@tshabalala.com

Ref: Mr T Tshabalala/jp/G0910

AND TO:

State Attorney

1st, 2nd and 4th Defendants' Attorneys

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Johannesburg

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Fax: 086 507 5177

Email: PCartwright@justice.gov.za

Ref: 6709/17/P4/PAC094

AND TO:

Moduka Attorneys

3rd Defendant Attorneys

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Club view East

Centurion

Pretoria

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Email: law@modukalaw.co.za

Ref: MS MODUKA/MHPCSA 0062/17/lmk

C/O Selebogo Inc

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Johannesburg

Tel: (011) 838 9000

AND TO

State Attorney Cape Town

5th Defendant Attorneys

4th Floor, 22 Long Street

Cape Town

Ref: S Chothia

C/O State Attorney Johannesburg

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Ref: 6709/17/P4/PAC094

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

70

CASE NO: 31396/2017

In the application for admission as amicus curiae of:

CENTRE FOR APPLIED LEGAL STUDIES

Applicant

In re: the matter between:

WALTER, SUZANNE

First Plaintiff

HARCK, DIETHELM GUNTHER

Second Plaintiff

WALTER, SUZANNE N.O.

Third Plaintiff

HARCK, DIETHELM GUNTHER N.O.

Fourth Plaintiff

GRUBB, LYNNE N.O.

Fifth Plaintiff

SODERHOLM, KAREN N.O.

Sixth Plaintiff

and

THE MINISTER OF HEALTH

First Defendant

**THE MINISTER FOR JUSTICE AND
CORRECTIONAL SERVICES**

Second Defendant

**THE HEALTH PROFESSIONS COUNCIL OF
SOUTH AFRICA**

Third Defendant

**THE NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS**

Fourth Defendant

**THE PARLIAMENT OF THE REPUBLIC OF
SOUTH AFRICA**

Fifth Defendant

REPLYING AFFIDAVIT

I, the undersigned,

SJS

SHEENA JUSTINE SWEMMER

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do hereby state under oath that:

1. I am an adult female practising as an attorney at the Centre for Applied Legal Studies ("CALS"), situated at 1 Jan Smuts Avenue, Braamfontein. I am duly authorised to depose to this replying affidavit on behalf of CALS.
2. The facts contained herein are to the best of my knowledge both true and correct and, unless otherwise stated or indicated by the context, are within my personal knowledge.
3. I make this affidavit in response to the position taken by the Health Professionals Council of South Africa ("HSPCA") in their opposing affidavit dated 16 April 2019 in in which the HSPCA:
 - 3.1 consents to CALS being admitted as an *amicus curiae* and submitting written and oral argument in the action; and
 - 3.2 opposes CALS' application for leave to adduce evidence in the action, on the basis that CALS be required to seek leave to adduce expert evidence:
 - i. after the parties to the main application have delivered all of their experts' summaries;

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- ii. after the parties have exchanged documentary evidence by way of discovery; and
 - iii. when it is in a position to comprehensively articulate the nature of the evidence it seeks to adduce, together with specific details surrounding the expert evidence sought to be introduced.
4. CALS has taken the position that it would be appropriate to proceed in this manner, and written to all of the parties accordingly that it will proceed:
- 4.1 to seek relief from this Court to be admitted as an *amicus curiae* in order to oral and written submissions in the trial; and
 - 4.2 following receipt of all the parties' expert summaries and discovered evidence, bring an application to adduce evidence comprehensively articulating the nature of that evidence and the specific expert evidence sought to be introduced.
5. Copies of the various correspondence between CALS and the HSPCA dated 29 April 2019, 06 May 2019 and 10 May 2019 respectively, are attached as annexures "SS1 to SS3".
6. In light of the present narrow application, and in order to avoid unnecessary or irrelevant disputes, I do not intend to reply *ad seriatim* to each and every allegation in the HPCSA's opposing affidavit, save to record that where allegations are made that dispute what I have set out in the founding affidavit,

CALS

Centre for Applied
Legal Studies

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www.law.wits.ac.za/cals

76
"SS1"

REF: S Swemmer

Tel (direct): 011 717 8609

29 April 2019

MODUKA ATTORNEYS

c/o Ms Moduka

Email: law@modukalaw.co.za

Ref no.: MS MODUKA/MHPCSA 0062/17imk

Dear Mrs Moduka

**RE: *Walter & Others v Minister of Health & Others*; Case number 31396/2017
CALS' application to be admitted as an *amicus curiae***

1. We refer to the above matter and specifically your client's Opposing Affidavit of 16 April 2019. We note that your client has no objection to CALS being admitted as an *amicus curiae* in order to present legal submissions orally and in writing. We note your objection of prematurity to CALS being permitted to adduce evidence.
2. In this regard, and in accordance with prayer 82 of the Opposing Affidavit, CALS is in agreement that it would be appropriate for the Court to hear its application to adduce evidence:
 - 2.1. once all the parties to the main action have delivered their expert summaries;
 - 2.2. once all the parties have completed discovery;

Faculty of Commerce, Law and Management
University of the Witwatersrand



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Email: jazmin@tshabalala.com
Ref: Mr T Tshabalala/jp/G0910

State Attorney
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Email: PCartwright@justice.gov.za
Ref: 6709/17/P4/PAC094

State Attorney Cape Town
5th Defendant's Attorneys
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Cape Town
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"SS2"

MODUKA ATTORNEYS



Attorneys & Administrators of Estates

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ELDORAINNE, CENTURION
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(012) 323-1137
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Our Ref : *As Moduka /MH/CSA 0062/17/nmk*
Your Ref : S Swemmer

Date: 2019/05/06

CALS CENTRE FOR APPLIED
LEGAL STUDIES
EMAIL: Sheena.Swemmer@wits.ac.za

Dear Sir/ Madam

RE: WALTER & OTHERS V MINISTER OF HEALTH & OTHERS: CASE NO: 31394/2017
CALS' APPLICATION TO BE ADMITTED AS AN AMICUS CURIAE

Your letter dated 29th April 2019 bears reference.

We take note that CALS is not persisting with its application to adduce evidence. The HPCSA only opposed this aspect of CALS' Application. We wish to enquire whether CALS tenders the HPCSA's costs.

We again confirm that the HPCSA does not oppose the admission of CALS as an *amicus curiae* and does not have an objection to CALS moving for that order on an unopposed basis.

We confirm that upon CALS' admission as *amicus curiae*, CALS will be provided access to the expert summaries and discovery (filed by or still to be filed) by the HPCSA.

We await your response.

YOURS FAITHFULLY
MODUKA ATTORNEYS
Per: 

Director : Nkagiseng Millicent Moduka B Proc. LLB. (Unisa)
Consultants: Nomsa Ursula Sefanyetso (B. Proc) Conveyancer, Marize Botha (3. Com. LLB)

5
SJS

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79
"553"

REF: S Swemmer
Tel (direct): 011 717 8609

10 May 2019

MODUKA ATTORNEYS

C/O Ms Moduka

Email: law@modukalaw.co.za

Ref no.: MS MODUKA/MHPCSA 0062/17Imk

Dear Ms Moduka

**RE: *Walter & Others v Minister of Health & Others*; Case number: 31396/2017
CALS' application to be admitted as an *amicus curiae***

1. We refer to the above matter and your letter dated 06 May 2019.
2. We note that your client does not oppose CALS being admitted as *amicus curiae* and does not have an objection in us moving for the order on unopposed basis.
3. CALS is not abandoning the relief to adduce evidence and present documentary evidence; we will seek leave of the court to admit evidence in due course upon receipt of all expert notices and discovery documents have been served upon all parties.
4. We wish to advise that costs should be reserved pending the determination of the application which we will bring in due course to admit evidence, and to the extent that you oppose our application.

Faculty of Commerce, Law and Management
University of the Witwatersrand



S
SSS

5. We look forward to your urgent response..

Sincerely yours,



Sheena Swemmer

Attorney: Centre for Applied Legal Studies

Email: Sheena.Swemmer@wits.ac.za

COPIED TO:

Tshabalala Attorneys, Notaries & Conveyancers

Plaintiffs' Attorneys

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Email: jazmin@tshabalala.com

Ref: Mr T Tshabalala/jp/G0910

State Attorney

1st, 2nd and 4th Defendants' Attorneys

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Tel: (011) 330 7796

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Email: PCartwright@justice.gov.za

Ref: 6709/17/P4/PAC094

State Attorney Cape Town

5th Defendant's Attorneys

4th Floor, 22 Long Street

Cape Town

Ref: S Chothla

C/O State Attorney Johannesburg



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SJB

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"SS4")

Vuyoletu Mntonintshi

From: Vuyoletu Mntonintshi
Sent: 22 January 2019 04:05 PM
To: 'law@modukalaw.co.za'
Cc: Sheena Swemmer; Lee Anne Bruce
Subject: RE: Request for consent in terms of Rule 16A to intervene in: Walters & Others v Minister of Health & Others; Case number 31396/2017 SGH

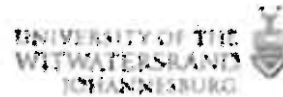
Dear Mr Milly Maduka

The above matter refers. We acknowledge receipt of your email dated 8 January 2019 consenting to CALS' admission as *amicus curiae*.

We have no objection to the 3rd Defendants' responding to our evidence, subject to any directions of the court. We may further seek leave of the court to reply accordingly.

Regards
Vuyo

Mr Vuyoletu Mntonintshi
Candidate Attorney
Centre For Applied Legal Studies
University of The Witwatersrand
Private Bag 3 | Wits 2050 | South Africa



Good day

We refer to the above matter as well as your email dated 3rd December 2018.

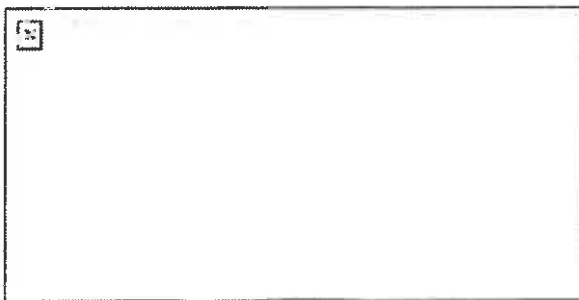
Kindly be informed that the third defendant (HPCSA), hereby consents to CALS's request to be admitted as an *amicus curiae* and address written and oral submissions in this matter.

The HPCSA is also minded to consent, and not oppose an application by CALS to adduce evidence on condition that CALS consents to and will not oppose an application by the HPCSA (if any) to adduce evidence in rebuttal.

We apologize for the late response.

Kindest Regards

Milly Moduka



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SSS