

**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

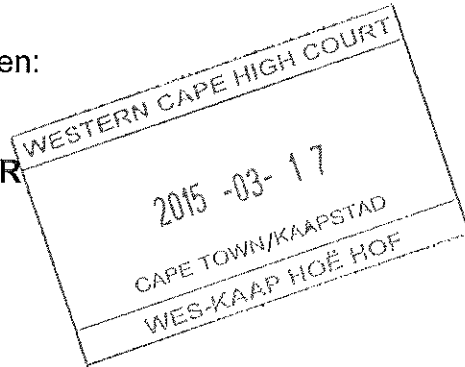
**CASE NO. 18775/2013**

In the matter between:

**MICHELLE SAFFER**

Applicant

and



**HEAD OF DEPARTMENT, WESTERN CAPE EDUCATION  
DEPARTMENT**

First Respondent

**THE SCHOOL GOVERNING BODY, FISH HOEK  
HIGH SCHOOL**

Second Respondent

**FISH HOEK HIGH SCHOOL**

Third Respondent

**MEMBER OF THE EXECUTIVE COUNCIL FOR EDUCATION  
IN THE WESTERN CAPE PROVINCIAL GOVERNMENT**

Fourth Respondent

**MINISTER OF BASIC EDUCATION**

Fifth Respondent

**MATTHEW GRAY**

Sixth Respondent

**TRUSTEES OF THE WOMEN'S LEGAL CENTRE TRUST**

*Amicus Curiae*

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**FILING NOTICE**

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**BE PLEASED TO TAKE NOTICE** that the following document are hereby filed:

1. Applicant's Amended Notice of Motion.

SIGNED AT CAPE TOWN ON THIS 16th DAY OF MARCH 2015.



**EQUAL EDUCATION LAW CENTRE**

Applicant's Attorneys

6 Spin Street

CAPE TOWN

Tel: (021) 461 – 1421

Fax: 086 572 4675

(Ref: SAF/cns/ S DASS)

**TO: THE REGISTRAR**

High Court

CAPE TOWN

**AND TO: THE HEAD OF DEPARTMENT, WESTERN CAPE**

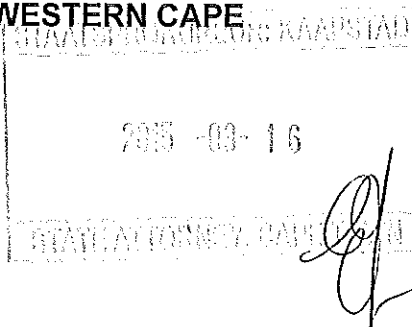
**EDUCATION DEPARTMENT**

First Respondent

Grand Central Towers

Lower Parliament Street

CAPE TOWN



**AND TO: THE SCHOOL GOVERNING BODY,**

**FISH HOEK HIGH SCHOOL**

Second Respondent

Thirteenth Avenue

FISH HOEK


**AND TO: FISH HOEK HIGH SCHOOL**

Third Respondent

Thirteenth Avenue  
FISH HOEK


**AND TO: MEMBER OF THE EXECUTIVE COUNCIL FOR  
EDUCATION IN THE WESTERN CAPE PROVINCIAL  
GOVERNMENT**

Fourth Respondent  
c/o **THE STATE ATTORNEY**  
Fourth Floor  
Liberty Life Centre  
22 Long Street  
CAPE TOWN

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2015-03-16  
STATE ATTORNEY, CAPE TOWN  


**AND TO: MINISTER OF BASIC EDUCATION**

Fifth Respondent  
c/o **STATE ATTORNEY**  
Fourth Floor  
Liberty Life Centre  
22 Long Street  
CAPE TOWN

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**AND TO: MATTHEW GRAY**

Sixth Respondent  
11 Afrikaner Road  
Murdoch Valley North  
CAPE TOWN

**AND TO: TRUSTEES OF THE WOMEN'S LEGAL CENTRE TRUST**

*Amicus Curiae Attorney*  
7<sup>th</sup> Floor Constitution House  
124 Adderley Street  
CAPE TOWN

Women's Legal Centre  
7th Floor, Constitution House  
124 Adderley Street, Cnr. Church Street  
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Tel: 021 424 5660  
Fax: 021 424 5206

  
16-03-2015  
3:25

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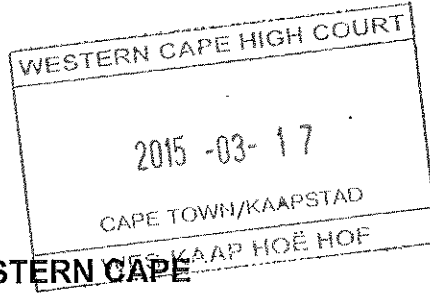
CASE NO: 18775/13

In the matter of

**MICHELLE SAFFER**

Applicant

and



**HEAD OF DEPARTMENT, WESTERN CAPE**

First Respondent

**EDUCATION DEPARTMENT**

**THE SCHOOL GOVERNING BODY,**

Second Respondent

**FISH HOEK HIGH SCHOOL**

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Third Respondent

**MEMBER OF THE EXECUTIVE COUNCIL FOR**

**EDUCATION IN THE WESTERN CAPE**

Fourth Respondent

**PROVINCIAL GOVERNMENT**

**MINISTER OF BASIC EDUCATION**

Fifth Respondent

**MATTHEW GRAY**

Sixth Respondent

**TRUSTEES OF THE WOMEN'S LEGAL CENTRE TRUST**

*Amicus Curiae*

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**AMENDED NOTICE OF MOTION**

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**BE PLEASED TO TAKE NOTICE THAT** the Applicant intends making application to the above Honourable Court for an order in the following terms:

1. Declaring that the application may be heard as a matter of urgency on the semi-urgent roll.
2. Reviewing and setting aside the decision of the First Respondent, in an appeal in terms of section 40(2) of the South African Schools Act 84 of 1996 ("the Act"), made on or about 19 September 2013, dismissing the Applicant's appeal against the Second Respondent's decision to refuse her a partial exemption from the payment of 2013 school fees.
3. Declaring that:
  - 3.1 the Applicant and the Sixth Respondent are jointly, rather than jointly and severally, liable for the payment of the school fees in respect of their minor daughter Zoë Olivia Saffer Gray;
  - 3.2 the Sixth Respondent is not Zoë Olivia Saffer Gray's "*parent*" for purposes of determining the "*combined annual gross income of parents*" in Regulation 6(2), read with the definition of this phrase in Regulation 1, of the Regulations relating to the exemption of parents from payment of school fees in public schools, promulgated in GN 1052 of 18 October 2006 ("the Regulations");
  - 3.3 *in the alternative to paragraph 3.2:* Regulation 6(2), read together with the definition of the phrase "*combined annual gross income of parents*" in Regulation 1, is inconsistent with the Constitution and invalid; and

3.4 the Applicant qualifies for a fee-exemption for the 2013 academic year, together with a determination of the amount of the exemption for which she qualifies.

3.5 Section 40(1) of the South African Schools Act 84 of 1996 is inconsistent with the Constitution and invalid.

4. Insofar as might be necessary, referring the declaration of constitutional invalidity in paragraph 3.3 and paragraph 3.5 above, to the Constitutional Court for confirmation.

5. Declaring that the Applicant has been subjected to repeated violations of her constitutional and statutory rights in the course of the processing of her 2011, 2012 and 2013 applications for exemptions from the payment of school-fees.

6. Declaring that the First, Fourth and Fifth Respondents have failed to comply with their constitutional and statutory obligations to ensure that fee-charging public schools in the Western Cape comply with the requirements of the Act and Regulations in relation to fee-exemptions, more particularly, in that they have failed:

6.1 to take sufficient and adequate measures to ensure that fee-charging public schools inform all parents of learners attending such schools of their right to apply for fee-exemptions;

- 6.2 to take sufficient and adequate measures to ensure that fee-charging public schools in no way discourage parents from applying for fee-exemptions or stigmatise parents who have applied for such exemptions;
- 6.3 to take sufficient and adequate measures to ensure that governing bodies cause a copy of the Regulations to be displayed in a conspicuous place at their schools;
- 6.4 to take sufficient and adequate measures to ensure that schools do not adopt policies which unlawfully limit fee-exemptions by excluding parents such as those who are refugees, immigrants or living outside the feeder area for the school;
- 6.5 to take sufficient and adequate measures to ensure that no learner is disqualified from attending a fee-charging public school as a result of his or her parents being unable to afford school-fees;
- 6.6 to take sufficient and adequate measures to ensure that governing bodies do not require divorced or single parents to provide financial information in respect of non-custodian biological parents;
- 6.7 to take sufficient and adequate measures to ensure that governing bodies and schools do not disqualify any applicants for fee-exemptions on the grounds that their application forms are either incomplete or incorrectly completed;

- 6.8 to take sufficient and adequate measures to ensure that governing bodies comply with the criteria and safeguards stipulated in the Act and Regulations in determining fee-exemption applications;
- 6.9 to take sufficient and adequate measures to ensure that governing bodies consider applications for fee-exemptions and make a decision on those applications within 30 days of receiving them;
- 6.10 to take sufficient and adequate measures to ensure that governing bodies in writing notify every applicant for a fee exemption of the outcome of his or her application, together with the reasons for the decision, within seven days of the decision being taken;
- 6.11 to take sufficient and adequate measures to ensure that if an application for a fee-exemption is rejected by a governing body, that the unsuccessful applicant is informed in writing, within seven days of the decision being taken, of his or her right to appeal against that decision to the First Respondent in terms of section 40(2) of the Act;
- 6.12 to take sufficient and adequate measures to ensure that in cases where applicants for fee-exemptions do not qualify for total or partial exemptions that governing bodies consider whether:
  - 6.12.1 the parent concerned qualifies for a conditional exemption on account of his or her inability to pay school fees owing to personal circumstances beyond his or her control; and



6.12.2 the parent concerned qualifies for an exemption based on transparent and equitable criteria other than those set out in the Regulations;

6.13 to ensure that the Western Cape Education Department has taken adequate measures to assist schools in applying the formula for fee-exemptions in Regulation 6 of the Regulations;

6.14 to take sufficient and adequate measures to ensure that when parents are in arrears with the payment of school fees by one month or more, governing bodies investigate whether the parent concerned qualifies for a fee-exemption before instituting legal proceedings for the recovery of school fees;

6.15 to take sufficient and adequate measures to ensure that public schools institute legal proceedings for the recovery of school fees only after having ascertained that:

6.15.1 the parent concerned does not qualify for exemption from the payment of school fees in terms of the Act;

6.15.2 deductions have been made in terms of the Regulations for parents who qualify for partial exemptions;

6.15.3 the parent concerned has completed and signed the prescribed form, annexure "A" to the Regulations;

6.15.4 the school can provide proof of a written notification to the parent, delivered by hand or registered post, that the parent has failed to apply for a fee exemption; and

6.15.5 despite the receipt of a notice contemplated in subsection 41(5)(a) of the Act, the parent has failed to pay school fees after a period of three months from the date of notification;

6.16 to take sufficient and adequate measures to ensure that all governing bodies institute legal proceedings for the recovery of school fees only after considering reasonable forms of payment other than cash.

7. Directing the First, Fourth and Fifth Respondents to comply with their constitutional and statutory obligations as declared by this Court.

8. *Structural interdict:*

8.1 Directing the First, Fourth and Fifth Respondents to deliver a report or reports under oath, within a period of four months, stating what steps they have taken to comply with their constitutional and statutory obligations as declared by this Court, what future steps they will take in that regard, and when such future steps will be taken;

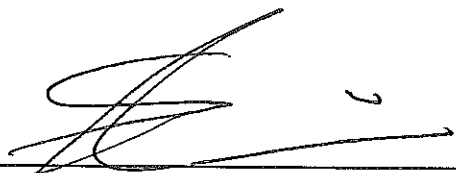
8.2 The Applicant may within one month of delivery of that report or reports, deliver commentary thereon, under oath;

- 8.3 The First, Fourth and Fifth Respondents may within one month of delivery of that commentary, deliver their reply to the commentary under oath;
- 8.4 Thereafter, the matter is to be enrolled on a date to be fixed by the Registrar in consultation with the presiding Judge for consideration and determination of the aforesaid report, commentary and reply.
- 9. Directing the First Respondent to pay the costs of this application, jointly and severally with any of the further Respondents who oppose the relief sought.
- 10. Granting further and/or alternative relief.

**TAKE NOTICE FURTHER THAT** the First Respondent is called upon to:

- (a) show cause why the decision referred to in paragraph 2 above should not be reviewed and corrected or set aside; and
- (b) deliver to the Registrar of this Court, within 15 days of receipt of this notice of motion, the record of the decision which the Applicant seeks to review, together with such reasons as she is by law required or desires to give or make, and to notify the Applicant that she has done so.


**TAKE NOTICE FURTHER** that if you intend opposing the relief sought in this application, you are required:



**MRS SHERYLLE DASS**  
**Applicant's Attorney**  
6 Spin Street  
CAPE TOWN  
Tel: (021) 416 1421  
Fax:  
Ref: (SAF/cns/S Dass)

**TO: THE REGISTRAR**  
High Court  
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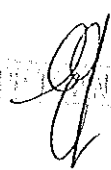
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STATE ATTORNEY GENERAL  



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*Amicus Curiae*  
Seventh Floor  
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