SMITH 4

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: _____

In the matter between:

THE VOICE OF THE UNBORN BABY NPC Applicant

and

MINISTER OF HOME AFFAIRS First respondent

MINISTER OF HEALTH Second respondent

AFFIDAVIT

I the undersigned,

ABRAHAM LODEWICKUS KLOPPER

state under oath as follows:

1. I am an adult male pastoral therapist and minister of religion.

2. The facts contained herein are within my personal knowledge unless otherwise apparent from the context and are true and correct.

My expertise

3. I have thirty years' experience as a minister in service of the *NG Gemeente Kempton Park Oos*. I gradually developed a specific interest in grief counselling and successfully pursued a Master's Degree in pastoral therapy in 2000 from the University of the Free State. Since then, I have been actively working as a pastoral therapist specialising in grief counselling. In my practice as pastoral therapist, I counsel people from different religions and with different worldviews.

4. I often counsel bereaved mothers and/or both bereaved parents following loss of pregnancy – both in the case of stillbirth and miscarriage. I have also performed numerous remembrance services at burials or cremations following stillbirths.

5. I am also the author of the book *Wanneer woorde ontbreek* published by Lux Verbi (2002 and 2009), which is currently in its second print. Directly translated into English the title would be "For a lack of words". The subject of the book is grief after the loss of a loved one, and how to deal with such grief. I am also the author and narrator of a series of four CDs entitled *Conversations on grief.* One of these CDs specifically deals with the process of grief after miscarriage and stillbirth.

6. I regularly act as a grief counselling expert consultant at training programmes that are officially accredited for continuous professional development points by the HPCSA (Health Professions Council of South Africa) for health care professionals. I am also often invited to participate in television and radio interviews as a grief counselling expert.

7. Given all the above, I am qualified to provide an expert opinion regarding the questions posed to me in this matter referred to in paragraph 8 below.

8. I was requested by the legal representatives of the applicant to provide an expert opinion on the following questions:

8.1. Do expecting parents who experience miscarriage experience grief?

8.2. Do expecting parents who experience termination of pregnancy experience grief?

8.3. In the context of the pregnancy losses referred to above, would burial (or cremation) impact on the process of grief of the bereaved parents, and if so, what would be the nature of the impact?

9. In this affidavit, I answer these questions.

Bibliography

10. In this affidavit, I complement my own expertise by referring to the following articles in peer-reviewed journals, which I attach hereto for the Court's convenience (listed in alphabetical order):

10.1. Adolfsson, A., 2011. 'Meta-analysis to obtain a scale of psychological reaction after perinatal loss: focus on miscarriage'. *Psychol. Res. Behav. Manag.* 29 – Attached hereto marked '**BK1**'.

10.2. Brier, N., 2008. 'Grief Following Miscarriage: A Comprehensive Review of the Literature'. *J. Women's Health* 17, 451–464 – attached hereto marked '**BK2**'.

10.3. Chaffey, E., Whyte, J.D., 2014. 'Dynamics and dimensions: Ambiguous loss and disenfranchised grief of partners following a miscarriage, stillbirth or TOPFA'. *Grief Matters Aust. J. Grief Bereave.* 17, 52–57 – attached hereto marked '**BK3**'.

10.4. Harris, J., 2015. 'A Unique Grief'. *Int. J. Childbirth Educ.* 30, 82–84 – attached hereto marked '**BK4**'.

10.5. Lafarge, C., Mitchell, K., Fox, P., 2013. 'Women's Experiences of Coping With Pregnancy Termination for Fetal Abnormality'. *Qual. Health Res.* 23, 924–936 – attached hereto marked '**BK5**'.

10.6. Limbo, R., Kobler, K., Levang, E., 2010. 'Respectful Disposition in Early Pregnancy Loss'. *MCN Am. J. Matern. Nurs.* 35, 271–277 – attached hereto marked '**BK6**'.

10.7. Stålhandske, M.L., Makenzius, M., Tydén, T., Larsson, M., 2012. 'Existential experiences and needs related to induced abortion in a group of Swedish women: a quantitative investigation'. *J. Psychosom. Obstet. Gynecol.* 33, 53–61 – attached hereto marked '**BK7**'.

Do expecting parents who experience miscarriage experience grief?

11. There is no doubt that many expecting mothers experience grief subsequent to miscarriage – during the fifteen years that I have been practicing as a pastoral therapist I have counselled many such women. There are three important notes in this regard:

12. First, my observation must be qualified: Given that all expecting mothers do not allocate the same *meaning* to their pregnancies, all expecting mothers who suffer a miscarriage do not grieve equally intense or at all. As observed by Adolfsson (**BK1**), pregnancy has different meanings to different women depending upon their circumstances. In this regard, Brier (**BK2**) states the following:

> Descriptions of grief following miscarriage are highly variable but tend to match descriptions of grief used to characterize other types of significant losses. A sizable percentage of women seem to experience a grief reaction, with the actual incidence of grief unclear.

13. Secondly, the expecting mother's partner should not be forgotten. In my experience many partners also grieve, although not always in the same

manner as the mother. This observation is confirmed by a study by Chaffey and Whyte (**BK3**).

14. Thirdly, in contemporary society miscarriage is unfortunately to a large degree an under-recognised and misunderstood loss. Typical and normal grief reactions are often not understood and hardly ever properly acknowledged. The fact that miscarriage can occur relatively early in the pregnancy does not mean that the expecting parents have not already invested significant emotional energy, hope and expectation in their child-to-be. In fact, in my observation several technological factors in contemporary society actually facilitate early bonding with the child-to-be by the expecting parents, amongst others:

14.1. Pregnancy tests that can medically confirm a pregnancy at a very early stage.

14.2. Expecting parents have access to modern ultrasound technology that can produce amazingly realistic images of the fetus in the womb that the expecting parents often use to start a photo album

for their 'baby' – and sometimes proudly share with their friends and family via social media such as Facebook.

15. The expecting parents that I have counselled after a miscarriage have all too often expressed how people would fail to appreciate that their 'baby' was already a reality to them, and would make well-intentioned but ultimately hurtful comments such as: "You are still young and can soon have another one" (as if a baby can be replaced as easily as a pet), and "It is probably better this way, there might have been something seriously wrong with the baby".

16. Harris (**BK4**) summarises the situation as follows (p82):

> Loss of a baby by miscarriage . . . is a profound life-changing event for the parents. It is a unique grief that is often misunderstood.

17. The current medico legal system – that deals with a miscarried fetus as anatomical *waste* destined to be unceremoniously incinerated with other waste – is counter-productive in the sense that it signals to society that the physical object of parents' grief following miscarriage is

unworthy of a proper burial (or cremation), and hence reinforces the notion that grief following miscarriage is similarly unworthy of society's concern.

18. This notion that underlies the current system may cause parents who experience grief following a miscarriage to deny their own feelings and not seek out professional counselling.

Do expecting parents who experience termination of pregnancy experience grief?

19. Personally I have only councelled small numbers of couples and individual women after termination of pregnancy, but all those have experienced grief and most of them experienced intense grief. Their grief is often accompanied by and intensified by feelings of guilt even if the reason for termination had been fetal abnormality. In fact, recent empirical studies on the subject confirms my findings.

20. Lafarge *et al* (**BK5**) report the results of a study of 27 women who elected to terminate their pregnancies between 12 and 30 weeks of

gestation *because of fetal abnormality*. The authors conclude that termination of pregnancy for fetal abnormality can have significant psychological consequences, including grief, depression, and posttraumatic stress.

21. The scope of the study by Stålhandske *et al* (**BK7**) is broader than the study by Lafarge *et al*, as it is not qualified by any reason (such as fetal abnormality) for termination and as it has about 499 women who participated as respondents in the study. Stålhandske *et al* report that women who elected to terminate their pregnancies commonly experience ambivalent emotions, such as relief, but also grief.

22. I have no reason to doubt the results of these studies. The reason why only small numbers of women (or parents) who have gone through a termination of pregnancy have as yet presented at my pastoral therapy practice is likely to be a combination of the following reasons, amongst others:

    22.1. Systemic factors analogous to the ones described in paragraphs 17–18 above.

22.2. The social stigma that attaches to termination of pregnancy.

22.3. The (Christian) religion's general antipathy towards termination of pregnancy, and the fact that I am a church minister and *pastoral* therapist.

22.4. My own failure to explicitly recognise termination of pregnancy as a cause of grief in the literature that I have published. (In this failure, I may be tacitly supporting the system that I criticise. During my research and contemplation for purposes of this affidavit, I have come to appreciate this unfortunate and unintended double-standard, which I do intend to rectify whenever the opportunity presents itself in future.)

In the context of the pregnancy losses referred to above, would a burial (or cremation) impact on the process of grief of the bereaved parents, and if so, what would be the nature of the impact?

23. While grief counselling has in the past focused on *phases* of grief (known as the "Kübler-Ross model"), in line with contemporary grief counselling

practice I rather focus on grief *tasks*. The difference is more than semantic: the notion of *tasks* implies an *active involvement* in working through grief towards a desired outcome, while *phases* through which the person goes can be taken to imply passivity on the side of the bereaved.

24. The grief task methodology that I have used and further developed through the years in my pastoral therapy practice was originally coined by William Worden. (Worden, J. William. *Grief Counseling and Grief Therapy*, 2nd edition. New York: Springer, 1991) and can be summarised as follows:

24.1. The reality of the death must be comprehended.

24.2. The emotions that go hand-in-hand with grief must be expressed, not suppressed.

24.3. Commemoration of the deceased person.

24.4. Conflicting emotions must be recognised and processed.

24.5. Emotional energy must be withdrawn from the deceased and channelled towards other (or new) relationships and activities.

25. In contrast with incineration, a burial or cremation provides the opportunity for and typically entail ritual and ceremony (whether religious or secular). For such a ceremony to have the maximum effect the following would be of the utmost importance: the physical presence of the body or ashes of the deceased, the physical presence of the bereaved parents, and the physical presence and emotional support of their loved ones.

26. Given these characteristics that are typical of burial or cremation, burial or cremation is relevant to at least three of the five grief tasks, namely the first three grief tasks. In the following, I analyse this relevance in more detail.

Prelude to the analysis: assumption of parental choice

27. As analysed in paragraphs 11–22.4 above, while a significant number of expecting parents who experience miscarriage or termination of

pregnancy experience grief as a result, this cannot be generalised. Also, the systemic under-appreciation of the psychological sequelae of miscarriage and termination of pregnancy should not be replaced by an equally rigid, non-differentiating system that *expects* all parents to grieve as a consequence of experiencing miscarriage or termination of pregnancy. The key is in recognising and making provision for the *reality of difference* in our society: Some expecting parents experience grief – even intense grief – in the event of a miscarriage or termination of pregnancy, others do not.

28. Accordingly, for purposes of this analysis of the impact of burial or cremation on the grief process of expecting parents who experience miscarriage or termination of pregnancy, I assume that such bereaved parents would have a *choice* between the following two fundamental options:

28.1. Burial or cremation of the dead embryo or fetus (or the "baby" according to the perception of the parents).

28.2. Leaving the dead embryo or fetus in the hospital's care, and forego a burial or cremation. (In this case the hospital will, as per current standard practice, dispose of the dead embryo or fetus through incineration.)

29. Furthermore, I assume that such bereaved parents have *chosen* the burial or cremation option.

Grief task 1: Comprehending the reality of the death

30. The bereaved parents *seeing* the little coffin or cremation urn, and *placing* it in a grave or wall of remembrance, facilitate the full comprehension of the reality of the death of the child-to-be in the parents' minds.

31. Accordingly, a burial or cremation would have a positive impact on the first grief task.

Grief task 2: Expression of emotion

32. The ceremony of a burial or cremation creates an atmosphere in which emotions can spontaneously come to the surface. Elements such as the memorial service, the music, and the presence and sympathising by family and friends all contribute to the expression (rather than the suppression) of emotion.

33. Accordingly, a burial or cremation would have a positive impact on the second grief task.

Grief task 3: Commemoration

34. While death ends the physical existence of a living entity, the *meaning* that the deceased entity's life had continues to exist in people's minds. Commemoration is premised on the acknowledgement that the deceased entity existed and that such existence had *meaning* for the bereaved. In the present context of pregnancy loss, the ceremony of a burial or cremation serves as an unequivocal and strong

acknowledgement that the deceased child-to-be had *meaning* for the bereaved parents.

35. Accordingly, a burial or cremation would have a positive impact on the third grief task.

Conclusion on the analysis of the impact of burial or cremation

36. It should be clear from the above analysis that burial or cremation would impact *positively* on the process of grief of expecting parents who have experienced miscarriage or termination of pregnancy.

37. My conclusion is aligned with the recommendations by Limbo *et al* (**BK6**), who advocate the 'respectful disposition' of fetal remains. The authors include burial within the concept of 'respectful disposition'.

38. I should note that the recommendations by Limbo *et al* are made within the context of miscarriage. However, there is no reason apparent from their article to limit their recommendations to miscarriage to the exclusion of termination of pregnancy. In fact, Stålhandske *et al* (**BK7**)

found that almost half of women who underwent termination of pregnancy have a need for 'ritual closure'.

Postscript: Comparison with stillbirth

39. As stated in paragraph 4 above, I regularly counsel not only expecting parents who have experienced miscarriage, but also expecting parents who have experienced stillbirth. In the event of stillbirth, burial or cremation is compulsory.

40. Based on my experience of counselling expecting parents who have experienced stillbirth and based on my experience of performing services (both religious and secular) at burials and cremations of stillborn fetuses, I can state that having a burial or cremation for a stillborn fetus impacts decidedly positively on the process of grief of such parents.

41. My reasons for this observation are the same as the reasons already analysed in paragraphs 30–35 above.

42. In my opinion, there is no reason to doubt that a similar positive impact would not also be the case in other kinds of loss of pregnancy, namely miscarriage and termination of pregnancy (provided that the bereaved parents who experience miscarriage or termination of pregnancy choose to have a burial or cremation).

Conclusion

43. From a grief counselling therapeutic perspective, the current system of handling of the dead embryo or fetus after a miscarriage or termination of pregnancy as 'waste' is a cause of serious concern.

44. During my fifteen years of grief counselling, some of the parents who experienced miscarriage expressed their anger and feeling of disempowerment at the fact that their 'baby' was taken from them and in their absence unceremoniously incinerated; for these parents, the fact that their 'baby' was simply perceived and treated as 'waste' is experienced as a deep insult. These negative emotions caused by the current rigid system are acutely counter-productive in a grief counselling therapeutic setting.

45. I reiterate that the key to improving the current system should be in recognising and making provision for the *reality of difference* in our society: Some expecting parents experience grief – even intense grief – in the event of a miscarriage or termination of pregnancy, others do not.

DEPONENT

Thus signed and sworn at Kempton Park on this 15th day of February 2017 by the deponent who has declared that he has read this affidavit, understands the contents thereof and has no objection to the taking of the prescribed oath, and regards same as binding on his conscience.

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