

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: A48/2025

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED: YES
2026-03-25	
DATE	SIGNATURE

In the matter between:

LEN DEKKER ATTORNEYS INCORPORATED

Applicant

and

THE FINANCIAL INTELLIGENCE CENTRE

Respondent

THE LAW SOCIETY OF SOUTH AFRICA

Amicus Curiae

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 25 March 2026.

JUDGMENT

THE COURT (POTTERILL J ET VAN DER SCHYFF J)

Introduction

[1] Legal Practitioners enrolled as attorneys are in terms of the Financial Intelligence Centre Act 38 of 2001 [the Act] “accountable institutions” and must comply with the requirements of the Act. The appellant, Len Dekker Attorneys Incorporated [LDA] was found to have been non-compliant with certain obligations imposed by the Act and consequently sanctioned with steep administrative penalties. LDA appealed to the Financial Intelligence Appeal Board [the Appeal Board] against the sanctions imposed and sought to introduce further evidence relevant pertaining to the sanctions.

[2] LDA in this Court appealed against a ruling and a finding of the Appeal Board both relevant to the sanctions imposed by the Financial Intelligence Centre [the FIC]. The ruling is not contained in an order of the Appeal Board, only in the body of the decision. It relates to a refusal by the Appeal Board to accept further documentary evidence [the DocFox contract] reflecting further remedial measures LDA took after the FIC found that LDA had not taken sufficient remedial measures. This evidence was relevant as a factor to consider in mitigation of the sanction.

[3] The finding appealed against is a preliminary point that was argued before the Appeal Board as to whether the FIC had jurisdiction to include in the sanction the period of LDA’s non-compliance when the FIC was not the supervisory body; the Legal Practice Council and its predecessor was the supervisory body. The finding of the Appeal Board is also not contained in the order of the Appeal Board but its decision reads:

“In the circumstances, the preliminary issue on the alleged lack of jurisdiction and alleged violation of retrospectivity principle must be dismissed. Calculation by the Centre of the appellant’s non-compliance from 2017 cannot be faulted.”

[4] This appeal is unique in that both the finding and the ruling relate to the sanctions imposed by the FIC, but the Appeal Board did not finally decide the sanctions in that the sanctions were set aside and referred back to the FIC for reconsideration. This was due to it allowing into evidence financial statements of LDA that was not before the FIC when it sanctioned LDA. Whereas finality of an order is the cornerstone to an appeal to this Court counsel for the FIC agreed that this Court must entertain the question of “retrospectivity” of the sanction and the ruling pertaining

to the DocFox document. The reason for this is that the FIC has issued contravention notices to many attorneys for non-compliance with the Act for the period that the FIC was not the supervisory body. This will have a severe impact on the attorney's profession. But FIC argued that all accountable institutions must adhere to the FIC to combat money laundering, funding of terrorist activities and prevent further pillaging of this Country's resources.

[5] The Legal Practice Council, the Regulatory body of the legal practitioners, intervened and was admitted as *amicus curiae* to present the Court with facts pertaining to its position as the supervisory body in terms of the Act, as well as the impact on attorneys as a low risk group pertaining to the objectives of the Act. It supported LDA that the Appeal Board could not have considered the non-compliance of LDA while the FIC was not the supervisory body.

The common cause facts as background to the matter

[6] The LPC and its predecessor is the statutory body that regulates the legal profession. The Law Society, and from 1 November 2018, the LPC were in terms of the Act the appointed supervisory body for the attorneys. It has 31 000 members of which approximately 16 000 are sole practitioners. A Memorandum of Understanding [MOU] was in terms of s45 of the Act concluded between the FIC and the LPC. In terms of the MOU it was agreed that the FIC would assume the LPC's supervisory duties to conduct inspections on legal practitioners in terms of the Act. This is reflected in the advisory issued by the LPC to legal practitioners dated 17 June 2021. On 19 December 2022 the FIC became the supervisory body.

[7] The Financial Intelligence Centre (FIC) conducted an investigation to determine LDA's compliance with the statutory obligations imposed by the FICA during June and July 2023. In its final inspection report dated 1 August 2023, the FIC held that the available facts indicated that LDA failed to comply with:

- i. Section 21B, read with the relevant provisions in Chapter 3 of the FICA, in that it did not establish the nature, control structure and the beneficial owners of legal persons, partnerships and trusts;

- ii. Section 28A(3), read with the relevant provisions in Chapter 3 of the FICA, in that it did not scrutinize its client information to determine if its clients are mentioned in the targeted financial sanctions (TSF) list available on the FIC website;
- iii. Section 42(1) and (2), read with the relevant provisions in Chapter 3 of the FICA, in that it did not document, maintain and implement a Risk Management and Compliance Programme [RMCP] to enable the institution to identify, assess, monitor, mitigate, and manage the risk that the provision by the institution of products or services may involve or facilitate money laundering or the financing of terrorist and related activities; and
- iv. Directive 6 of 2023, in that it did not submit its RMCP timeously.

[8] The FIC issued a Notice of Intention to Impose an Administrative Sanction (NIS) to LDA on 21 November 2023. LDA was informed of its non-compliance with the abovementioned provisions of the FICA. LDA was also, among others, informed of its right to submit representations as to why the intended administrative sanctions should not be imposed.

[9] It is common cause that, following the inspection and the issuance of the final inspection report, LDA engaged in ongoing correspondence with the FIC and sought guidance in order to address the identified deficiencies. In January 2024, LDA advised that it had achieved compliance with s 42 of the Act, having adopted and approved a RMCP on 1 September 2023, which provides for compliance with ss 21B and 28A(3). The Centre acknowledged the steps taken by LDA towards compliance.

[10] Notwithstanding its acknowledgment of LDA's remedial efforts, the FIC proceeded to impose administrative penalties. In determining the nature and extent of those sanctions, the FIC regarded LDA's contraventions as serious and extensive. It considered, in particular, that compliance with s 42 and the implementation of an effective RMCP are foundational to the Act; that customer due diligence and screening against targeted financial sanctions lists are central compliance obligations; that failure to adhere to the Centre's Directives reflects disregard for statutory duties; and that such non-compliance undermines the integrity of both the domestic regulatory

framework and South Africa's response to money-laundering and terrorist-financing risks.

[11] The FIC did not intervene in terms of S44 read with section 45 while the LPC was the supervisory body.

[12] The contraventions relied on for sanctioning purposes had 3 different implementation dates. From 2 October 2017 in terms of S21B a RMCP had to be developed and implemented. A duty to scrutinize client information to determine if its clients are on the TSF lists reflected on the FIC website [S21B] was compelled from 1 April 2019. Directive 6 was issued by the FIC and had to be complied with by 31 March 2023.

[13] The LPC sought compliance from its attorneys [accountable institutions] by issuing guidelines to the legal practitioners and their auditors on FIC compliance and how reports to the LPC should be compiled. The legal practitioners were required to provide those reports to the LPC. The LPC would then issue Fidelity Fund Certificates [FFC] on those reports. The issued FFC was the instrument reflecting that LDA complied with the requirements of the supervisory body in compliance with the Act.

[14] The 2017 amendment of the Act brought a fundamental change in the approach that the FIC must take. The FIC's viewpoint was always a rule-based approach, but the amendment varied it to a risk-based approach.

LDA's argument on the two appeal points

[15] LDA submitted before this court that the appeal raises fundamental principles of statutory interpretation, the rule of law, administrative justice, and procedural fairness. The outcome of the appeal will affect numerous legal practitioners across South Africa and establish precedent for future regulatory transitions. LDA emphasised the international framework and regulatory context and explained the risk-based approach that, according to LDA, requires that while all legal practitioners must implement appropriate measures, the measures should be proportionate to the identified risks.

[16] LDA submitted that the FICA established a clear framework of supervisory authority over legal practitioners that changed over time. Between 1 March 2002 and 31 October 2018, the provincial Law Societies under the Law Society of South Africa were the designated supervisory bodies in Schedule 2 of the FICA. For the period 1 November 2018 – 18 December 2022, the LPC, as the successor to the Law Societies, was the designated supervisory and enforcement body. The FIC failed to make out a case that the prerequisites of it enforcing compliance as prescribed in section 44 were met.

[17] LDA submitted that the principle of legality dictates that enforcement powers may be exercised only by the entity vested with such authority at the time of the alleged non-compliance. By asserting jurisdiction for a period when the LPC, not the FIC, had statutory enforcement authority, the FIC exceeded the bounds of its lawful power, and this action constitutes an *ultra vires* exercise of public power. LDA contended that the LPC's actions created a legitimate expectation of compliance for practitioners who followed its guidance and who were issued with an FFC. Based on legal practitioners' declarations regarding "internal rules" the LPC issued Fidelity Fund Certificates, which constituted formal administrative action under the Promotion of Administrative Justice Act, 3 of 2000. The FIC cannot simply retrospectively invalidate these administrative actions without following proper review processes, particularly when they were taken by the statutorily designated supervisory and enforcement body acting within its explicit statutory mandate as part of its core functions.

[18] LDA, relying on *City of Tshwane Metropolitan Municipality v RPM Bricks (Pty) Ltd*,¹ repeated its submission that the legitimate expectations created by the LPC's regulatory framework provide the foundation for a further barrier, administrative estoppel, to the FIC's retrospective enforcement.

[19] LDA submitted that section 45C(2) of the FICA is inherently forward-looking. LDA sought to introduce evidence of its engagement with DocFox Africa (Pty) Ltd, a specialised compliance service provider, demonstrating substantial investment in ensuring future compliance, precisely the type of remedial action contemplated by section 45C(2)(c). LDA submitted that the Appeal Board conflated immediate remedial

¹ *City of Tshwane Metropolitan Municipality v RPM Bricks (Pty) Ltd* 2008 (3) SA 1 (SCA)

steps with forward-looking, comprehensive remedial measures. The Appeal Board has a discretion under section 45D(3B) of the FICA to admit new evidence on appeal, but this discretion must be exercised in accordance with the principles of administrative justice. The blanket exclusion of relevant evidence without proper consideration of its materiality constituted a reviewable irregularity that can be appealed against. In addition, the exclusion of evidence of these remedial measures prevents the proper application of the proportionality principle as highlighted in *Harlyn Trading International (Pty) Ltd v Financial Intelligence Centre and Another*,² leading to potentially disproportionate sanctions that do not reflect LDA's actual compliance posture.

The LPC's submissions

[20] The amicus argued that the matter raises significant issues of importance to the broader legal profession. It took issue with what it coined the FIC's approach to retrospective enforcement of compliance prior to the transition of supervisory authority from the LPC to the FIC. It further submitted that the FIC sought to exercise power during a period when it lacked the authority to do so. It highlighted that despite awareness efforts by the LPC and the FIC, many sole practitioners and smaller firms do not have RMCPs in place. By implication, if retrospective administrative sanctions can lawfully be imposed by the FIC on LDA, the FIC will be obligated to do so in respect of all historically non-compliant practitioners.

[21] The amicus argued that before 19 December 2022 the FIC only had authority in terms of section 4(g)(ii) read with section 44(b) when the FIC referred a matter to the LPC in which the LPC failed to act. This had to happen after the FIC consulted with the LPC before it commenced enforcement steps against the implicated legal practitioner. The LPC contended that the FIC sought to assess the severity of LDA's non-compliance by adding a 5-year period prior to 19 December 2022. This falls outside the scope of section 4(g)(ii), read with section 44(b) of the FICA, is impermissible and amounts to retrospective enforcement of the FIC's compliance obligations.

² [2021] ZAGPPHC 618 (20 September 2021)

[22] Despite the MOU between the LPC and the FIC, FICA compliance enforcement was not transferred to the FIC. The LPC's enforcement of FIC requirements was exercised by, among others, the following:

- i. Guidelines were issued to legal practitioners and their auditors on FIC compliance and how reports to the LPC should read;
- ii. All attorneys are required to provide such reports to be submitted to the LPC;
- iii. Based on the report, Fidelity Fund Certificates were issued to enable legal practitioners to conduct a legal practice.

[23] The abovementioned steps were taken by the LPC in its capacity as regulatory authority of the profession, supervisory authority, and FICA compliance enforcement authority. Although the FIC could have intervened in the way the LPC exercised its enforcement compliance power in terms of section 44(b) read with section 4(g)(ii) or section 45, the FIC did not intervene. It is settled law that administrative action stands until set aside by a court. The LPC exercised its compliance authority, and this cannot merely be ignored. If it is being attacked as having been exercised in an invalid manner, it cannot merely be replaced by the Centre retrospectively exercising its enforcement powers. The LPC, relying on *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others*³ submitted that its administrative action first needs to be set aside in each specific case relating to each legal practitioner.

[24] The LPC submitted that:

“To the extent that the FIC is required to look at conduct predating 2022, it must be informed by findings made by the former statutory law societies and then LPC as those institutions were vested with enforcement authority pre-2022. By virtue of the certificates issued, it can be assumed that the firms were compliant. This administration is not only valid but has legal force until set aside.”

[25] The LPC took umbrage at legal practitioners apparently being treated on the same footing as other sectors, such as motor car salesmen. Such an approach failed

³ 2004 (6) SA 222 (SCA)

to recognise that legal practitioners are subject to rigorous regulatory oversight and bound by a strict ethical code. The FIC's approach further fails to draw the necessary distinction between law firms with materially different risk profiles for money laundering and terrorist financing. The unique position of legal practitioners with respect to client confidentiality and legal professional privilege requires a nuanced approach to AML/CFT regulation.

[26] The amicus was very concerned with the effect that the harsh sanctions imposed by the FIC's enforcement approach would have on small firms.

[27] The amicus reiterated that the LPC's actions amounted to administrative actions. The FIC could have intervened in the way the LPC exercised its enforcement compliance power but did not. Through not intervening, the amicus submitted, the FIC indicated that it was satisfied with the way the LPC exercised its enforcement authority. The LPC's administrative actions regarding enforcing compliance with the FICA cannot be ignored.

The FIC's submissions

[28] The FIC advanced the view that LDA's non-compliance with the FIC went undetected because the LPC neither inspected LDA or took any enforcement steps against it. The FIC discovered LDA's non-compliance in an inspection conducted as part of its supervisory duties in June 2023 and imposed an administrative sanction. In exercising its discretion to impose the administrative sanction, the FIC considered the "nature, duration, seriousness and extent" of LDA's non-compliance with the provisions of the FICA.

[29] Counsel for the FIC submitted that the nature of the FIC's power to impose an administrative sanction and the onus in upsetting the decision is settled. The FIC's power to impose an administrative penalty is a true discretion, and as a result, neither the Appeal Board nor this court enjoys "unfettered discretion to interfere with ... the assessment and imposition of an administrative penalty."⁴

⁴ *Harlyn, supra*, at para [31]. *Florence v Government of the Republic of South Africa* 2014 (6) SA 456 (CC) at para [113].

[30] Counsel furthermore submitted that LDA mischaracterizes the *in limine* issue as a jurisdictional challenge. The true nature of the challenge does not concern the FIC's jurisdiction, it concerns the scope of the FIC's sanctioning discretion. Particularly the proper interpretation of the requirement in section 45C(2) of the FICA to consider the duration of the non-compliance when the FIC decided to impose an administrative penalty. The FIC was exercising the discretion granted to it by section 45C(2). The "duration of non-compliance" contemplates the whole period of non-compliance, regardless of whether it occurred when the LPC or its predecessor was the supervisory body.

[31] Counsel for the FIC submitted that estoppel does not operate to condone unlawfulness. The doctrine cannot compel the FIC to ignore LDA's historic non-compliance, particularly when the empowering provision requires the FIC to do so in the proper exercise of its discretion. The FIC submitted that LDA's reliance on administrative estoppel is misplaced. The issuance of a FFC did not constitute a representation by the LPC of compliance with the Act, because the LPC issued the FFC on the strength of representations made by LDA. The process as far as it related to compliance with the Act did not involve any form of interrogation or investigation by the LPC. The LPC merely accepted the declarations made by LDA as truthful, this is not a representation of compliance with the FICA.

[32] LDA's invocation of the Promotion of Administrative Justice Act 3 of 2000 was argued as being ill-fated. If issuing a FFC is indeed an administrative action, it stands until set aside, but the factors to consider in imposing an administrative sanction do not depend on the factual existence of the FFC issued between 2017 and 2022.

[33] The FIC submitted that the prior jurisdiction of a supervisory body does not bar the FIC from considering the whole duration of non-compliance. Section 45C(2)(d) of the FICA requires the FIC to consider steps taken against the institution by (i) another supervisory body, or (ii) a voluntary association of which the institution is a member. This section, so the FIC's argument went, destroyed LDA's claim that the FIC is barred from considering non-compliance that occurred before the FIC attained primary enforcement authority. It contemplates situations where non-compliance occurred while a supervisory body had primary enforcement authority. The only relevance of the previous supervisory body is in the steps that it took in respect of the contravention.

[34] The purpose of section 45C(2) is to determine the appropriate sanction for non-compliance. The duration of non-compliance is closely related to Act's underlying purposes. Duration of non-compliance is a factual question with legal consequences. The FIC submitted that LDA's construction that the change from a supervisory body to the FIC erases past non-compliance does not withstand scrutiny. It cannot be that the shift in regime from a supervisory body to the FIC effectively condoned all prior contraventions.

[35] The FIC finally contended that the presumption against retrospectivity or retroactivity does not come into play at all. The change in the supervisory body did not introduce new obligations. LDA always knew, or should have known, its obligations and was thus able to arrange its affairs accordingly. LDA's non-compliance always rendered it susceptible to sanctions. The FIC did not reach back in time to invalidate what was previously valid. The FIC submitted with reliance on *Nkabinde and Another v Judicial Service Commission and Others*⁵ that the presumption does not apply to procedural legislation designed to govern only the way rights are asserted or enforced if it does not affect the substance of those rights.

Reasons for decision

[36] The submission on behalf of the FIC is correct that the appeal before us is a narrow or strict appeal. This entails that a Court is strictly confined to the record of the proceedings of this administrative Tribunal. But, this Court can interfere where the administrative Tribunal, despite strict or true discretion exercised, has not acted in a judicial manner. "The intervention would be in the interests of justice as the appeal court imposes fidelity to the law. The appellate court would be doing no more than correcting an instance where [the Tribunal] has exercised its statutory power capriciously or was moved by a wrong principle of law or an incorrect appreciation of

⁵ *Nkabinde and Another v Judicial Service Commission and Others* 2016 (4) SA 1 (SCA) at paras [59]-[68].

the facts or has not brought its unbiased judgment to bear on the issue or has not acted for substantial reason.”⁶

[37] The main issue to decide is whether the Appeal Board applied a correct interpretation of the sanctioning provision of the Act. I also agree with the submission made on behalf of the FIC that the issue is not a jurisdictional issue. The FIC has the power to conduct investigations and pursuant thereto make a finding of non-compliance with the Act. Furthermore, it has the power to impose an administrative penalty. If it has these powers, it has jurisdiction. The correct enquiry is thus whether the FIC sanctioned in terms of the Act and the Appeal Board correctly interpreted s45C(2)(a) of the Act.

The Appeal Board’s ratio

[38] The Appeal Board in essence found that it mattered not that the FIC was not the supervisory body, but that LDA had another supervisory body. The Appeal Board in coming to its conclusion relied heavily on the “imperative of Section 45(3).” It concluded that the FIC could step in at any time and it would be absurd to conclude that it then cannot go back to the period of non-compliance while under a supervisory body.

[39] Section 45(1) reads:

“45(1) Every supervisory body is responsible for supervising and enforcing compliance with this Act or any order, determination or directive made in terms of this Act by all accountable institutions regulated or supervised by it.

(1A) ...

(1B) ...

(1C) ...

(1D)(a) The Centre and a supervisory body must coordinate their approach to exercising their powers and performing their functions in terms of this Act to ensure the consistent

⁶ *Florence v The Government of South Africa* 2014 (6) SA 456 (CC) par [114]

application of the Act, and must enter into a written memorandum of understanding in respect thereof.

- (b) The memorandum of understanding must provide for –
 - (i) the sharing of information between the parties, which must include –
 - (aa) the types of information to be furnished by each party; or
 - (bb) measures to protect confidentiality of the information, including limiting access to specified persons or incumbents of specified positions, subject to section 40(3) and other provisions of this Act and other applicable legislation;
 - (ii) cooperation between the parties and assisting each other in the exercise of their respective powers and the performance of their respective duties in terms of this Act;
 - (iii) a dispute resolution mechanism; and
 - (iv) such other matters as may be prescribed.
- (2) When the Centre refers a matter to a supervisory body or other public body or authority in terms of section 44, that supervisory body or other public body or authority must investigate the matter and may, after consultation with the Centre, take such steps within the scope of its powers as it considers appropriate to remedy the matter.
- (3) Should a supervisory body or other public body or authority to which a suspected contravention or failure is referred in terms of section 44 fail to take adequate steps to ensure that the suspected contravention ceases or the suspected failure is rectified, the Centre may, after consultation with the supervisory body or other public body or authority concerned, take such steps within the scope of its powers as the Centre considers appropriate to remedy the matter.”

[40] Section 44 reads:

“Referral of suspected offences to investigating authorities and other public bodies

If the Centre in the performance of its functions has reasonable grounds to suspect that an accountable institution, or any other person other than a supervisory body who is subject to the provisions of the Act, has contravened or failed to comply with any provision of this Act or any rule or guideline applicable to that accountable institution or person which facilitates compliance with this Act, it may, if it considers it appropriate to do so, refer the matter to –

- (a) a relevant investigating authority; or
- (b) an appropriate supervisory body or other public body or authority affected by it, together with any recommendation the Centre considers appropriate.”

[41] The FIC must:

“4(g)(ii) To achieve its objectives the Centre must supervise and enforce compliance with this Act or any directive made in terms of this Act by accountable institutions, reporting institutions and other persons to whom the provisions of this Act apply that are supervised by a supervisory body in terms of this Act, if that supervisory body fails to enforce compliance despite any recommendation of the Centre made in terms of section 44(b).”

[42] Section 45(1B) was promulgated in 2008. The section provides, among others, that a supervisory body may, in meeting its obligation, take any measure it considers necessary and require that an accountable institution supervised or regulated by it report on that institution’s compliance with the Act “in the form, manner and timeframes determined by the supervisory body”.⁷

[43] The Appeal Board found that the FIC and supervisory bodies are obligated in terms of section 45(1D) of the Act to exercise their powers and perform their functions in terms of the Act to ensure consistent application of the Act. Section 45(1D) existed to ensure that supervisory bodies do not operate inconsistently with the application and objectives of the Act and do not frustrate the obligations and objectives of the Act.

⁷ Section 45(1B)(c) and (d)

[44] The Appeal Board misunderstood and incorrectly applied s45(3). Section 45(3) of the Act pertains to the authority of the FIC to take direct enforcement action if a supervisory body fails to adequately address a suspected non-compliance by an accountable institution. It follows on from section 44; pursuant to the FIC referring a suspected contravention or failure to comply with the Act to a supervisory body. S45(3) is only triggered if the supervisory body fails to take adequate steps to rectify the non-compliance, then the FIC may, after consulting with the relevant supervisory body or authority, take any steps within its power to remedy the matter. This section ensures that if a designated supervisor does not properly handle a violation of the Act, the Centre has the legal authority to step in and enforce compliance.

[45] The FIC did not utilize section 44 read with s45(3) in the period that the LPC was the supervisory body. In terms of the Act "every supervisory body is responsible for supervising and enforcing compliance with this Act or any order, determination or directive made in terms of this Act by all accountable institutions regulated or supervised by it." The LPC did this and the FIC did not step in.

[46] The Act proceeds to describe the obligation of enforcing compliance with the Act as a legislative mandate of the supervisory body "and constitutes a core function of that supervisory body." The LPC had this core function while it was the supervisory body, not the FIC, with the MOU required by the Act confirming this. In terms of the Act the FIC and the LPC by means of the MOU coordinated their approach to exercising these powers, but the LPC had the core function of enforcing compliance.

[47] Section 45(1B) grants a supervisory body a discretion in meeting its obligation to take any measure it considers necessary to ensure compliance required from the accountable institution by it report on that institution's compliance with the Act "in the form, manner and timeframes determined by the supervisory body".⁸ The LPC did so. LDA complied with the requirements set up by the LPC.

[48] The Appeal Board did not at all interpret s45C(2)(a), the sanctioning section. This in itself is a mistake of fact and law. Section 45C(2) reads as follows:

⁸ Section 45(1B)(c) and (d)

"When determining an appropriate administrative sanction, the Centre or the supervisory body must consider the following factors:

- (a) The nature, duration, seriousness and extent of the relevant non-compliance;
- (b) whether the institution or person has previously failed to comply with any law;
- (c) any remedial steps taken by the institution or person to prevent a recurrence of the non-compliance;
- (d) any steps taken or to be taken against the institution or person by –
 - (i) another supervisory body; or
 - (ii) a voluntary association of which the institution or person is a member; and
- (e) any other relevant factor, including mitigating factors."

[49] The FIC relied on s45C(2)(a) and specifically the "duration" of the non-compliance inclusive of the period that the LPC was the supervisory body. The Act is silent as to whether the period that another supervisory body was appointed is included in the extent, duration, nature and seriousness as factors to consider. In this instance a five-year period has been included where LDA had complied with the requirements set by the LPC. It is undeniable that such a period or long "duration" has a severe impact on the method the FIC computes the administrative penalties increasing same substantially. This long duration results in heavy penalties, this while LDA had complied with the requirements set by the LPC. If the Legislator intended this section to apply retroactively it would have had to have done so expressly in s45(C)(2).

[50] *In National Director of Public Prosecutions of South Africa v Carolus and Others* (162/99) [1999] ZASCA 101; [2000] 1 All SA 302 (A); 2000 (1) SA 1127 (SCA); 1999 (2) SACR 607 (SCA) (1 December 1999) the Supreme Court of Appeal referred and applied the matter of *Benner v Canada (Secretary of State)* (1997) 42 CRR (2d) 1 (SCC), a decision of the Supreme Court of Canada, wherein it quoted with approval

definitions of the terms “retroactivity” and “retrospectivity” by a well-known Canadian writer on the interpretation of statutes, Elmer A Driedger, in an article in (1978) 56 *Canadian Bar Review* 264 at 268-9 as follows:

“A retroactive statute is one that operates as of a time prior to its enactment. A retrospective statute is one that operates for the future only. It is prospective, but it imposes new results in respect of a past event. A retroactive statute operates backwards. A retrospective statute operates forwards, but it looks backwards in that it attaches new consequences for the future to an event that took place before the statute was enacted. A retroactive statute changes the law from what it was; a retrospective changes the law from what it otherwise would be with respect to a prior event.

In terms of this terminology the expression ‘retroactivity’ is used for retrospectivity in the ‘strong’ sense while the expression ‘retrospectivity’ is reserved for what is described as retrospectivity in the ‘weaker’ sense.

It appears clearly from the many cases on the point, both in our law and in overseas jurisdictions, that the basis of the presumption against retrospectivity (in the strong and weak senses) is what Stevens J described, when giving the opinion of the United States Supreme Court in *Landgraf v USI Film Products et al* [1994] USSC 10; 511 US 244 (1994) at 265 as ‘elementary considerations of fairness [which] dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly.’”

“In that case the main opinion was delivered by Lord Mustill who (at 525 E - F) referred with approval to the following statement by Staughton LJ in *Secretary of State for Social Security v Tunncliffe* [1991] 2 All ER 712 (CA) at 724:

‘In my judgment the true principle is that Parliament is presumed not to have intended to alter the law applicable to past events and transactions in a manner which is unfair to those concerned in them, unless a contrary intention appears. It is not simply a question of classifying an enactment as retrospective or not retrospective. Rather it may well be a matter of degree - the greater the unfairness, the more it is to be expected that Parliament will make it clear if that is intended.’”

[51] The degree of unfairness in this matter speaks for itself and Parliament should have made it clear if its intent was that no matter while under the supervision of an appointed body the FIC can take that duration into consideration as a factor for sanctioning. The reason for this is not only the unfairness, but that accountable institutions should know that this factor included the clean slate it received from its supervising body. If they had knowledge of this the accountable institution should rather take their cue from the FIC than the supervisory body, but that defeats the whole premise of why a supervisory body is appointed.

[52] By analogy; what powers would the LPC have had in circumstances where it accepted LDA's compliance as satisfactory between 2017 and 2022, and in 2023 realised that the Act required better compliance? Could the LPC simply ignore its own prior acceptance, formally granted through the FFC process, and retroactively sanction the firm for the past five years' non-compliance? In our view, it could not. The discomfort presented by such a scenario is palpable.

[53] The evidence shows that the LPC required practitioners to report compliance; referring to outdated information in its *Audit Report Guidelines: Rules of the Legal Practice Council* - referencing "internal rules" from the 2001 version of the Act instead of the RMCP - and thus failed to account for the evolving nature of the Act. Practitioners were effectively "lulled" into a false sense of security, believing they were compliant because their regulator never indicated otherwise. Notably, the FIC remained equally silent, failing to exercise its oversight powers under section 45(3) while the LPC was in charge.

[54] The purpose of sub section 45C(2)(d) is to ensure that the regulator does not apply disproportionate penalties if the institution is already being punished by another regulatory body or a professional body, like the LPC, for the same conduct. This subsection does not grant the FIC the power to retroactively sanction, but it acts as a guide to determine if the institution has already taken steps to remediate the issue based on intervention from a different authority, that may reduce the severity of the FIC sanction. In essence, s45C(2)(d) compels the regulator to consider the "bigger picture" of enforcement actions against an institution from other professional or regulatory bodies before finalizing a FICA sanction. In this matter there was no other sanction, is not applicable and did not empower the FIC to sanction retroactively.

[55] This Court fully understands the need for strict adherence to this Act to prevent or identify money laundering and funding of terrorist activities, but the FIC must in terms of the Financial Action Task Force [FATF] consider a genuine risk assessment of LDA and sanction proportionally.

The refusal of the admission of the DocFox service level agreement

[56] The Appeal Board gave no reason for accepting the FIC's ruling not to allow this further evidence, the DocFox document. It was a service level agreement that reflected a prospective manner by which LDA was ensuring compliance with the Act. Without any reasons provided why the Appeal Board upheld this decision this Court must accept the Appeal Board did not exercise its discretion judicially. The reasoning of the Appeal Board was "However, a ruling was made not to allow the introduction of additional remedial information and documentation after the decision was taken on 4 March 2024. Such information and or documentation on remedial action, would serve no purpose because the Centre in its decision of 4 March 2024 accepted that appropriate remedial actions had been taken to avoid recurrence."

[57] Counsel for the FIC was gracious in acknowledging that this Court could not on this "reasoning" render a decision on whether the Appeal Board exercised its discretion judicially. This refusal must thus be set aside and the FIC must consider this document. The fact that some remedial information is accepted as evidence does not exclude evidence of further remedial information. The FIC must consider all the remedial information put before it.

[58] The following orders are made:

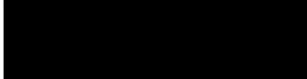
1. The Appeal is upheld in the following manner:

1.1 The Appeal Board's finding that the Financial Intelligence Centre was entitled to calculate the period of non-compliance from 2017 is set aside and replaced with; any recalculation of the administrative sanctions is limited to the period from 19 December 2022 onwards.

- 1.2 The Appeal Board's ruling in terms of par [12] of its decision is set aside. The Service Level Agreement between DocFox and LDA is to be admitted and considered in determining any administrative sanction.
- 1.3 The Appeal Board's order that the sanctions are set aside and referred back to the FIC, is confirmed.
2. No order as to costs.


S. POTTERILL
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree


E. VAN DER SCHYFF
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

CASE NO: A48/2025

HEARD ON: 3 February 2026

FOR THE APPELLANT: ADV. A. LOUW

INSTRUCTED BY: Len Dekker Attorneys Inc.

FOR THE RESPONDENT: ADV. M. SIBANDA

INSTRUCTED BY: Cliffe Dekker Hofmeyr Inc.

FOR THE AMICUS CURIAE: MR. M.V. GWALA

INSTRUCTED BY: Gwala Dlamini Msane Inc.

DATE OF JUDGMENT: 25 March 2026