

# **DOCUMENT BUNDLE**

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12 July 2010

Ms Vidhu Vedalankar  
Chief Executive Officer  
Legal Aid South Africa  
29 De Beer Street  
Braamfontein  
Johannesburg

Dear Ms Vedalankar

#### SENIOR LITIGATOR POSITION: PIETERMARITZBURG

1. On 12 November last year I was interviewed for a Senior Litigator position at the Pietermaritzburg Justice Centre.
2. The position had been advertised by Legal Aid South Africa for the second time, and I was one of four applicants shortlisted (a Senior Litigator for Durban was also sought).
3. In view of the seniority of the post and the high-level legal expertise it required, the Executive Board appointed a professional selection board comprising six senior attorneys and advocates, chaired by the regional HR officer, with the delegated power to field and screen applications; to draw a shortlist of the pick of them; to interview the shortlisted candidates; and to select the most suitable candidate for the position, if any.
4. The professional board's selection for the Pietermaritzburg Senior Litigator position was made subject to the approval of Legal Aid South Africa's Chairperson and most

senior lawyer, Supreme Court of Appeal Judge Dunstan Mlambo, consequent on a further confirmatory interview by him.

5. During a lengthy, wide-ranging interview by the professional selection board, I was closely interrogated on my qualifications, my applied legal experience and competence, my knowledge of recent case law, my personal and professional record, and my background and values insofar as they bore on my suitability as a public lawyer serving the poor of our country, as well as all and any other matters considered relevant to the determination of my application for the position.
6. From the range of questions put to me during my interview it was evident to me that the professional selection board had been charged with the responsibility of satisfying itself that the applicants shortlisted met not only the advertised requirements in terms of professional qualifications, experience and expertise, and enjoyed an unblemished record and reputation for personal and professional integrity, but would likely be an asset to Legal Aid South Africa in the discharge of its mandate to provide legal assistance to the poor in the High Court, Supreme Court of Appeal and Constitutional Court.
7. It was a rigorous interview, conducted face to face by a panel of fellow lawyers. I was afforded the opportunity to provide a full account of myself and to answer all and any questions that the professional selection board saw fit to pose concerning my suitability for the position. The professional manner in which the interview was conducted struck me as impeccable, and seemed to me to have been entirely objective. It was open and it was transparent.
8. It goes without saying that as lawyers who respect the Bill of Rights enshrined in Chapter 2 of the Constitution, the professional selection board did not consider it proper or relevant to enquire into whether I follow and observe the dominant Christian religion; subscribe to the dominant ideology of free-market capitalism; believe in the dominant biological theory of Darwinian evolution; accept the dominant theories in physics of Special and General Relativity; support the dominant cosmological Big Bang theory of the origin of the universe; prefer

dominant Western aggressive germ theory and transnational corporate, patent-based, PR marketing-driven, toxic synthetic chemical pharmaceutical medicine over African Traditional, Ayurvedic, Chinese, Herbal, or Homeopathic medical schools, with their radically different theoretical frameworks and diagnostic and healing modalities; and so on\*.

9. Nor did the professional selection board express any interest in my understanding, opinions and beliefs concerning all manner of past and current historical, political and economic matters either; ditto my literary, artistic and musical tastes, and whether they are confined to strictly useful social-realism or run to the decadently abstract.
10. The professional selection board's perfect indifference to these questions sprung of course from the fact that they are all matters of 'conscience, religion, thought, belief and opinion' falling within the purview of Section 15 of the Constitution.
11. Being well acquainted with the Constitution, the professional selection board fully appreciated that the free practice and free pursuit of these matters of 'conscience, religion, thought, belief and opinion' are protected by Section 16 of the Constitution, guaranteeing the 'right to freedom of speech and expression, which includes (a) freedom of the press and other media; (b) freedom to receive or impart information or ideas; (c) freedom of artistic creativity; and (d) academic freedom and freedom of scientific research'.
12. And as lawyers equally familiar with Section 19 of the Constitution, which guarantees 'the right ... to campaign for ... a cause', the professional selection board naturally didn't consider it appropriate to ask me whether I was involved in 'a cause' of any sort.
13. This is because the professional selection board of senior lawyers who interviewed me were fully cognizant of the fact that for the first time in the history of our country since it was invaded and colonized three and a half centuries ago, these basic freedoms, these basic human rights, have been guaranteed by a progressive

Constitution enacted at the commencement of the democratic era following national liberation – marking the clearest juridical break with the apartheid era and the closed, parochial, fearful, stultified, intolerant, and repressive mentality of the former ruling class and its servants, in which oppressive era no such basic freedoms were enjoyed as basic human rights, and critics and opponents of the ruling class and its servants were liable to be punished, neutralized and silenced: prohibited from public speaking; from writing and publishing; from engaging in any kind of political activity; from associating with whom they chose; from entering universities to conduct research; and even, in the case of banned lawyers, from practising their profession.

14. And because such restrictive political measures were decided by administrative officials sitting in their private offices behind closed doors, no recourse to any sort of review or appeal existed in open courts of law. Unlike in the democratic era.
15. It will not surprise you to be apprised, therefore, that I found no indication at the interview that, contemptuous of the Constitution and contemptuous of the basic human rights it guarantees, the professional selection board was fixing to discriminate against me illegally on any of the ‘prohibited grounds’ defined in the Promotion of Equality and Prevention of Discrimination Act 4 of 2000, to wit ‘race, gender,’ through to ‘conscience, belief,’ etc, (which illegal discrimination is actionable in the Equality Court for ‘the payment of damages in respect of any proven financial loss, including future loss’). On the contrary, I was quite satisfied at the time that the interview was conducted properly and I remain so.
16. My impression was that the interview, for which I had prepared thoroughly, went very well, and I left it confident of my prospects – even more so after sizing up two of the three other shortlisted candidates with whom I chatted in the waiting room.
17. Three weeks after the interview I telephoned the regional HR officer for the professional selection board’s decision. His studiously guarded response was that he was not free to divulge this information to me, and that I must just wait to be told.

18. So I waited. I waited for five months.
19. On 14 April I telephoned HR Executive Amanda Clark in Johannesburg Head Office to find out the score. Imagine my amazement to discover that she had never even heard of me and didn't know about the pending recruitment process in question. Nonetheless, in a briskly professional and reassuringly friendly manner, she undertook to enquire for me and revert with advice by email.
20. A couple of hours later she wrote that she had 'looked into this matter and can confirm it is still in progress and has not been concluded. I will endeavour to expedite the process in which I am not directly involved at this stage. ... Thanks for your keen interest. We hope to conclude the matter soon.' She advised me to contact the regional HR officer 'for updates'.
21. I did so a week later, expecting from Ms Clark's undertaking to 'endeavour to expedite the process', that I might at last get some indication of the state of play. But again, despite my 'keen interest' in learning the outcome of my interview, the regional HR officer was as mute as a sphinx, and provided no 'updates'. When I expressed my dismay, for I was most dismayed make no mistake, he volunteered that the professional board's selection was subject to confirmation following 'a final interview by the chairman, a Judge of Appeal' (his words precisely).
22. I then telephoned Ms Clark's office repeatedly over the next few days, but couldn't reach her. My calls were not returned.
23. On 22 April, I emailed Ms Clark, mentioning a particular practical pinch the lack of information and the delay were causing my partner and me, and requesting her to 'establish for me whether the administrative machinery in HQ involved in fixing a date with the judge for the final interviews is indeed turning – and not stalled at the clerical level'.
24. Ms Clark took a week to mull and no doubt confer over my email, and on 30 April she replied. Gone was the friendly, clear and professional tone and style of her previous communications. Her animus was palpably hostile and her now distinctly

unprofessional email was obscure, muddled, irrelevant, contradictory, accusatory, and calculatedly discouraging – although the information she conveyed was most revealing all the same. Obviously something was up.

25. Concerning the personal difficulty I'd mentioned, Ms Clark coolly pronounced her complete unconcern, and stated: 'The process is where it is. It is your decision as to whether you wish to wait to allow us to complete the process or whether you wish to withdraw.'
26. I inferred from this that the professional board had indeed selected me for the position, as I'd believed from the beginning, for had it not done so, and had it scratched me from its shortlist following my interview nearly six months earlier, my application would not still have been in 'process' in Legal Aid South Africa's Head Office. Or put another way: had the professional selection board rejected my application in November and excluded me from the running, I would not have been in a position to 'withdraw' from 'the process' in April, as Ms Clark thoughtfully suggested.
27. I also inferred that no legitimate obstacle to my appointment had turned up, or I would not have been asked to decide whether or not to be more patient in giving Legal Aid South Africa more time, after nearly six months, 'to complete the process': I'd have been forthrightly informed that I'd been disqualified on some or other lawful ground specified.
28. Ms Clark further stated: 'At this stage it is not even clear which applicants will be considered in the second round or if indeed we will proceed with a second round.' You'll readily appreciate, I'm sure, that all this is insupportable both on the facts and at law.
29. Firstly, Ms Clark's statement implied that the professional panel hadn't made a 'clear' selection of a specific candidate for the Pietermaritzburg Senior Litigator position after interviewing those it had shortlisted. We all know this isn't so.

30. Secondly, her statement revealed her misconception that she and other members of the Executive Board ('we') had the prerogative (a) to disregard and over-ride the professional board's selection of a candidate for the Pietermaritzburg Senior Litigator position; (b) to make an independent selection of its own; and (c) to terminate the recruitment process without referring the candidate selected by the professional board for confirmation or otherwise by Judge Mlambo.
31. In other words, Ms Clark imagined that in initiating a recruitment process to engage a suitable candidate for appointment as Pietermaritzburg Senior Litigator, the Executive Board, of which she's a member, is entitled to usurp both the selection function it had delegated to a board of senior legal professionals as well as the veto power it had delegated specifically to the Board's Chairperson, a senior judge.
32. You may be struck, as I certainly was, by the dark implication of her advice to me: 'Applying for a job is done at the applicant's own risk. Being called to an interview is not a guarantee of being appointed to the position.' Unpacking this ostensibly neutral, utterly superfluous platitude in the surrounding countryside of her other discouraging messages, including her frank suggestion that I shove off, you may even share my inference that Ms Clark meant to convey that in daring to apply for the position, I'd made an unsuccessful gamble and had lost my bid for it, so why don't I just go away and try somewhere else.
33. She further advised, 'I think you should allow us to complete our process at the pace we have decided.' From enquiries I've made, I've established that the 'pace we have decided' for the administration of my particular application is a special one: eight months have passed since I was interviewed, and I'm still counting.
34. To 'complete our process', all that's required from Ms Clark as HR Executive (or her staff) is to see to it that the candidate selected by the professional board is interviewed by Judge Mlambo, and to strike the necessary practical arrangements.
35. In point of fact, since this is the law, no one besides Judge Mlambo on the Executive Board has any discretion to discharge in this regard, and neither Ms Clark nor any

other member has anything substantial to decide concerning the selection and confirmation process that the Executive Board commenced.

36. Ms Clark concluded, 'If we require further information or follow-up from yourself, our organisation will contact you.' Since no 'further information or follow-up' has been sought from me in the eight months since my interview, including the two and a half months since Ms Clark's specific advice in this regard, I must conclude from her don't call us, we'll call you defensive faux legalese that no 'further information' from me is required by her 'organization', and that any 'follow-up' by myself is undesired. Leaving me wondering whether I'm not perhaps perceived to be an undesirable sort of person, best kept out of 'our organization' – her expression clanging in the context like a castle grate between us.
37. Ms Clark's further accusatory remarks are neither here nor there for immediate purposes.
38. Although in mid-April she'd noted my 'keen interest' in finding out what has become of my application and why it is taking so inordinately long to be finalized – conveying her 'hope to conclude the matter soon' and undertaking to 'expedite the process' – there has been no appreciable movement in 'the process' in the three months that have passed since then. This suggests that Ms Clark is either unable or unwilling to 'expedite the process'.
39. From the invitation she extended me to 'withdraw' my application if I wasn't happy with the exceptionally retarded 'pace we have decided' for dealing with it, and naturally I'm not, I rather gained the impression that she'd be pleased if I did.
40. One might even think, on an objective conspectus of all the foregoing, that for some undisclosed reason they'd rather not state Ms Clark and/or other members of the Executive Board have 'decided' to abort 'the process' by bringing it to a practical standstill, hoping to avoid trouble in court by not actually telling me so.
41. Please be advised that I do not 'wish to withdraw' my application, and that contrariwise I 'wish to wait to allow [Legal Aid South Africa] to complete the

process' lawfully. You'll agree, though, that more than a reasonable time has passed for this.

42. Clearly many hard questions arise from the extraordinary handling of my application. At this stage, however, hoping that everyone has just been terribly busy, I would prefer to put only one question to you: Can you tell me when I might meet Judge Mlambo? I'd be grateful.

Yours sincerely

ANTHONY BRINK

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CC: None

\*A couple of weeks ago I was interested to read an interview with you conducted by the Legal Resources Centre on 10 November 2010, just two days before my own, and in an addendum hereto I include some comments that may be pertinent.

## **‘Interview with Vidhu Vedalankar: CEO – Legal Aid South Africa’**

10 Nov 2009

(excerpts)

In my comments below I refer to numerous books and documents on the internet websites [www.tig.org.za](http://www.tig.org.za) and [www.openbooks.tig.org.za](http://www.openbooks.tig.org.za), for which I’ve provided conveniently shortened bit.ly URLs (<http://bit.ly/.....>).

### **1. What is your background and what interested you in joining Legal Aid South Africa (Legal Aid SA)?**

*I am a development planner by training and worked for many years in the NGO movement supporting civic and community organisations in their struggle for a better life for all our people. I also worked as a development activist, organising communities for change and to build a democratic South Africa. In the 1990s I worked in local government and was involved in housing and development issues.*

1. My brother Paul tells me of the difficulty your uncompromising personal integrity caused you in the eThekweni municipality. Your late husband Vish was a good friend and colleague of his in the development and housing consultancy Seneque, Smit & Maughan-Brown. It was Vish who recruited him into the company and launched his career in the provision of humanely designed low cost housing for the African poor in and around Durban, until sidetracked by political corruption. He describes Vish as ‘one of my heroes’.

*Issues of social justice are therefore close to my heart and when the opportunity came up at Legal Aid SA to make a contribution to increasing access to justice to all South Africans, I decided to take it up.*

1. The enclosed ‘Personal and Political History’ will tell you of a shared commitment to ‘issues of social justice’ from an early age and a long history of concern for ‘a better life for all our people’. My decade-and-a-half engagement with the Western medical industrial complex and its political and propaganda agencies has profoundly radicalized my philosophical, ideological and political outlook, and has sharpened my consciousness of structural inequality and social injustice, both at the national and international levels. In this period, working, living and travelling in Europe for many months at a time, I’ve formed close friendships with several activists in the international solidarity Left – among others, Lutz Kliche in Berlin, German translator of the Uruguayan writer Eduardo Galeano and of Ernesto Cardenal, first Sandinista Minister of Culture in Nicaragua, in whose ministry he worked until the Contra Thermidor in 1990; and Lluís Botinas in Barcelona, three decades underground for the 4th International in Franco’s Spain, Communist Poland, Bolivia and Peru. Also Dr Felipe Guzmán in Caracas, founder and director of the Venezuelan medical militia CONAMEV, formed in defence of the Bolivarian Revolution after the US attempt to oust President Chávez in 2002; we toured Germany together in September 2007, addressing conferences and meetings in Potsdam, Dresden, Duisburg, and Berlin. My

dominant interest now is in general political problems, and I read into this on a daily basis.

2. Although well known for my work in public health politics around the abuses of the transnational pharmaceutical industry in the South, hardly known outside my circle is my concern with fundamental land questions. For some years I've been tracking and researching agrarian reform and its challenges in Zimbabwe, with its human imperatives and economic contradictions similar to ours, only more acute. In early 2008 I started writing and editing a book about this, intended to rebut the propaganda narrative of the Western corporate media, *Why I Support Robert Mugabe: A Zimbabwe Reader*, comprising an extended introduction to selected interviews, speeches, histories, and critical analyses of post-colonial Zimbabwe and its problems, focusing on the fundamental land question – only to lose the manuscript and other work in a disaster a few months later in June ([bit.ly/bdNgWk](http://bit.ly/bdNgWk)).
3. A related concern of mine is the political, economic and social implications of GM food as an extension of enclosure, and its negative implications for food security as a modern capital accumulation and concentration strategy. In June 2007 I attended a conference on the subject in Magdeburg, Germany, addressed by two of the world's foremost GM food opponents, Dr Arpad Pusztai and William Engdahl. We met and conferred off-stage, and I shared information with both. Engdahl and I chimed politically (he also researches and writes about other geo-political issues) and we continued corresponding; I have his latest book he sent me. I currently collaborate and exchange ideas with the radical Italian historian and philosopher, Paolo De Bernardi, and have perfected English translations of some of his writing on industrial food production, GM food, and historical changes in land-holding and production patterns and their adverse economic and social consequences.
4. When I learned of the opening for the Senior Litigator position, I was similarly excited by the prospect of 'making a contribution to increasing access to justice to all South Africans' for the reasons elaborated under Question 6 below.

## **5. What has been Legal Aid SA's most significant accomplishment together with LRC?**

*Legal Aid SA funded the constitutional litigation on behalf of the Treatment Action Campaign to get the government to roll out anti-retrovirals to pregnant mothers who are HIV positive to prevent the transmission of the virus from mother-to-child in all state hospitals. This case is arguably one of the most significant impact cases as it has resulted in preventing the loss of life of a large number of babies who would otherwise have contracted HIV Aids.*

1. The almost universal Western belief nestled 'close to [the] heart' of all good, well-meaning people, whose knowledge and opinions in the matter derive from the media, that the 'anti-retrovirals' AZT and nevirapine 'prevent the transmission of the virus from mother-to-child' is comprehensively examined and refuted by a 130 000-word

scientific review study, of which I'm an honorary co-author, *Mother to Child Transmission of HIV and its Prevention by AZT and Nevirapine: A Critical Analysis of the Evidence*, conducted by the Australian biophysicist Eleni Papadopulos-Eleopulos and her scientific colleagues at the request of former President Thabo Mbeki for the information of the South African government in 2001. It's written in terms intended to be readily comprehensible to non-expert policy-makers and other lay readers ([bit.ly/ax2HMT](http://bit.ly/ax2HMT)).

2. An easy-to-follow slide presentation by the same authors focusing specifically on nevirapine debunks the popular belief that the drug works to 'prevent the transmission of the virus from mother-to-child' ([bit.ly/cOtfT](http://bit.ly/cOtfT)).
3. *The trouble with nevirapine*, an intensively researched 98 000-word book I published in 2008, recounts inter alia the history of the invention and fast-track provisional licensing of the drug in the US, Canada and South Africa; critically analyses the single corrupt clinical trial in Uganda on which the TAC based its case in the High and Constitutional Courts; critically examines the conduct and the decision of the case itself; and reports the subsequent revelations of the most high-ranking whistleblower in the history of US government, Dr Jonathan Fishbein, concerning the many unreported deaths and severe adverse events among African babies exposed to the drug in the Ugandan trial. The book is online with positive reviews by Fishbein and a senior, highly regarded English academic clinical pharmacologist Professor Andrew Herxheimer ([bit.ly/bdNgWk](http://bit.ly/bdNgWk)). It's stocked by all national and provincial libraries, and by several municipal libraries in the Western Cape; and before going out of print it was sold by Cape Town's leading independent bookstore Clarke's Bookshop. I hope one day to reduce the book to a medico-legal PhD.
4. In the litigation to which you refer, the case was argued for nevirapine (the merits or otherwise of AZT were not specifically before court) without any examination and judicial assessment of the scientific integrity of the claims being made for it, namely that it saves African babies' lives, who will otherwise certainly die without a baptismal dose of the drug. My book presents the clear evidence that even a single dose of nevirapine – so acutely toxic that it was banned by the American CDC on the advice of the FDA in January 2001 for even short-term use by doctors and nurses suffering needle-stick injuries – is often very harmful to African babies and in many cases fatally so.
5. Contrary to the widespread medical and popular consensus that the perinatal administration of nevirapine is effective in 'preventing the loss of life of a large number of babies who would otherwise have contracted HIV Aids', there is in fact no cogent evidence available demonstrating (a) that nevirapine administered solo has any antiretroviral activity according to conventional measures, (b) is better than no intervention at all 'to prevent the transmission of the virus from mother-to-child' according to conventional measures, and (c) that perinatally administered nevirapine works for 'preventing the loss of life of a large number of babies' in terms of real clinical outcomes: no such evidence was presented in report of the Ugandan study on

which the TAC based its case, and no such evidence has been presented in any subsequent study. To the contrary, there is ample evidence that the drug is dangerously harmful for African babies and in many cases fatally so. In sum, it's all risk and no benefit.

6. I drew an urgent amicus curiae application for the late Professor Sam Mhlongo, bringing to the Constitutional Court's attention, inter alia, that the single Ugandan study on which the TAC's case rested had just a few weeks earlier been rejected by the American FDA as irredeemably corrupt (to this day, nevirapine is not licensed by any Western drug regulatory agency for administration to blue-eyed, fair-haired babies). I also pointed up the shocking incidence of severe adverse events reported in *Lancet* among African babies given nevirapine in the Ugandan clinical trial – much higher figures, including many unreported deaths, emerged eighteen months after the decision of the case. Strangely enough, the application I drew is missing from the Constitutional Court file (and my electronic original in MS Word was lost on a burgled computer), but the case I made, argued by Khoza SC and commended by Chaskalson CJ during the debate as 'a compelling argument', is substantially echoed in a 100-point submission to the Medicines Control Council that I drew for Professor Mhlongo soon afterwards; see Appendix 1 to *The trouble with nevirapine*. After reading the submission, MCC member Dr Rajen Misra remarked to Professor Mhlongo that he (actually I) clearly knew more about the drug than any member of the Council.
7. I agree that the TAC's nevirapine case 'is arguably one of the most significant impact cases' funded by Legal Aid South Africa, inasmuch as the legal constitutional principles that the Constitutional Court enunciated are unimpeachable. It was indeed a landmark, precedent-setting case that can usefully be cited in future related rights disputes. But on the evidence I present, the High and Constitutional Courts were misdirected on the particular facts of the case, with atrocious consequences. It's summed up in my letter to former Chief Justice Chaskalson, covering a copy of the book I sent him ([bit.ly/bkftGz](http://bit.ly/bkftGz)).
8. The single dose nevirapine regime has now been superseded in South Africa by 'combination therapy' with AZT, nevirapine and similar drugs given to African mothers during pregnancy for some months and to their children for some weeks after birth. The mitochondrial damage that the potent cell toxin AZT and chemically related drugs cause developing brain and other organ tissues of foetuses and infants, manifesting in a wide spectrum of horrible injuries and fatalities, including manifestations of permanent brain damage of various kinds, is the subject of an exhaustive 50 000-word analytical literature review I performed, *Poisoning our Children: AZT in pregnancy* ([bit.ly/bdNgWk](http://bit.ly/bdNgWk)). Again, I intend to make a higher academic degree of it some day. South Africa's leading MTC experts Professors Francois Venter and Glenda Gray recently admitted never having heard of the chilling studies I canvass and discuss in the book, and reacted angrily when put to them for comment during filmed interviews by a documentary producer. A member of the MCC telephoned the late Dr Tshabalala-Msimang to say he had been 'amazed' by my 'detailed research' in digging out and presenting these studies on the foetal and neonatal toxicity of AZT,

of which he said the MCC had been ‘unaware’. Two people told me after reading them, ‘I cried,’ and as a mother you are likely to do so too. A press statement I issued in 2007 about AZT and pregnancy describes a similar half-century-long medical tragedy ([bit.ly/cPGhl7](http://bit.ly/cPGhl7)). None other than the very inventor of AZT, Professor Richard Beltz, supports my opposition to the drug on the basis that it is both therapeutically useless and extremely poisonous, especially dangerously so during pregnancy – not surprisingly, since he synthesized it in 1961 as a cell poison to kill human cells, intending it for cancer chemotherapy; see ‘Inventing AZT’ in the appendices to *Introducing AZT: ‘A World of Antiretroviral Experience’* ([bit.ly/bdNgWk](http://bit.ly/bdNgWk)).

9. I don’t know whether Legal Aid South Africa also maintained the cost of the TAC’s strike against the German micronutrient promoter Dr Matthias Rath in the Cape High Court. Well appreciating that I have no interest in vitamin pills, other than for the critically malnourished, and that my interest and work, even while associated with Rath, was always in respect of ARVs, the TAC included me in the spray of the case in an abusive misjoinder. No case was made for my inclusion as a respondent in the application any more than Rath’s tea-lady or receptionist, and when I made this point in my Heads of Argument ([bit.ly/9qzxFd](http://bit.ly/9qzxFd)), the TAC immediately withdrew against me ([bit.ly/atwYR3](http://bit.ly/atwYR3)). My 500-paragraph answering affidavit details the harm done to African babies by even a single shot of nevirapine squirted down their throats, as discovered and reported by the official US paediatric drug safety experts who reviewed the available Ugandan clinical trial data – and it mentions how their report was corruptly suppressed and kept from our MCC (search on Venter at [bit.ly/9DOFfp](http://bit.ly/9DOFfp)). *The trouble with nevirapine* recounts this in further detail.
10. I have been moved to bring official and public attention to the horrors I have uncovered by a call of conscience, an irresistible moral imperative, a profound sense of social responsibility, and deep compassion. I talk to this in the preface of my first book, *Debating AZT: Mbeki and the AIDS drug controversy*. So does ‘the country’s most experienced investigative journalist, Martin Welz’ (per veteran political journalist and author Allister Sparks), ‘a national treasure’ (per former *Sunday Times* editor Ken Owen), in his foreword to the book: ‘Anthony Brink is a citizen who takes his rights and his responsibilities seriously’ ([bit.ly/bdNgWk](http://bit.ly/bdNgWk)). My particular responsibility has been to air critically important information in the public interest, specifically in the interest of ‘the poor and vulnerable in an independent and ethical manner’ (to cite your language in the interview) and more particularly in the interest of the most vulnerable, the most defenceless, and the voiceless: the unborn and newly born African poor.
11. For taking my ‘responsibilities seriously’ – and be assured I take my right to do so seriously too – I’ve paid a very steep personal price indeed. Most people whose knowledge and understanding of the subject derives from what they read in the newspapers and see on TV think I’ve been claimed by the Devil; such is the cold chill I frequently encounter even among ancient family friends and old acquaintances, let alone the undisguised spitting hatred, even physical aggression, of strangers just met. Prior to winning the respect of former *Sunday Times* editor Mondli Makhanya in 2007,

his paper (many millions of readers) had billed me as a ‘loathsome personality’ – once even suggesting I’m dishonest ([bit.ly/9aOusw](http://bit.ly/9aOusw)), for which he apologized on the phone when I set him straight and published a correction ([bit.ly/a2HEVv](http://bit.ly/a2HEVv)). I’ve been pilloried and smeared (e.g. as a ‘denialist’) in several ARV drug promoting books in recent years: most extensively, on page after page, in Ronald Suresh Roberts’s *Fit to Govern: The Native Intelligence of Thabo Mbeki*, to which I wrote a line-by-line rebuttal of 120 000 words, *Lying and Thieving: The fraudulent scholarship of Ronald Suresh Roberts*, exposing his habitual mendacity and massive plagiarism, but more importantly his wholesale historical fabrication and falsification (Mbeki was gratified by my effort). The book, along with an archive of the saturation newspaper cover it attracted and a review by the editor of *Fit to Govern* Dr James Sanders is online ([bit.ly/bz2wCn](http://bit.ly/bz2wCn)). It’s summed up in a caustic letter I wrote to Harvard Law Professor Allan Dershowitz ([bit.ly/9YJ0J2](http://bit.ly/9YJ0J2)), which I copied to Professor Noam Chomsky, the most widely cited living intellectual of the Left. He liked it a lot: ‘Fine letter, and very appropriate.’

12. I used the same kind of subversive black humour as a serious political instrument in a Draft Bill of Indictment I filed against TAC leader Zackie Achmat in the International Criminal Court at The Hague in 2007 – winning me four days of prime time radio interviews to inform the public about the real, grave substance of the complaint: the therapeutic inefficacy and deadly harmful toxicity of ARV drugs. As detailed in the complaint, they severely injured Achmat (he admits it) and nearly killed him. It’s online with both appreciative and perplexed reviews ([bit.ly/bdNgWk](http://bit.ly/bdNgWk)).
13. The general prejudice against me for contradicting the deeply piled propaganda consensus that ARVs are beneficent medicines is not shared by my legal colleagues who know me well, nor by the judges of the Pietermaritzburg High Court bench. Several colleagues read *Debating AZT* with interest and returned positive comments. Reaction from judges who raised the book with me after its publication was likewise positive; one said he ‘couldn’t put it down’. I mention this to quell any suggestion that I have lost professional credibility as a lawyer for doing the unpopular work I’ve done and for taking the unpopular stand I’ve taken.
14. Other than a scientific paper I presented in Russia in May 2008 on the subject of ‘HIV’ ([bit.ly/dlNXLv](http://bit.ly/dlNXLv)), and methodological critiques of the HSRC’s ‘HIV Prevalence’ reports (search on Shisana at [bit.ly/9ZAAtQT](http://bit.ly/9ZAAtQT)), my focus has largely been on the so-called ARV drugs AZT and nevirapine. The intense antipathy I’ve experienced in reaction arises from the fact that the controversy is ideologically and morally charged to the religious pitch and rationally impermeable conviction of the ‘saved’ and the ‘reborn’; it is intensely politicized; it threatens political, commercial and professional vested interests on a massive scale across a broad front; and it has colossal, destabilizing implications for the exploitative ideological, political and commercial hegemony of the Northern powers over the countries of the South. My engagement in what I initially considered to be a purely scientific medical issue has given me an inkling of what it must have been like to have been banned or listed as a ‘communist’ in apartheid South Africa for criticizing or opposing ‘separate development’: loathed, feared, despised, and regularly slandered in books and newspapers; prohibited from

being quoted on ARVs in the media and in materials duplicated by printing works (search on ASA at [bit.ly/9ZAtQT](http://bit.ly/9ZAtQT)); and now – it could even be – prevented from practising my profession in a manner suitable to my social conscience. And all this in the democratic constitutional era. Václav Havel, first President of post-communist Czechoslovakia and later of the Czech Republic, described what it's like:

You do not become a dissident just because you decide one day to take up this most unusual career. You are thrown into it by your personal sense of responsibility, combined with a complex set of external circumstances. You are cast out of the existing structures and placed in a position of conflict with them. It begins as an attempt to do your work well, and ends with being branded an enemy of society.

Chomsky has made a similar point, and has repeated it in several interviews, for instance:

If you go back to the Bible, there were essentially intellectuals. The word that is used for them is prophets, kind of a mistranslation of an obscure Hebrew term. But if you look at what they were doing, it was what you'd expect intellectuals to be doing. They were giving geo-political analyses: it doesn't make sense to fight a war against the Syrians and the Egyptians, we'll get wiped out. They were criticizing the practices of the rich and privileged. They were urging decent behavior towards widows and orphans. That's the role of decent, honest intellectuals. They were not the ones who were praised and honored, not at that time. Hundreds of years later, maybe, but not at the time. I mean, at the time they were in prison, driven into the desert and reviled and so on. Now there were intellectuals who were respectable and well-treated and honored. They were the flatterers of the courts of the kings. Later, hundreds of years later, they were called false prophets. But that's typical of any society. At least I don't know of any exceptions.

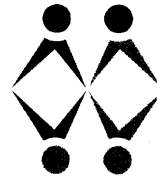
## **6. What is the biggest obstacle that human rights lawyers face today and how are LRC and Legal Aid SA addressing this?**

*To attract and retain lawyers committed to human rights litigation continues to be a challenge. Legal NGOs, law clinics and Legal Aid SA cannot match the remuneration packages and working environment offered by the corporate law firms.*

1. I am completely 'committed to human rights litigation'. It's the only litigation I'm really interested in. Conventional mercenary legal practice and the usual rewards have lost all appeal for me, in fact they've become repugnant.

2. At the Pietermaritzburg Bar I carried a heavy pro bono and political case load, for which I developed a reputation among the judges as a champion of the weak. I remember Hurt J smiling sympathetically as I began pleading yet another hard case in the teeth of the law and asking, 'Mr Brink, is this a court of equity or a court of law?' One important political case, a civil appeal, took me to the Supreme Court of Appeal for the respondent. Again the bench was friendly and sympathetic, but took a strict positivist approach to the apartheid legislation in question, and we lost. The case is reported.
3. I also did a great deal of work for the poor on Legal Aid. Griffiths J, then Legal Aid Taxing Master, told me that I was handling nearly all ('about 85%', I think he said) of High Court civil litigation on Legal Aid in Pietermaritzburg.





**Legal Aid**  
South Africa

**Our ref: B. Nair/nl**  
Your ref:

Tuesday, August 03, 2010

**Anthony Brink**  
25 Baker Road  
Prestbury  
**PIETERMARITZBURG**  
3200

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Braamfontein  
Johannesburg 2017  
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**E-mail: [arbrink@iafrica.com](mailto:arbrink@iafrica.com)**

Dear Mr Brink

**Senior Litigator Position: Pietermaritzburg**

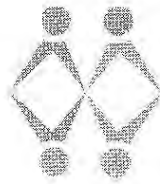
Your letter dated 11 July 2010 refers. Kindly note that this letter was referred to me to provide a response.

Contrary to what you may have been informed, please note that the person responsible for the final approval of the Senior Litigator appointments in our organisation would be the line function executive, which in this case is myself. I acknowledge that the recruitment process to finalise the appointments for all vacant Senior Litigator posts were put on hold due to various reasons. I can now confirm that we will not be proceeding with the filling of any of these posts. I will request our HR department to send out regret letters to all persons who were interviewed during the first round of interviews.

I would nevertheless like to thank you for the interest you have shown in joining our organisation.

Yours faithfully

  
**Brian Nair**  
**National Operations Executive**



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**CONFIDENTIAL**

23 August 2010

Mr Anthony Brink  
25 Baker Road  
Pietermaritzburg  
3200

Dear Mr Brink

**APPLICATION FOR EMPLOYMENT: SENIOR LITIGATOR [DURBAN & PMBURG] (REF. 2009/06/25)**

Thank you for your application and for attending the interview for the above advertised position.

Please be advised that Legal Aid South Africa will not be proceeding with the filling of this post. We apologise for the delay in informing candidates of the outcome of the interview process.

I would like to take this opportunity to wish you well for the future and thank you for your interest in the Legal Aid South Africa.

Yours sincerely

**LEGAL AID SOUTH AFRICA**

**VELA MDAKA  
REGIONAL OPERATIONS EXECUTIVE  
KZN REGION**

**Your voice. For justice.**

25 Baker Road  
Prestbury  
Pietermaritzburg 3201  
1 September 2010

Mr Jerry Makokoane  
Chief Operations Officer  
Legal Aid South Africa  
29 De Beer Street  
Braamfontein  
Johannesburg

Dear Mr Makokoane

#### SENIOR LITIGATOR POSITION: PIETERMARITZBURG

1. I write to petition your intervention as Chief Operations Officer in a serious illegal development at Legal Aid South Africa ('LASA'), and to appeal to you to remedy it before it escalates, to the considerable embarrassment and undeserved public discredit of LASA's Management Board and Board of Directors.
2. In its media release announcing your appointment on 13 June 2007, LASA quoted you remarking that it 'has a very important role in upholding the pillars of our Constitution and the Bill of Rights'.
3. Indeed, LASA states its 'Vision' to be 'A just South Africa in which the rights enshrined in our Constitution are promoted, respected, defended, protected and fulfilled to ensure justice for all.'
4. Given your stated commitment to 'the pillars of our Constitution and the Bill of Rights', which you rightly observed LASA 'has a very important role in upholding', it is unimaginable that you have been informed about – let alone

have connived in – the contemptuous violation of ‘the rights enshrined in our Constitution’ and the illegal abuse of power by those members of the Management Board whose conduct prompts this petition.

5. Contrariwise, all indications are that you’ve been deliberately kept in the dark about it, your authority and responsibility as Chief Operations Officer scorned by subordinate members of the Management Board.
6. The enclosed copy of my letter to Chief Executive Officer Vidhu Vedalankar (‘Vedalankar’) of 12 July 2010 will apprise you of most of the facts, and I respectfully request that you pause to read it before continuing with this one.
7. My letter was passed to your junior, National Operations Executive Brian Nair (‘Nair’), ‘to provide a response’ and he did so three weeks later on 4 August 2010 – completing the puzzle at last.
8. Since Nair did not copy his letter to you as his superior executive officer, nor to anyone else, I am enclosing a copy for your information.
9. From its contents you will readily understand why Nair didn’t want you to see it.
10. Nair commences his letter with the claim: ‘Contrary to what you may have been told please note that the person responsible for the final approval of the Senior Litigator appointments in our organisation is the line function executive, which in this case is myself.’
11. This is to say, according to Nair – contradicting KZN HR officer Baboo Brijlal’s true and correct information to me in April that ‘the professional board’s selection of a suitably qualified and experienced senior lawyer was subject to confirmation following “a final interview by the Chairperson, a Judge of Appeal” (his words precisely)’, as I recorded in paragraph 21 of my letter to Vedalankar – ‘the person responsible for the final approval of the Senior

Litigator appointments in our organisation’, is not LASA’s most senior lawyer and Chairperson, Supreme Court of Appeal Judge Dunstan Mlambo, but ‘the line function executive, which in this case is myself’, Nair.

12. Nair’s allegation that he’s ‘the person responsible for the final approval of the Senior Litigator appointments in our organisation’ is manifestly untrue.
13. LASA’s website informs us that Nair is employed as an executive manager ‘responsible for ensuring the delivery of cost effective quality legal services’, and is qualified to perform this function with degrees in school-teaching, computers and running businesses.
14. A request for records under the Promotion of Access to Information Act that I sent Vedalankar last week will show that Nair has never been invested with any such ‘final approval’ power – for the obvious reason that lacking any background in law and legal practice he’s not even remotely competent to exercise it. A copy of the request is enclosed.
15. Indeed, it is precisely because most members of the Management Board, and particularly its most senior members, are not qualified and are therefore unable to assess the professional qualifications, experience, ability, and suitability of the senior lawyers applying for the Senior Litigator positions advertised by the Management Board, that professional selection boards comprising senior advocates and attorneys were convened to perform this function.
16. You’ll readily appreciate that Nair’s unauthorized arrogation to himself of personal gate-keeping power to apply occult, ulterior, arbitrary criteria in effectively vetoing suitably qualified and experienced senior legal professionals – selected as such following their short-listing, interrogation, and assessment for appointment by duly appointed professional selection boards – is unlawful and subject to judicial intervention and interdictory relief.

17. Next, Nair substantially admits my observation in paragraph 40 of my letter to Vedalankar that ‘for some undisclosed reason they’d rather not state [Human Resources Executive] Ms [Amanda] Clark and/or other members of the Management Board have “decided” to abort “the process” by bringing it to a practical standstill’ – Nair responds: ‘I acknowledge that the recruitment process to finalise the appointments for all vacant Senior Litigator posts were [*sic*] put on hold due to various reasons’.
18. Until Nair declared himself in his letter, I was unaware that he had been ‘the person responsible’ for obstructing my appointment.
19. It seems clear from Nair’s untruthful claim to enjoy the ‘final’ discretion to approve or disapprove my appointment as Senior Litigator that he unlawfully assumed control of ‘the recruitment process’ when he learned of my selection, not as manager but as arbiter, and that he immediately “decided” to abort “the process” by bringing it to a practical standstill’, as I put it in my letter to Vedalankar.
20. It appears Nair did this without the knowledge and authority of the Management Board.
21. This explains fellow Management Board member Clark’s ignorance of me and of my pending appointment to the post when I telephoned her five months after I was interviewed and selected for it, and her information to me that she was ‘not directly involved at this stage’ in managing the appointment process (which at that advanced ‘stage’ entailed no more than fixing a date, place, and time for my interview with Judge Mlambo to confirm my selection).
22. In other words, not only did Nair usurp Judge Mlambo’s function as final arbiter of my selection, he also invaded Clark’s jurisdiction by assuming control of a recruitment project for which her HR department is responsible.

23. Nair's misrepresentation to me about the ambit of his executive management power makes it likely that having assumed arbitrary control of the appointment process, and having taken the decision to stall it permanently, it was Nair whom Clark consulted after our telephone conversation on 14 April 2010 to 'look into' my appointment and why it was being delayed, and it was Nair who was the source of Clark's (then apparently innocently conveyed) false information to me in her email a couple of hours later that that the 'recruitment process to finalise the appointments' (as Nair put it in his letter) was 'still in process and has not been concluded' and that 'we hope to conclude the matter soon' (Clark's email of 14 April 2010, quoted in paragraph 20 of my letter to Vedalankar).

24. This is to say, although (it is obvious now) Nair had moved immediately to block my appointment by aborting the process in order to prevent Judge Mlambo from confirming my selection at a 'second round' interview, he deliberately misinformed Clark about the progress of the matter with the intention that she should misinform me in turn and lead me to expect my selection might be confirmed by Judge Mlambo 'soon'.

25. Nair obviously never told Clark that he'd acted illegally to terminate the 'recruitment process to finalise the appointments' or even that he'd put my appointment 'on hold', or she wouldn't have offered 'to expedite the process in which I am not directly involved at this stage', nor would she have invited me to contact the regional HR officer in the future 'for updates'.

26. Whereas on 14 April Clark seems to have been innocent of complicity in Nair's illegal scheming to prevent my appointment, by 30 April she had joined it, and was communicating with me in bad faith.

27. On one hand, she implicitly confirmed that I'd been selected for the Pietermaritzburg Senior Litigator post, by suggesting that if I wasn't happy

about the many months of silence and inaction since my interview, I should ‘withdraw’ my application for the post before Judge Mlambo confirmed my selection (see paragraph 26 of my letter to Vedalankar).

28. On the other hand, Clark dissembled in the face of the obvious facts that the professional selection board hadn’t made a selection for appointment to the Pietermaritzburg Senior Litigator post.

29. Clark compounded this misrepresentation to me with another one, falsely alleging further that it was up to the discretion of her and other members of the Management Board as to whether my selection would be vetted by Judge Mlambo or not – thus usurping the final approval power delegated to Judge Mlambo as LASA’s most senior lawyer, and thus preventing him from exercising it (see paragraphs 28 of my letter to Vedalankar).

30. You will be disappointed to discover that both of Clark’s emailed communications with me – in which she appears largely to have been Nair’s messenger – were at marked odds with LASA’s ‘Values’: ‘Passion for justice, Caring, Respect for human dignity (ubuntu) and diversity, Empowerment, Integrity and Accountability’.

31. They were also at variance with Clark’s own similar claims about ‘Company culture and style’ in LASA’s ‘BestEmployers 2009/10’ résumé (online), in which she paraphrased: ‘staff members have a passion for justice; they are caring, committed to empowerment, have integrity, as well as respect for human dignity and diversity, and are also accountable’.

32. It’s evident from Clark’s emails to me that none of these values were observed in her and Nair’s dealing with me. On the contrary, all these values were breached:

33. I enquire five months after a formal interview by a professional selection board of senior legal professionals pursuant to an application for a senior legal position advertised nationally in the newspapers and in the law journals, for which interview I had prepared intensively, spending many days in the Cape Bar library, and for which I was put to the expense of flying across the country to attend. With no explanation, no apology, instead chilling hostility, animosity and deliberately obscure, misleading and contradictory information and insinuations, Clark –

- responds to my enquiry with the purposely opaque, uninformative, discouraging Kafkaesque non-statement, ‘The process is where it is’ – with its implication that she and Nair hold themselves unaccountable as public servants;
- tells me blatant lies about the status of my application and its progress through ‘the recruitment process’ – what was ‘clear’ to her, even as she pretended to me that ‘it is not even clear’, was that the process to appoint me after my selection had already been unlawfully aborted;
- clumsily attempts to conceal the fact that I’d been selected for appointment;
- dishonestly suggests that my interview for the post had been unsuccessful;
- basically tells me off for seeking word as to the upshot of my interview by the professional selection board and for wishing to know, many months after it, when the final stage of ‘the recruitment process’ – my interview by Judge Mlambo – might take place;
- admonishes me to just keep on waiting indefinitely and ‘to allow us to complete our process at the pace we have decided’, with no indication of what that ‘pace we have decided’ is, apart from the indication I’d gathered from many months already passed that it could take forever and that I was

simply at the mercy of the sort of unresponsive and unaccountable bureaucrats who ran the apartheid state;

- dismisses my hint that five months of inaction by public servants is not normal but that instead it evidences disgraceful indolence and dereliction of their duty to do their jobs;
- forcibly implies that I should desist from making further enquiries for ‘information’ concerning progress in the process to confirm and appoint me as Senior Litigator at the Pietermaritzburg Justice Centre, having been duly selected for the post by the KwaZulu-Natal regional professional selection board, and that I should put aside any thoughts of ‘follow-up’ in the matter;
- displaces and projects her and Nair’s own delinquency onto me in wantonly and falsely impugning my personal integrity with a wholly unwarranted accusation of shady dealing – ‘It is also not proper to obtain inside information from your brother and then to stand on whatever you have been told by him’ – after I’d openly mentioned to her that my brother, an attorney in Pietermaritzburg, informed me in Cape Town that the Pietermaritzburg Senior Litigator post had been re-advertised after the first candidate selected had been disapproved by LASA’s Chairperson Judge Mlambo – which plain fact was in no wise ‘inside information’: it was commonly known in the relatively small Pietermaritzburg legal community;
- callously responds to my mention of the particular practical personal difficulty that the uncertainty and lack of information about my appointment and the timing of my final interview by Judge Mlambo were causing my partner and me (she pressingly needed to make a trip to Italy), by telling me in as many words that she couldn’t care less;

- proposes that after all the time, energy, and expense I'd invested in applying and preparing for the advertised Pietermaritzburg Senior Litigator post, and having been duly selected for it, I should simply walk away from it – the outcome Nair had evidently hoped for in adopting his strategy to stonewall me.

34. Clark's emailed communications to me, essentially as Nair's messenger, also conspicuously failed the 'Mission' of the 'Batho Pele Principles' governing the conduct of public servants in the post-apartheid, progressive, democratic, Constitutional era: 'The creation of a people-centred and a people-driven public service that is characterised by equity, quality, timeousness and a strong code of ethics.'

35. Another nearly four months then passed with no further communication to me before Nair announced, 'I can now confirm that we will not be proceeding with the filling of any of these posts'.

36. Nair's letter was followed by one in similar terms some weeks later from KwaZulu-Natal Regional Operations Officer Vela Mdaka. A copy of Mdaka's letter is enclosed.

37. The impetus to Nair's announcement was not some new operational consideration that tipped his decision from (a) to 'put' the 'process to finalise' my appointment 'on hold', to (b) 'not to be proceeding with the filling of these posts' – it was my letter to Vedalankar eight months after my selection, pressing for a date for my final interview by Judge Mlambo.

38. As mentioned above, it is now clear in the light of Nair's letter that he moved – solo or possibly in cabal with one or more members of the Management Board behind the scenes – to quash my selection immediately, but because this was illegal he was reluctant to announce it.

39. So first he misleads Clark into telling me the recruitment process is proceeding and would likely be finalised ‘soon’, to lull me into waiting longer and to keep me off his tracks. Then, when I again press Clark for information soon after, he brings her into his scheme and gets her to pretend to me, five and a half months after I was selected, that the Management Board members (‘we’) were still busy thinking about the selection (see paragraph 28 of my letter to Vedalankar). Even though, of course, the Management Board as a whole, or a couple of its members acting in cabal, had no business vetting the selection: this was Judge Mlambo’s function.

40. Nair and Clark then kept me waiting another nearly four months before Nair falsely stated, in response to my letter to Vedalankar, that (a) my appointment had been ‘put on hold’, whereas in truth he had immediately blocked it without the authority and knowledge of the Management Board as a whole – contradicting Clark’s equally false allegation on 30 April that my selection was still being considered by the Management Board or some of its members (implied by ‘we’); and (b) the Management Board or some of its members (‘we’) had just decided to kill ‘the recruitment process’ for ‘various reasons’, impliedly not particular to me: ‘I can now confirm that we will not be proceeding with the filling of any of these posts.’

41. Note that Nair did not say the vacant Pietermaritzburg Senior Litigator post had been abolished because the Pietermaritzburg Justice Centre at the seat of the Pietermaritzburg High Court no longer needed a Senior Litigator to conduct its more complex litigation and impart his wide legal experience and forensic skills to its young attorneys; he said, in as many words, that the Management Board or some of its members had decided to abandon ‘the recruitment process’ that Management Board had started, just before its final conclusion, and to leave the post vacant ‘due to various reasons’ that he didn’t want to specify. This is to say, although the continued existence of the (vacant)

post implies the continuing need for a suitable person to perform the public function the post was created to address, this public need would not be met.

42. Note also that Nair did not expressly say that the Management Board had resolved to abandon its search for a suitable Senior Litigator for Pietermaritzburg after I'd been found suitable for appointment by the professional selection board which interviewed and selected me; he said 'we will not be proceeding' – deceptively implying this was a Management Board decision, knowing full well it's not true.
43. Only when it became apparent to Nair that his gambit to discourage and exhaust me and lead me to take the 'decision ... to withdraw' had failed, did he allege for the first time, nearly nine months after my interview, assessment and selection for appointment as Senior Litigator for the Pietermaritzburg Justice Centre, that 'we will not be proceeding with the filling of any of these ... vacant Senior Litigator posts'.
44. Like Clark did in her email of 30 April, Nair sought to obscure the fact that I was actually selected for Pietermaritzburg Senior Litigator post and not merely 'interviewed' for it – only, like she did, he implicitly confirmed that the professional selection board had indeed made a selection, in referring to 'the recruitment process to finalise the appointments'.
45. Perhaps because they lack any qualifications in and knowledge of law, Nair and Clark apparently bargained that for as long as they didn't explicitly inform me that I'd been selected for the Pietermaritzburg Senior Litigator post, and tried keeping this fact from me, I wouldn't have any 'legitimate expectation' of being appointed to it, subject to Judge Mlambo's approval, and so wouldn't have any rights to prosecute under the Promotion of Administrative Justice Act 3 of 2000.
46. Section 1, the 'Definitions', provides:

“administrative action” means any decision taken, or any failure to take a decision, by –

[...]

(b) a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision, which adversely affects the rights of any person and which has a direct, external legal effect [...]

47. Under the heading ‘Procedurally fair administrative action affecting any person’ Section 3 (1) provides:

Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.

48. Not that there is any question about the fact, implicitly confirmed by Clark and elliptically by Nair, that I was selected: the six senior advocates and attorneys on the professional selection board who interviewed me will all confirm under subpoena on oath if needs be that after interviewing me at length, interrogating my suitability, and assessing and debating it in committee thereafter, they resolved to select and recommend me for appointment as Pietermaritzburg Senior Litigator on the basis that as an extensively experienced lawyer, with a history of progressive social and political engagement, I am eminently qualified to occupy the position to the benefit of LASA in assisting it discharge its mission ‘To be a leading provider of quality, professional legal services, ensuring effective access to justice for the poor and vulnerable, in an independent and caring manner.’ The selection board was evidently satisfied that I’m the sort of lawyer who would fit into the ‘Company culture and style’ mentioned in LASA’s ‘BestEmployers 2009/10’ résumé: ‘Legal Aid South Africa is epitomised by a dynamic, energised and committed workforce, which is highly motivated by the concept of serving the poor of South Africa.’

49. By invoking the plural pronoun ‘we’ in ‘we will not be proceeding’, Nair falsely implied that he was speaking for the Management Board, and that the Management Board had resolved for ‘various reasons’, for various legitimate reasons, to revoke its resolution to equip the Pietermaritzburg Justice Centre with a Senior Litigator.
50. In truth this resolution was never revoked and Nair was acting on his own unlawful, unauthorized initiative to derail my appointment, on the false basis that he’s ‘the person responsible for the final approval of the Senior Litigator appointments in our organisation’ and as such is entitled to veto the professional selection board’s selection (see paragraphs 3–7 of my letter to Vedalankar); and he did this behind the backs of the Management Board as a whole.
51. It couldn’t be that the Management Board had decided that Pietermaritzburg didn’t need a Senior Litigator after all, or the post wouldn’t have been re-advertised after the first candidate selected by the KwaZulu-Natal regional professional selection board had been disapproved by Judge Mlambo. Apart from Pietermaritzburg and Durban, all Justice Centres at the seats of the High Court have been equipped with Senior Litigators. So I hear.
52. Nor could it be that any newly arisen budgetary constraints motivated a decision not to fill the vacant Pietermaritzburg Senior Litigator post. On 12 April 2010, two days before my telephonic enquiry to Clark for information about the progress of my application, the Management Board advertised to recruit a Senior Litigator for the Umthatha Justice Centre – with a special salary incentive of R60 000 a year more than the advertised starting salaries for the Pietermaritzburg and Durban Senior Litigators. A copy of the advertisement online is enclosed.

53. Nor could it be that upon reconsideration, the Management Board worried that it had set the qualifying criteria for the Pietermaritzburg and Durban senior Litigator posts too low: the criteria for the Umthatha post were set lower than those for these two posts.
54. Nair's deceptively exaggerated reference to 'all vacant Senior Litigator posts' and to 'any of these posts' appears to have been contrived to mislead me to conclude that more than the Pietermaritzburg and Durban posts were affected; as far as I'm aware there are no others.
55. Likewise, Nair's statement that 'due to various reasons ... the recruitment process to finalise the appointments were [*sic*] put on hold' and 'we will not be proceeding with the filling of any of these posts' appears to have been contrived to mislead me to conclude that several legitimate general operational considerations had arisen subsequent to my interview and selection, and not an unlawful, unconstitutional one particular to me.
56. The question is why Nair unlawfully blocked my appointment by preventing Judge Mlambo from approving my selection. Without his frank statement of the reason, one is constrained to speculate.
57. I'm an unusually widely experienced senior lawyer with a spotless professional and personal record, and I easily meet the advertised qualifying criteria for the Senior Litigator post in question. My social and political values, my long history of political and social engagement, and my long identification with the poor and the weak borne out by the amount of political, pro bono, and Legal Aid work I performed in practice at the Pietermaritzburg Bar, are all consonant with the 'Vision, Mission and Values' of Legal Aid South Africa (for the kind of man I am, see my Personal and Political History enclosed). The professional selection board was satisfied on all these scores, and this is why it selected me for appointment as Senior Litigator for the Pietermaritzburg Justice Centre.

58. I'm also a politically controversial person for having thoroughly researched, written critically about, drawn government attention to, and publicized the toxicity and clinical inefficacy of the so-called antiretroviral drug AZT – in the process attracting the fury and opprobrium of its promoters. (My investigation of nevirapine and my critiques of the defective methodology of the HSRC's alleged 'HIV Prevalence' studies haven't attracted any public attention.) I deal with this in the 'Addendum' of my letter to Vedalankar and in a brief 'Postscript' enclosed.

59. I'm unable to conceive of any reason for Nair's obstruction of my appointment other than political prejudice – illegal under the Employment Equity Act 55 of 1998.

60. Under the title 'Prohibition of Unfair Discrimination', Section 6 (1) in Chapter 2 of the Act provides:

No person may unfairly discriminate, directly or indirectly, against an employee, **in any employment policy or practice**, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, **conscience, belief, political opinion**, culture, language and birth. (emphasis added)

61. Section 1 in Chapter I, 'Definitions, Purpose, Interpretation and Application', provides:

"employment policy or practice" includes, but is not limited to –

- a) **recruitment procedures**, advertising and **selection criteria**;
- b) appointments and **the appointment process**; [...] (emphasis added)

62. Nair's unlawful conduct is also prohibited by the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

63. The ‘Definitions’ in Section 1 provide:

“discrimination” means any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly –

- (a) imposes burdens, obligations or disadvantages on; or
- (b) withholds benefits, opportunities or advantages from, any person on one or more of the prohibited grounds; [...]

“prohibited grounds” are –

- (a) race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, **conscience, belief**, culture, language and birth [...] (emphasis added)

64. Under the heading ‘Prevention and general prohibition of unfair discrimination’, Section 6 provides:

‘Neither the state nor any person may unfairly discriminate against any person.’

65. The ‘ILLUSTRATIVE LIST OF UNFAIR PRACTICES IN CERTAIN SECTORS (Section 29)’ in the Schedule to the Act includes:

**Labour and employment**

- 1. (a) Creating artificial barriers to equal access to employment opportunities by using certain recruitment and selection procedures. [...]

66. As to why a Senior Litigator was not appointed for Durban, I have no hard information – save that I have a rumour, to be confirmed, that the candidate selected for it (his name was given to me) will soon be acting on the Durban High Court bench with a view to a permanent promotion to the judiciary, possibly accounting for why his appointment was not proceeded with.

67. You may also be troubled by Clark's and Nair's consistent use of the strange phrase 'our organization' in their communications with me, with its inappropriate personal proprietary resonance jarring against the fact that they are accountable public servants employed as executive managers of a ~one-billion-rand-a-year public body, and not the family supermarket.
68. It seems certain that neither Judge Mlambo nor any other members of the non-executive Board of Directors have been informed of Nair's clueless pretensions to holding 'final' veto power over professional selection board decisions, nor of his illegal, unauthorized decision taken behind the other Management Board members' backs, nor of his evident contempt for my basic civil liberties guaranteed by the Bill of Rights in Chapter 2 of the Constitution (see paragraphs 8–15 of my letter to Vedalankar, read with the Addendum to it).
69. Since Nair's decision to abort my appointment was beyond his powers, was therefore incompetent, and is consequently of no force and effect, his communication of this invalid act as well as Regional Operations Executive Vela Mdaka's letter to me in similar terms are both legally *pro non scripto*. (A copy of Mdaka's letter is enclosed.)
70. Naturally I write this letter to you on the basis of the information currently available to me and the inferences arising from it. If the records I have requested put things in a different light and the matter has still not been resolved by then, I will revert to you.
71. You will appreciate that this letter is a *bona fide* endeavour to achieve a solution, to unblock the pipe as it were, without having to resort to litigation to vindicate my rights: I am progressively 'exhausting all available remedies', as the courts require before intervening.
72. I am copying this letter to Legal Development Executive Patrick Hundermark: as an attorney he's well placed to advise you on LASA's current legal exposure

arising from Nair's illegal obstruction of my appointment, in the light of the statutory provisions cited above.

73. I am also copying this letter to Chief Financial Officer Rebecca Hlabatau: unless this matter is lawfully resolved, she will be concerned about the 'wasteful and fruitless expenditure' prohibited by the Public Finance Management Act 1 of 1999 that she will have to report and explain to the Board of Directors and ultimately to the Parliamentary Safety and Security Select Committee as a result of Nair's unauthorized and illegal abortion of the Management Board's initiative to recruit a Senior Litigator for Pietermaritzburg, to advertise extensively for it in several national newspapers and legal journals, and to occupy the time and attention of the senior advocates and attorneys on the KwaZulu regional professional selection board in screening, short-listing, interviewing, assessing, and selecting a suitably qualified and experienced senior lawyer for appointment to the post.

74. Every approach I have made in this matter has been consistent with my wish that the delay in the Management Board's recruitment of a Senior Litigator for Pietermaritzburg be resolved discreetly, and that the process be continued to its lawful conclusion. I record here that my determination to achieve this is implacable.

75. All that remains to remedy my problem is to arrange a date, place, and time for LASA Chairperson Supreme Court of Appeal Judge Dunstan Mlambo to interview me and thereafter confirm or disconfirm my selection by the KwaZulu-Natal regional professional selection board. It's that simple.

76. I truly hope you can fix this without the necessity of going to the Board of Directors, to Parliament, to Court. I think Judge Mlambo and the Board of Directors would be appalled, more especially if, apprised of all the facts of the matter, the Parliamentary Safety and Security Select Committee – which is

concerned that Senior Litigators should be engaged, and which has raised this with Judge Mlambo – calls upon Judge Mlambo to explain Nair’s unlawful conduct in depriving the Pietermaritzburg Justice Centre of the amply qualified, extensively experienced, and unusually socially committed Senior Litigator Legal Aid South Africa successfully recruited.

Yours sincerely

ADV ANTHONY BRINK

arbrink@iafrica.com  
033 344 2420



25 Baker Road  
Prestbury  
Pietermaritzburg  
3201  
1 September 2010

Mr Patrick Hundermark  
Legal Development Executive  
Legal Aid South Africa  
29 De Beer Street  
Braamfontein  
Johannesburg

Dear Mr Hundermark

**SENIOR LITIGATOR POSITION: PIETERMARITZBURG**

As mentioned in paragraph 72 of my letter to COO Jerry Makokoane today, I enclose a copy for your information, and, I hope, prompt and appropriate remedial action.

Yours sincerely

ADV ANTHONY BRINK

25 Baker Road  
Prestbury  
Pietermaritzburg  
3201  
1 September 2010

Ms Rebecca Hlabatau  
Chief Financial Officer  
Legal Aid South Africa  
29 De Beer Street  
Braamfontein  
Johannesburg

Dear Ms Hlabatau

**SENIOR LITIGATOR POSITION: PIETERMARITZBURG**

I enclose a copy of my letter to COO Jerry Makokoane today for your information, having regard to your interest mentioned in paragraph 73.

Yours sincerely

ADV ANTHONY BRINK

# Professional Update

A monthly newsletter for KZN Attorneys from the Kwazulu-Natal Law Society

## 12 June 2009

This professional service draws attention to current and important items of news and members are directed to the hosts' websites

InfoUpdate 12 of 2009  
Vacancies

### Senior Litigator

Applications are invited from interested persons, *who meet the minimum requirements*, to fill the above-mentioned position at the following Justice Centres: **Durban and Pietermaritzburg**. Applicants must be admitted Attorneys or Advocates. The incumbent will be appointed on a permanent basis.

#### Position Purpose:

To render legal services, primarily litigation services, in complex criminal and civil matters linking to the higher courts (High Courts, Appeal Courts and Constitutional Court) in the country, and provide specialist support to Justice Centres on these matters.

#### Key Outputs:

- Take responsibility for and expertly / proficiently attend to legal matters in various legal forums / courts requiring expert litigation skills such as impact litigation and / or warranting the services of a Senior Litigator
- Attend to referrals from National Office, Regional Office and Justice Centres regarding cases as in above and provide support to Justice Centres in specialised, complex or impact litigation matters
- Provide written legal opinion for the LAB as requested
- Build and manage a caseload as agreed by the ROE, that makes optimum usage of the expertise and skills of the senior litigator position
- Assist with in-house legal training sessions as identified / agreed by the ROE or LDE
- Develop the litigation expertise within the LAB by providing individual mentoring and coaching to legal staff as identified by ROE, involving other LAB practitioner to assist in legal matters and others means

#### Competencies (Skills, Knowledge and Attributes) Required:

- Admitted Attorney / Advocate
- B Proc or LLB degree, with right of Appearance in the High Court
- An LLM will be an advantage
- At least 12 years post qualification legal experience of which 10 years must be high court experience. Must be performing at least 80% active court litigation
- Valid code 08 drivers licence
- Excellent leadership and people development skills with a track record in

training

- Experience in budget preparation and management thereof
- Advanced computer skills (MS Word, Excel, Outlook, PowerPoint and Ad Infitum)
- Strong communication, problem solving and interpersonal skills
- Innovative, creative and analytical thinking skills. Strong research skills
- Ability to interpret and apply policies

Envisaged for this position is a senior Attorney or Advocate, with a good standing in the legal fraternity, proven track record in criminal and civil litigation, a motivated, self-driven and mature individual who is a team player.

Salary:

R603 002 (all-inclusive OSD package - min of scale)

Detailed curriculum vitae highlighting required skills as advertised must be submitted by close of business on **10 July 2009**, quoting the above reference number & Justice Centre of choice as follows :

**Ms Thandeka Hadebe, KZN/MP Regional Office, Fax Number: (031) 702-1960. Email Address: [ThandekaH@legal-aid.co.za](mailto:ThandekaH@legal-aid.co.za)**

(Please indicate clearly in your e-mail subject line the following: Application for Advertised Post: Senior Litigator.

Should you not hear from us within one month of the closing date, please accept that your application was unsuccessful. Please indicate clearly which office you are applying for.

*Preference will be given in terms of our affirmative action approach, to suitable candidates who meet the minimum requirements.*

Ref: 2009/06/25/kzn

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Your voice. For Justice.

Legal Aid South Africa is an autonomous statutory body with the primary objective of rendering or making available legal aid to poor persons. The National Footprint of Legal Aid South Africa covers more than 50 Justice Centres spread throughout the country.

## Senior Litigator

Ref: 2009/06/25/kzn

Salary: R603 002 per annum (all-inclusive OSD package - min of scale)

Applications are invited from interested persons, who meet the minimum requirements, to fill the above-mentioned position at the following Justice Centres: Durban and Pietermaritzburg. Applicants must be admitted Attorneys or Advocates. The incumbent will be appointed on a permanent basis.

**Position purpose:** To render legal services, primarily litigation services, in complex criminal and civil matters linking to the higher courts (High Courts, Appeal Courts and Constitutional Court) in the country, and provide specialist support to Justice Centres on these matters.

**Key outputs:** • Take responsibility for and expertly/proficiently attend to legal matters in various legal forums/courts requiring expert litigation skills such as impact litigation and/or warranting the services of a Senior Litigator • Attend to referrals from National Office, Regional Office and Justice Centres regarding cases as in above and provide support to Justice Centres in specialised, complex or impact litigation matters • Provide written legal opinion for the LAB as requested • Build and manage a caseload, as agreed by the ROE, that makes optimum usage of the expertise and skills of the Senior Litigator position • Assist with in-house legal training sessions as identified/agreed by the ROE or LDE • Develop the litigation expertise within the LAB by providing individual mentoring and coaching to legal staff as identified by ROE, involving other LAB practitioners to assist in legal matters and other means.

**Competencies (skills, knowledge and attributes) required:** • Admitted Attorney/Advocate • B Proc or LLB degree, with Right of Appearance in the High Court • An LLM will be an advantage • At least 12 years' post-qualification legal experience, of which 10 years must be High Court experience. Must be performing at least 80% active court litigation • Valid Code:08 driver's licence • Excellent leadership and people development skills with a track record in training • Experience in budget preparation and management thereof • Advanced computer skills (MS Word, Excel, Outlook, PowerPoint and Ad Infinitum) • Strong communication, problem solving and interpersonal skills • Innovative, creative and analytical thinking skills • Strong research skills • Ability to interpret and apply policies.

Envisaged for this position is a senior Attorney or Advocate, with a good standing in the legal fraternity and a proven track record in criminal and civil litigation. He/she is a motivated, self-driven and mature individual who is a team player.

A detailed curriculum vitae, highlighting required skills as advertised, must be submitted by close of business on 18 September 2009, quoting the above reference number and Justice Centre of choice to: Ms Thandeka Hadebe, KZN/MP Regional Office, fax: (031) 702 1960 or e-mail: thandekaH@legal-aid.co.za (Please indicate clearly in your e-mail subject line the following: Application for Advertised Post: Senior Litigator.)

Should you not hear from us within one month of the closing date, please accept that your application was unsuccessful. Please indicate clearly which office you are applying for.

Preference will be given in terms of our affirmative action approach to suitable candidates who meet the minimum requirements.



For more vacancies visit [www.legal-aid.co.za](http://www.legal-aid.co.za)

www.legal-aid.co.za

## **Vacancies at Legal Aid South Africa**

### **Apply for position: SENIOR LITIGATOR - MTHATHA JUSTICE CENTRE**

Applications are invited from interested persons, who meet the minimum requirements, to fill the above-mentioned position at the Mthatha Justice Centre. Applicants must be admitted Attorneys or Advocates. The incumbent will be appointed on a permanent basis. POSITION PURPOSE To render legal services, primarily litigation services, in complex criminal and civil matters linking to the higher courts (High Courts, Appeal Courts and Constitutional Court) in the country, and provides specialist support to Justice Centres on these matters. KEY OUTPUTS • Take responsibility for and expertly / proficiently attend to legal matters in various legal forums / courts requiring expert litigation skills such as impact litigation and / or warranting the services of a Senior Litigator. • Attend to referrals from National Office, Regional Office and Justice Centres regarding cases as in above and provide support to Justice Centres in specialised, complex or impact litigation matters. • Provide written legal opinion for the Legal Aid South Africa as requested. • Build and manage a caseload as agreed by the ROE, that makes optimum usage of the expertise and skills of the senior litigator position • Assist with in - house legal training sessions as identified / agreed by the ROE or LDE. • Develop the litigation expertise within the Legal Aid South Africa by; providing individual mentoring and coaching to legal staff as identified by ROE, involving other Legal Aid South Africa practitioner to assist in legal matters and others means. COMPETENCIES (SKILLS, KNOWLEDGE AND ATTRIBUTES) REQUIRED • Admitted Attorney / Advocate. • B Proc or LLB degree, with right of Appearance in the High Court. • At least 10 years post qualification litigation experience (both Criminal and Civil) of which 5 years must be high court experience. • A valid code 08 drivers' license. • Excellent leadership & people development skills with a track record in training. • Experience in budget preparation & management thereof. • Advanced computer skills (MS Word, Excel, Outlook, Power Point and Ad Infinitum). • Strong communication, problem solving & interpersonal skills. • Innovative, creative & analytical thinking skills. Strong research skills. • Ability to interpret & apply policies. SALARY: R663 302.20 (all inclusive OSD package) Detailed curriculum vitae highlighting required skills as advertised must be submitted by close of business on the 07 May 2010, quoting the above reference number & Justice Centre of choice as follows:- Mr Leslie Gwele, Justice Centre Executive, P.O. Box 536, MTHATHA, 5099. Fax Number: (047) 531 4144. Email Address: LeslieG@legal-aid.co.za OR Mr Mlindo Mzuku, Admin Manager. Email Address MlindoM@legal-aid.co.za (Please indicate clearly in your e-mail subject line the following: Application for Advertised Post: Senior Litigator. Should you not hear from us within one month of the closing date, please accept that your application was unsuccessful. Please indicate clearly which office you are applying for. Preference will be given in terms of our affirmative action approach, to suitable candidates who meet the minimum requirements

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Registered post slips: Vedalankar, Makokoane, Hundermark, and Hlabatau

<b>REGISTERED LETTER</b> <b>GEREGISTREERDE BRIEF</b> (with an insurance option/met 'n versekeringsopsie) <b>Full tracking and tracing/Volledige volg en spoor</b>		Postage paid R _____ c Service fee/Diensgeld R _____ c Insurance/Versekering R _____ c Total/Totaal R _____ c	
Addressed to/Geadresseer aan Ms Vidhu Vedalankar Legal Aid SA P/Bag X76 Braamfontein 2017 Postcode/Poskode		Insured value of contents/Versekerde waarde van inhoud R _____ c Enquiries/Navrae Toll-free number/Tolvry nommer 0800 111 502	
The value of the contents of this letter is as indicated and compensation is not payable for a letter received unconditionally. Compensation is limited to R100.00. No compensation is payable without documentary proof. Optional insurance up to R2 000.00 is available and applies to domestic registered letters only. Die waarde van die inhoud van hierdie brief is soos aangedui en vergoeding sal nie betaal word vir 'n brief wat sonder voorbehoud ontvang word nie. Vergoeding is beperk tot R100.00. Geen vergoeding is sonder dokumentêre bewys betaalbaar nie. Opsionele versekering tot R2 000.00 is beskikbaar en is slegs op binnelandse geregistreerde briewe van toepassing.		REGISTERED LETTER (with a domestic insurance option) ServiceCall 0800 111 502 www.postnet.co.za R10 355 342 691 ZA CUSTOMER COPY 301028R Paraaf van aanneembampste Initial of accepting officer Date stamp Datumstempel	

<b>REGISTERED LETTER</b> <b>GEREGISTREERDE BRIEF</b> (with an insurance option/met 'n versekeringsopsie) <b>Full tracking and tracing/Volledige volg en spoor</b>		Postage paid R _____ c Service fee/Diensgeld R _____ c Insurance/Versekering R _____ c Total/Totaal R 20.55 c	
Addressed to/Geadresseer aan Mr Patrick Hundermark Legal Aid SA P/Bag X76 Braamfontein 2017 Postcode/Poskode		Insured value of contents/Versekerde waarde van inhoud R _____ c Enquiries/Navrae Toll-free number/Tolvry nommer 0800 111 502	
The value of the contents of this letter is as indicated and compensation is not payable for a letter received unconditionally. Compensation is limited to R100.00. No compensation is payable without documentary proof. Optional insurance up to R2 000.00 is available and applies to domestic registered letters only. Die waarde van die inhoud van hierdie brief is soos aangedui en vergoeding sal nie betaal word vir 'n brief wat sonder voorbehoud ontvang word nie. Vergoeding is beperk tot R100.00. Geen vergoeding is sonder dokumentêre bewys betaalbaar nie. Opsionele versekering tot R2 000.00 is beskikbaar en is slegs op binnelandse geregistreerde briewe van toepassing.		REGISTERED LETTER (with a domestic insurance option) ServiceCall 0800 111 502 www.postnet.co.za R10 355 360 236 ZA CUSTOMER COPY 301028R Paraaf van aanneembampste Initial of accepting officer Date stamp Datumstempel	

<b>REGISTERED LETTER</b> <b>GEREGISTREERDE BRIEF</b> (with an insurance option/met 'n versekeringsopsie) <b>Full tracking and tracing/Volledige volg en spoor</b>		Postage paid R _____ c Service fee/Diensgeld R _____ c Insurance/Versekering R _____ c Total/Totaal R 20.55 c	
Addressed to/Geadresseer aan Mr Hlabatau Chief financial officer P/Bag X76 Braamfontein 2017 Postcode/Poskode		Insured value of contents/Versekerde waarde van inhoud R _____ c Enquiries/Navrae Toll-free number/Tolvry nommer 0800 111 502	
The value of the contents of this letter is as indicated and compensation is not payable for a letter received unconditionally. Compensation is limited to R100.00. No compensation is payable without documentary proof. Optional insurance up to R2 000.00 is available and applies to domestic registered letters only. Die waarde van die inhoud van hierdie brief is soos aangedui en vergoeding sal nie betaal word vir 'n brief wat sonder voorbehoud ontvang word nie. Vergoeding is beperk tot R100.00. Geen vergoeding is sonder dokumentêre bewys betaalbaar nie. Opsionele versekering tot R2 000.00 is beskikbaar en is slegs op binnelandse geregistreerde briewe van toepassing.		REGISTERED LETTER (with a domestic insurance option) ServiceCall 0800 111 502 www.postnet.co.za R10 355 360 253 ZA CUSTOMER COPY 301028R Paraaf van aanneembampste Initial of accepting officer Date stamp Datumstempel	

<b>REGISTERED LETTER</b> <b>GEREGISTREERDE BRIEF</b> (with an insurance option/met 'n versekeringsopsie) <b>Full tracking and tracing/Volledige volg en spoor</b>		Postage paid R _____ c Service fee/Diensgeld R _____ c Insurance/Versekering R _____ c Total/Totaal R 20.55 c	
Addressed to/Geadresseer aan Ms Jerry Makokoane P/Bag X76 Braamfontein 2017 Postcode/Poskode		Insured value of contents/Versekerde waarde van inhoud R _____ c Enquiries/Navrae Toll-free number/Tolvry nommer 0800 111 502	
The value of the contents of this letter is as indicated and compensation is not payable for a letter received unconditionally. Compensation is limited to R100.00. No compensation is payable without documentary proof. Optional insurance up to R2 000.00 is available and applies to domestic registered letters only. Die waarde van die inhoud van hierdie brief is soos aangedui en vergoeding sal nie betaal word vir 'n brief wat sonder voorbehoud ontvang word nie. Vergoeding is beperk tot R100.00. Geen vergoeding is sonder dokumentêre bewys betaalbaar nie. Opsionele versekering tot R2 000.00 is beskikbaar en is slegs op binnelandse geregistreerde briewe van toepassing.		REGISTERED LETTER (with a domestic insurance option) ServiceCall 0800 111 502 www.postnet.co.za R10 355 360 219 ZA CUSTOMER COPY 301028R Paraaf van aanneembampste Initial of accepting officer Date stamp Datumstempel	



25 Baker Road  
Prestbury  
Pietermaritzburg  
3200  
26 August 2010

Ms Vidhu Vedalankar  
Chief Executive Officer  
Legal Aid South Africa  
29 De Beer Street  
Braamfontein  
Johannesburg

Dear Ms Vedalankar

PROMOTION OF ACCESS TO INFORMATION ACT  
REQUEST FOR RECORDS  
SENIOR LITIGATOR POSITION, PIETERMARITZBURG

Further to my letter to you of the 12<sup>th</sup> ultimo, and your national operations executive Brian Nair's reply to it on the 3<sup>rd</sup> instant, I enclose a request for records in the prescribed form in terms of section 18 (1) of the Promotion of Access to Information Act 2 of 2000 ('PAIA').

I was unable to find Legal Aid South Africa's PAIA manual, mandatory under section 14 of PAIA, on the Legal Aid website yesterday, so I telephoned Ms Chantal Kisoona, deputy director of the PAIA Unit of the South African Human Rights Commission ('SAHRC'), for a copy of SAHRC's PAIA Guide, compiled in terms of section 10 of PAIA, and listing in terms of sub-section 2 (b) 'the postal and street address, phone and fax number and, if available, electronic mail address of – (i) the information officer of every public body, and (ii) every deputy

information officer of every public body'. She was unable to access the Guide for certain practical reasons given me and so could not give me these particulars in respect of Legal Aid South Africa. An emailed request for this information in the evening to your national communications executive Mpho Mphasha hadn't drawn a reply by the time of posting.

In the circumstances, and on Ms Kisoona's advice, I'm addressing this request directly to you as information officer of Legal Aid South Africa by virtue of your position as chief executive officer – per the definition of 'information officer' in section 1 of PAIA – with a request that you refer it for action to your deputy information officer(s), designated as such by you under section 17 of PAIA.

Several of the records cited in my request are founded on claims made to me by human resources executive Amanda Clark and by national operations executive Brian Nair. In the event that it's determined upon investigation that the records in question do not exist, I respectfully call attention to section 23 (1) and (2) of PAIA:

23 Records that cannot be found or do not exist

(1) If –

(a) all reasonable steps have been taken to find a record requested; and

(b) there are reasonable grounds for believing that the record –

(i) is in the public body's possession but cannot be found; or

(ii) does not exist,

the information officer of a public body must, by way of affidavit or affirmation, notify the requester that it is not possible to give access to that record.

(2) The affidavit or affirmation referred to in subsection (1) must give a full account of all steps taken to find the record in question or to determine whether the record exists, as the case may be, including all communications with every person who conducted the search on behalf of the information officer.

Indeed, I am almost certain that many of these records do not exist, and you will readily appreciate the legal implications.

Having regard to the several false and misleading statements made to me in response to queries and requests I made subsequent to my interview by the KwaZulu-Natal regional professional selection board on 12 November 2009, and the bad faith demonstrated to me, the provisions of section 90 of PAIA may also be pertinent to the handling of this particular records request:

#### 90 Offences

(1) A person who with intent to deny a right of access in terms of this Act –

(a) destroys, damages or alters a record;

(b) conceals a record; or

(c) falsifies a record or makes a false record,

commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(2) An information officer who wilfully or in a grossly negligent manner fails to comply with the provisions of section 14 commits an offence and is liable on conviction to a fine, or to imprisonment for a period not exceeding two years.

Although the reason for my request is immaterial in terms of section 11 (3) of PAIA, the following excerpts from PAIA's Preamble, read in the light of my letter to you of 12 July, will indicate both my purpose and where things are heading without prompt intervention to remove the illegal block to my interview with Judge Mlambo, and the fake cover that Nair has improvised for it:

#### RECOGNISING THAT –

\* the system of government in South Africa before 27 April 1994, amongst others, resulted in a **secretive and unresponsive culture in public** and

private **bodies** which often led to an abuse of power and human rights violations; [...]

AND BEARING IN MIND THAT –

\* **the State must respect, protect, promote and fulfil, at least, all the rights in the Bill of Rights which is the cornerstone of democracy in South Africa; [...]**

AND IN ORDER TO-

\* **foster a culture of transparency and accountability in public** and private **bodies** by giving effect to the right of access to information;

\* **actively promote a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect all of their rights,**

BE IT [PAIA] THEREFORE ENACTED by the Parliament of the Republic of South Africa [...] (emphasis added)

In terms of section 25 of PAIA, please advise me of your decision ‘as soon as reasonably possible, but in any event within 30 days, after the request is received’ by email, as well as your access fee/copy charges.

Yours sincerely

ADV ANTHONY BRINK

arbrink@iafrica.com

**FORM A**

**REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY**

(Section 18(1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000))

**[Regulation 2]**

<p><b>FOR DEPARTMENTAL USE</b></p> <p style="text-align: right;">Reference number:</p> <p>Request received by (state rank, name and surname of information officer/deputy information officer) on (date) at (place).</p> <p>Request fee (if any): R .....</p> <p>Deposit (if any): R .....</p> <p>Access fee: R .....</p> <p>SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER</p>
--

**A. Particulars of public body**

**The Information Officer/Deputy Information Officer:**

..... (CEO Ms Vidhu Vedalankar entered in manuscript)

**Legal Aid South Africa**  
**Private Bag X76**  
**Braamfontein 2017**  
**Johannesburg**

**B. Particulars of person requesting access to the record**

<p>(a) <i>The particulars of the person who requests access to the record must be recorded below.</i></p> <p>(b) <i>Furnish an address and/or fax number in the Republic to which information must be sent.</i></p> <p>(c) <i>Proof of the capacity in which the request is made, if applicable, must be attached.</i></p>
--

Full names and surname : **Anthony Robin Brink**  
Identity number : **590225 5116 081**  
Postal address : **25 Baker Road, Prestbury, Pietermaritzburg 3201**  
Fax number : **086 672 0776**  
Telephone number : **033 344 2420**  
E-mail address : **arbrink@iafrica.com**

Capacity in which request is made, when made on behalf of another person:

**N/A**

### **C. Particulars of person on whose behalf request is made**

*This section must be completed only if a request for information is made on behalf of another person.*

Full names and surname : **N/A**  
Identity number : **N/A**

### **D. Particulars of record**

*(a) Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.*

*(b) If the provided space is inadequate please continue on a separate folio and attach it to this form. **The requester must sign all the additional folios.***

1. Description of record or relevant part of the record:
2. Reference number, if available:
3. Any further particulars of record:

**See annexure**

**E. Fees**

<p>(a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a <b>request fee</b> has been paid.</p> <p>(b) You will be notified of the amount required to be paid as the request fee.</p> <p>(c) The <b>fee payable for access</b> to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.</p> <p>(d) If you qualify for exemption of the payment of any fee, please state the reason therefor.</p>
--

Reason for exemption from payment of fees:

N/A

**F. Form of access to record**

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 hereunder, state your disability and indicate in which form the record is required.

Disability: N/A		Form in which record is required:	
<p>Mark the appropriate box with an "X".</p> <p>NOTES:</p> <p>(a) Your indication as to the required form of access depends on the form in which the record is available.</p> <p>(b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.</p> <p>(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.</p>			
<b>1. If the record is in written or printed form -</b>			
<b>X</b>	copy of record*		inspection of record

<b>2. If record consists of visual images -</b>				
(this includes photographs, slides, video recordings, computer-generated images, sketches, etc.)				
	view the images	<b>X</b>	copy of the images*	transcription of the images*
<b>3. If record consists of recorded words or information which can be reproduced in sound -</b>				
	listen to the soundtrack (audio cassette)	<b>X</b>	transcription of soundtrack* (written or printed document)	
<b>4. If record is held on computer or in an electronic or machine-readable form -</b>				
	printed copy of record*		printed copy of information derived from the record*	<b>X</b> copy in computer readable form* (on compact disc)
*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you?				<b>YES</b>
<b>A postal fee is payable.</b>				
<i>Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.</i>				
In which language would you prefer the record? <b>English</b>				

**G. Notice of decision regarding request for access**

*You will be notified in writing whether your request has been approved/denied. If you wish to be informed thereof in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.*

How would you prefer to be informed of the decision regarding your request for access to the record? **By email**

Signed at Pietermaritzburg on this 23<sup>rd</sup> day of August 2010

.....  
SIGNATURE OF REQUESTER



## **ANNEXURE TO FORM A**

### **SECTION D: RECORDS REQUIRED**

#### **A: Relevant excerpts from the minutes of meetings of the Management Board of Legal Aid South Africa, and its resolutions, concerning:**

1. – its decision to engage Senior Litigators at Justice Centres in South Africa.
2. – the procedural mechanism adopted for the recruitment of suitably qualified and experienced Senior Litigators, and specifically the selection, confirmation, and appointment process.
3. – the appointment of National Operations Executive Brian Nair ('Nair') as executive in charge of managing the process to recruit and appoint Senior Litigators, rather than Human Resources Executive Amanda Clark ('Clark') (– implied by Clark's email to the records requestor, Adv Anthony Brink ('Brink') on 14 April 2010 read with Nair's allegation of his 'final approval' power in his letter to Brink on 3 August 2010).
4. – the appointment of Nair 'as the 'person responsible for the final approval of the Senior Litigator appointments in our organization' (– per Nair's allegation in his letter to Brink).
5. – the power of the Management Board, or of one or more of its individual members acting without the authority of a specific resolution of the Management Board, to disregard and over-ride the selection of a suitably qualified and experienced senior legal professional for appointment as Senior Litigator by a regional professional selection board of senior legal professionals, all advocates and attorneys; to select an alternative candidate of its/his/her/their own choosing at its/his/her/their own independent discretion – a candidate interviewed and assessed by the professional selection board but found unsuitable and therefore not selected – for appointment as Senior Litigator, subject to the approval of Management Board Chairman Supreme Court of Appeal Judge Dunstan Mlambo ('Judge Mlambo') at a 'second round'

Signed: Adv AR Brink

interview ( – per Clark’s implication to Brink in her email of 30 April 2010, quoted in paragraph 28 of Brink’s letter to Chief Operations Executive Vidhu Vedalankar (‘Vedalankar’) on 12 July 2010).

6. – the power of the Management Board, or of one or more of its individual members acting without the authority of a specific resolution of the Management Board, to intervene in the selection and approval process initiated by the Management Board for the recruitment of a Senior Litigator, by exercising its/his/her/their own independent discretion in vetting and disapproving the professional selection board’s selection of a suitably qualified and experienced senior legal professional for appointment as a Senior Litigator and thereby aborting the recruitment process ( – per Clark’s implication to Brink in her email of 30 April 2010, quoted in paragraph 28 of Brink’s letter to Vedalankar).
7. – its decision to engage a Senior Litigator for the Pietermaritzburg Justice Centre.
8. – its decision to re-advertise the Pietermaritzburg Senior Litigator post after the first candidate selected by the KwaZulu-Natal regional professional selection board had been disapproved by Judge Mlambo.
9. – the two issues: ‘At this stage it is not even clear which applicants will be considered in the second round or if indeed we will proceed with a second round’ ( – per Clark in her email to Brink on 30 April 2010, quoted in paragraph 28 of Brink’s letter to Vedalankar).
10. – the particular ‘pace we have decided ... to complete our process’ to recruit and appoint a Senior Litigator for Pietermaritzburg – which remaining ‘process’ entailed arranging an interview of the selected candidate by Judge Mlambo ( – per Clark in her email to Brink on 30 April 2010, nearly six months after the professional selection board had interviewed the shortlisted candidates and made its selection, quoted in paragraph 33 of Brink’s letter to Vedalankar; and per KwaZulu-Natal Regional HR Officer Baboo Brijlal’s (‘Brijlal’) telephonic advice to Brink, quoted in paragraph 21 of Brink’s letter to Vedalankar).

Signed: Adv AR Brink

11. – the decision to ‘put on hold ... the recruitment process to finalize the appointments for all vacant Senior Litigator posts’ ( – per Nair in his letter to Brink).
12. – the decision by the Management Board thereafter that ‘we will not be proceeding with the filling of any of these posts due to various reasons’ – and the excerpt of the minutes relating to this resolution will enumerate and detail all of these ‘various reasons’ for aborting the recruitment process in respect of the Pietermaritzburg Senior Litigator position, and of the other Senior Litigator posts referred to, after the Pietermaritzburg Senior Litigator post had promptly been nationally re-advertised following Judge Mlambo’s disapproval of the first applicant selected; after shortlisted candidates had been interviewed; and after the professional selection board had assessed, selected and recommended a suitably qualified and experienced senior legal professional for the Pietermaritzburg Senior litigator post ( – per Nair in his letter to Brink).
13. – the decision to engage a Senior Litigator at the Umthatha Justice Centre, as advertised in April 2010.
14. – the decision to attract a candidate for the Umthatha Senior Litigator post with a special salary incentive of R60 000 a year more than the advertised starting salaries of the Pietermaritzburg and Durban Senior Litigators.
15. – the decision to lower the qualifying criteria for the Umthatha Senior Litigator post in terms of legal experience, as compared with the qualifying criteria set for the Pietermaritzburg and Durban Senior Litigators.
16. – any other matters discussed by the Management Board concerning Brink and/or the Pietermaritzburg Senior Litigator post, after the re-advertisement of the post in August 2009.

Signed: Adv AR Brink

## **B: Other records**

1. The minutes of the KwaZulu-Natal regional professional selection board's interview with Brink on 12 November 2009.
2. Brijlal's notification of Nair, and/or any other member(s) of the Management Board, of the senior legal professionals selected by the KwaZulu-Natal professional selection board for the Pietermaritzburg and Durban Senior Litigator posts after interviewing its shortlisted candidates on 12 November 2010.
3. All written communications, including email, between Brijlal and Nair, and/or other members of the Management Board, concerning the Durban and Pietermaritzburg Senior Litigator posts, subsequent to the re-advertisement of these posts in August 2009.
4. All written communications, including email, between members of the KwaZulu-Natal regional professional selection board and Nair, and/or other members of the Management Board, concerning the Durban and Pietermaritzburg Senior Litigator posts, subsequent to the re-advertisement of the posts in August 2009.
5. All records, including but not limited to email, reports and notes, pertaining to the reasons for the delay in finalizing the appointment of the senior legal professional selected by the KZN regional professional selection board for the Pietermaritzburg Senior Litigator post (by arranging a final confirmation interview with Judge Mlambo) in the five months between 12 November 2009, when the interviews were conducted and the selection was made, and 14 April 2010, when Clark recorded in email to Brink that after making enquiries about this delay in the appointment process, (a) she was able to 'confirm it is still in process'; (b) she 'will endeavour to expedite the process'; and (c) that 'we hope to conclude the matter soon' ( – quoted in paragraph 20 of Brink's letter to Vedalankar).
6. All and any email and/or notes to Clark on the morning of 14 April 2010, in which she was given to understand, and which founded the basis of her emailed advice to

Signed: Adv AR Brink

Brink on the same day, that the finalization of the long-delayed Pietermaritzburg Senior Litigator appointment 'is still in process' ( – quoted in paragraph 20 of Brink's letter to Vedalankar).

7. All and any email and/or notes to Clark on the morning of 14 April 2010, in which she was given to understand, and which founded the basis of her emailed advice to Brink on the same day, apropos of the long-delay in the finalization of the Pietermaritzburg Senior Litigator appointment, that 'we hope to conclude the matter soon' ( – quoted in paragraph 20 of Brink's letter to Vedalankar).
8. All and any notes made by Clark recording any verbal information received by her on the morning of 14 April 2010 in response to her enquiries on Brink's behalf as to the delay in the finalization of the Pietermaritzburg Senior Litigator appointment, on the basis of which she immediately informed Brink by email that she could 'confirm' that the finalization of the Senior Litigator appointment for Pietermaritzburg 'is still in process'; could record that 'we hope to conclude the matter soon'; and, since evidently no possible impediment to the finalization of the appointment was conveyed to her at that stage, could undertake to 'endeavour to expedite the process' and see to its prompt conclusion, after several months of unexplained delay ( – quoted in paragraph 20 of Brink's letter to Vedalankar).
9. All and any email or other correspondence from Clark and/or from any other Management Board member(s) to Brijlal after 14 April 2010, informing him as to progress in finalizing the Pietermaritzburg senior Litigator appointment, so as to enable Brijlal to provide Brink with 'updates' as and when he might request them, as expected from Clark's invitation to Brink to contact Brilal 'for updates' in her email of the same date, in which email Clark copied Brijlal in as a cc recipient for his information so that he might expect Brink's enquiries ( – quoted in paragraph 20 of Brink's letter to Vedalankar).
10. All and any email or other correspondence from Brijlal to Clark and/or any other Management Board member(s) after 14 April 2010 in which Brijlal requested

Signed: Adv AR Brink

information as to the progress of the Pietermaritzburg Senior Litigator appointment process, so as to be equipped to provide Brink with ‘updates’ when requested, in accordance with Clark’s invitation to Brink to contact Brijlal ‘for updates’ in her email of the same date, in which email Brijlal was copied in as a cc recipient so that he might expect Brink’s enquiries ( – quoted in paragraph 20 of Brink’s letter to Vedalankar).

11. All and any email or notes to Clark, founding her statements in her second email to Brink on 30 April 2010, two weeks after her first, that ‘the process is where it is’ and remained to be completed (i.e. had not yet been ‘put on hold’ as Nair alleged in his letter to Brink on 3 August 2010): ‘It is your decision as to whether you wish to wait to allow us to complete the process or whether you wish to withdraw’ and ‘I think you should allow us to complete our process at the pace we have decided’, five and a half months since the professional selection board had interviewed its shortlisted applicants and selected a suitably qualified and experienced senior legal professional for appointment as Senior Litigator at the Pietermaritzburg Justice Centre ( – quoted in paragraph 25 of Brink’s letter to Vedalankar).
12. All and any email or notes to Clark, founding her emailed statement to Brink on 30 April 2010 that ‘At this stage it is not even clear which applicants will be considered in the second round or if indeed we will proceed with a second round’ ( – quoted in paragraph 28 of Brink’s letter to Vedalankar).
13. All records, including but not limited to email, reports and notes, pertaining to the decision to ‘put on hold ... the recruitment process to finalize the appointments for all vacant Senior Litigator posts’ ( – per Nair’s letter to Brink).
14. All records, including but not limited to email, reports and notes, pertaining to the decision to finally abort the ‘recruitment process’ and ‘not be proceeding with the filling of any of these posts’ ( – per Nair’s letter to Brink).

Signed: Adv AR Brink

15. All records, including but not limited to email, reports and notes, canvassing the ‘various reasons’ that the alleged decision to abort the ‘recruitment process’ was allegedly ‘due to’ ( – per Nair’s letter to Brink).
16. All and any email or other written correspondence with third parties concerning Brink and/or his selection by the KwaZulu-Natal regional professional selection board for appointment to the Pietermaritzburg Senior Litigator post, including but not limited to email or other correspondence with members of the following email group to which Vedalankar and Nair belong ( – see <http://j.mp/9Iipxr>):

```

>
> *From:* Jim Yong Kim [mailto:kim1@harvard.edu]
> *Sent:* 04 December 2008 01:02 PM
> *To:* Joseph Amon; Mark Haywood; David Barr; Gregg Gonsalves
> *Cc:* Victor Ramathasele; M Sithole; S Shezi; Denise Hunt; Jonathan
> Berger; Adila Hassim; Nonkosi Khumalo; Rev D Lambrechts; Chris Collins; Paul
> E. Farmer - Aol; Michaels Clayton; Dr N Dinat; P Tsukulu Motshoshi; J
> Bodibe; S Dlamini; C Vavda; HEALTHGAP; Frayne Mathys; Khosi Kutana; Hosi
> Ngowe; R Gobind; Joanne Csete; Aditi Sharma; Anand Grover; Belinda
> Beresford; Fatima Hassan; Nathan Geffen; Paula Akugizibwe;
> sidhontshani@gmail.com; Anso Thom; Rexton Bila; Sebei Masha; Grace
> Masibuko; Tshepo Molapo; Tshego Mononyane; Sesupo Makakole-Nene; Shaidah
> Asmal; Brian O'Connell; Robert Carr; Diederik Lohman; Rebecca Schleifer;
> Sofia Gruskin; D Shisana; Childline; Carlos de Rogo; Brian Nair; Ms Vidhu
> Vedalankar; Janet Love; M Maletse; Dr N Mqhayi; ingmtambo@mxweb.co.za; R
> Jewkes; Silungile Mtembo; Edwin Cameron; F Randere; simonavi@mxweb.co.za;
> vavdafam@mxweb.co.za; N Nxesi; H Schneider; Lennox Mekuto; Dr A Coovadia; W
> Newwoudt; wnewwoudt@parliament.gov.za; Zackie Achmat; Odette Gelnhuyse; Dr
> Helen Rees; Brad Mears; M Letlape; V Brennan; Eddie Makue; Jody Kollappen;
> Jody Kollappen; Julian Botha; Kgosi Letlape; M Muliwana; H Bogopane; Ralf
> Jurgens; activist@tac.org.za; Gavin Silber; Johanna Ncala;
> leslie@tac.org.za; Nathan Geffen; rebecca@tac.org.za; Wuyiseka Dubula; B
> Phato; E Bennett; C Dlamini; M Nkosi; Mr Rakabone; Anneke Meerkotter; Dr M
> Tom; Obed Qulo; Susan Timberlake; Daniel Tarantola; Menaka Jayakody; Maria
> Mabotja; Moray Hawthorn; F Boye; ymotlase@vahoo.com;
> Internationaltreatmentpreparedness
> *Subject:* RE: IIPC On The Lancet Article
>

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17. Vedalankar’s ‘referr[all]’ to Nair of Brink’s letter to her, ‘to provide a response’ to it on her behalf ( – per Nair’s letter to Brink).
18. Any further correspondence between Vedalankar and Nair by email or otherwise concerning Brink, and/or his letter to Vedalankar.

Signed: Adv AR Brink

19. Brijlal's notification to Pietermaritzburg Justice Centre attorney Ashok Kaloo ('Kaloo') advising him of the fact that he had been selected by the KwaZulu-Natal regional professional selection board for appointment as Pietermaritzburg Senior Litigator.
20. Brijlal's notification to Kaloo of the date, time and place of his final interview by Judge Mlambo for the confirmation of his selection.
21. The 'regret letters' (Nair's expression, see below) sent to the unsuccessful candidates when Kaloo was selected.
22. Brijlal's, alternatively any other officer's, communication to Kaloo that Judge Mlambo had vetoed his selection.
23. Written enquiries, alternatively memoranda/file notes of telephonic enquiries, by other candidates interviewed by the KwaZulu-Natal regional professional selection board on 12 November 2009 as to whether they had been selected or not.
24. The written replies, alternatively memoranda/file notes of the telephonic replies, to these enquiries.
25. Nair's 'request' issued to the 'HR department' in accordance with his stated intention to 'request our HR department to send out regret letters to all persons who were interviewed during the first round of interviews' on 12 November 2009 ( – per Nair's letter to Brink).
26. Excluding the 'regret letter' to Brink from KwaZulu-Natal Regional Operations Executive Vela Mdaka ('Mdaka') on 23 August 2010 and emailed to Brink by Brijlal by way of an email attachment on the same day, the 'regret letters' sent to all of the other shortlisted candidates interviewed by the KwaZulu-Natal regional professional selection board on 12 November 2009 – following the decision made not to 'be proceeding with the filling of any of these posts', i.e. 'all vacant Senior Litigator posts' ( – per Nair's letter to Brink).

Signed: Adv AR Brink

27. Brijlal's, alternatively any other officer's, email to the other shortlisted candidates (Brink excluded) interviewed by the KwaZulu-Natal regional professional selection board on 12 November 2009, covering the delivery of Mdaka's 'regret letters' to them by way of email attachments.
28. The instruction issued to Mdaka to send Brink a 'regret letter'.
29. Mdaka's confirmation that he had written Brink a 'regret letter'.
30. Email or other correspondence notifying Clark as Human Resources Executive that the process to finalize the appointment of Senior Litigators selected for Durban and Pietermaritzburg (and any other centre for which suitably qualified and experienced candidates had been selected, to which Nair alluded) had been aborted.
31. Email or other correspondence notifying Clark that the senior legal professionals shortlisted and interviewed for the vacant Durban and Pietermaritzburg Senior Litigator posts (and any other centre for which suitably qualified and experienced candidates had been selected, to which Nair alluded) had been notified of the abortion of the appointment process by way of 'regret letters'.
32. The Management Board's, alternatively Nair's, alternatively, Mdaka's, alternatively any other officer's notifications of the Principals of the Pietermaritzburg and Durban Justice Centres (and of any other Justice Centres affected) that the Management Board, alternatively Nair, would 'not be proceeding with the filling any of these posts' for Senior Litigators which had been nationally advertised for a second time, and for which suitably qualified and experienced senior legal professionals had been shortlisted, interviewed, assessed and selected by the KwaZulu-Natal (and any other) regional professional selection board(s) ( – per Nair's letter to Brink).
33. All and any records, including internal email, founding Nair's statement: 'I can now confirm that we will not be proceeding with the filling of any of these posts', i.e. 'all vacant Senior Litigator posts' ( – per Nair's letter to Brink).

Signed: Adv AR Brink

34. Any record identifying other ‘vacant Senior Litigator posts’ besides those in Durban and Pietermaritzburg in respect of which ‘the recruitment process to finalise the appointments for all Senior Litigator appointments were [*sic*] put on hold’, and ‘we will not be proceeding with the filling of any of these posts – to the extent that by his use of the words ‘all’ and ‘any’, rather than ‘both’ and ‘either’, Nair intended to imply and for Brink to understand that the ‘recruitment process’ was being aborted not only for Senior Litigators for Durban and Pietermaritzburg, but for one or more other Senior Litigator posts at other Justice Centres for which selections for appointment by regional professional selection boards had been made ( – per Nair’s letter to Brink).
35. All and any other electronic records, including internal email, in which the word ‘Brink’ features, where it clearly or possibly refers to the records requestor Adv Anthony Brink ( – conduct a search on the word ‘Brink’ of the computer server at LASA’s national office on which all computer files, documents, and email are archived).

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<b>REGISTERED LETTER</b> <b>GEREGISTREERDE BRIEF</b>			
(with an insurance option/met 'n versekeringsopsie)		Postage paid R _____ c Service fee/Dienstees R _____ c Insurance/Versekering R _____ c <b>Total/Totaal R 20.55</b> c	
<b>Full tracking and tracing/Volledige volg en spoor</b>		Insured value of contents Versekerde waarde van inhoud R _____ c	
Addressed to/Geadresseer aan Vishu Tradetone CEO Legal aid SA P / P oeg x 76 Braamfontein 2017 Postcode Poskode		Enquiries/Navrae Toll-free number Tolvry nommer <b>0800 111 502</b>	
<small>The value of the contents of this letter is as indicated and compensation is not payable for a letter received unconditionally. Compensation is limited to R100.00. No compensation is payable without documentary proof. Optional insurance up to R2 000.00 is available and applies to domestic registered letters only.</small> <small>Die waarde van die inhoud van hierdie brief is soos aangedui en vergoeding is nie betaalbaar vir 'n brief ontvang sonder voorafrekening van die waarde van die inhoud. Die vergoeding is beperk tot R100.00. Geen vergoeding is betaalbaar sonder dokumentêre bewys. Opsionele versekering tot R2 000.00 is beskikbaar en is slegs op tuislandse geregistreerde briewe van toepassing.</small>		Initial of accepting officer Date stamp 	
AMW Track and Trace <b>REGISTERED LETTER</b> RD 355 350 015 ZA CUSTOMER COPY 301038		Parrel van saakbeantw. bevestiging Datumstempel	

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**PARCEL TRACKING RESULTS**

Item Number: RD355350015ZA was last scanned on: 2010/08/30 at 10:24:00

Location last scanned: BRAAMFONTEIN

Currently has status of: Item delivered to: SAPO X76

TRACKING LINE	TYPE	DATE	TIME	BRANCH	COMMENTS
1	Item delivered to: SAPO X76	2010/08/30	10:24:00	BRAAMFONTEIN	The postal item has been delivered
2	In transit	2010/08/29	10:07:02	WITSPQS (HUB)	
3	In transit	2010/08/27	14:20:06	PIETERMARITZBURG (HUB)	
4	Other	2010/08/27	10:23:00	MAYOR'S WALK	
5	Item accepted by branch	2010/08/26	16:38:29	MAYOR'S WALK	



**CURRICULUM VITAE**  
**ANTHONY ROBIN BRINK**

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**PERSONAL DETAILS**

**Surname** : Brink  
**Name** : Anthony Robin  
**Age** : 50  
**Nationality** : RSA  
**Identity Number** : 5902255116081  
**Drivers License** : Code 08  
**Criminal Record** : None  
**Home Language** : English

**EDUCATIONAL QUALIFICATIONS**

**SECONDARY EDUCATION:**

**Last School Attended** : Westville Boys High  
**Subject** : English, Afrikaans, Mathematics,  
General Science, History, and Latin

**TERTIARY EDUCATION**

**Institution** : University of Natal, Pietermaritzburg  
**Qualification** : BA (1979) LLB (1982)  
**Subjects** : (BA majors): Theology, Zulu

**PROFESSIONAL STATUS** : Advocate

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**EMPLOYMENT HISTORY**

I began my legal career as a maintenance officer in the Commissioner's Court in Pietermaritzburg in January 1983.

I was admitted as an advocate by the Natal Provincial Division of the Supreme Court of South Africa in April 1983.

In July 1983 I was drafted by the army, and was a law officer at Natal Command in Durban in my second year, prosecuting and defending in Courts Martial, conducting boards of enquiry, and performing a range of other legal work.

Between July 1985 and mid-1988 I prosecuted crime in the District and Regional Courts in Pietermaritzburg and neighbouring regions.

In 1988 I was appointed additional magistrate of the District Court in Pietermaritzburg.

In 1989 I was appointed as a magistrate of the Civil Court in Pietermaritzburg – at 29 the youngest full-time civil magistrate in the country.

Since my senior colleague in the Civil Court preferred debtors' enquiries and other applications over trial work, all the latter fell to me; and for four years I was in court virtually every day trying every sort of cause of action, and acquiring extensive knowledge of applied civil law on the way.

Apart from an adjustment of a damages apportionment and the change of a dismissal to an absolution, none of my judgments were upset on appeal.

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Talk among senior attorneys, reported back to me, was that I was "the best civil magistrate we've ever had". Similar compliments were expressed to me directly.

While a magistrate, I co-founded a multiracial jazz club with an attorney friend to promote inter-community contact and cultural cross-pollination during the darkest days of the emergency era of the apartheid regime. I also built a recording studio and recorded dozens of mostly African jazz, gospel, mbaqanga and isicathamiya bands, one of which I took on as their manager for a couple of years. The late great Bheki Mseleku, the internationally acclaimed jazz pianist and Steinway artist, later asked me to be his professional manager for his international career, but my legal practice and family commitments in Pietermaritzburg prevented this.

In January 1993, I began pupillage at the Pietermaritzburg Bar.

My Bar exam results were the best in the province, and I was exempted from the oral examination, the only pupil exempted in my group.

When introducing myself to the judges at the commencement of my practice, I found that nearly all knew me already by reputation and warmly welcomed me with such remarks as, "We've been tracking you through your judgments over the years."

With my competence as a civil lawyer already established among litigation attorneys, I immediately commenced a busy senior-junior civil practice, and was instructed in a wide variety of trial, application and opinion briefs, including two civil appeals in the Appellate Division. I also arbitrated, and I was appointed Commissioner under the Companies Act at an enquiry into the largest corporate industrial insolvency in the history of KwaZulu-Natal.

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My heavy civil workload from the outset precluded me from taking pro Deo work at the commencement of my practice – unprecedented among novice advocates, who invariably begin building their practices with pro Deo criminal defences.

I also undertook serious criminal defences on private instructions, notably a case before Howard JP involving nine counts of murder and seven of attempted murder, in which I secured an acquittal (correctly so).

I was repeatedly commended from the bench on the quality of my legal drafting.

I trained two pupil advocates, one of whom excelled in her written exams and, like me, was exempted from the oral examination.

I practised as an advocate for eight years. I was well-known both among my legal colleagues and among the judges for the premium I placed on securing justice above personal profit. (Judge Hurt once asked me with a knowing smile, at the start of another desperate plea for justice with the law against us, 'Mr Brink, is this a court of equity or a court of law?') Concurrent with my ordinary practice I took on a heavy pro bono workload, in which I brought major applications and conducted lengthy trials without charge in cases of injustice suffered or threatened. I did a great deal of work for the Legal Aid Board, and in doing so schooled many of its candidate attorneys in practical litigation, from simple divorce to complex medical negligence cases.

A week after my return from a holiday abroad in mid-2001, my wife at the time was appointed to a research post at the University of Cape Town. Two days later the Department of Justice telephoned me enquiring about my availability to act as a Regional Court magistrate in the Eastern Cape. Since

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the terms included two sponsored flights to Cape Town a month, facilitating regular contact with my two young sons, I accepted the offer, quit the Pietermaritzburg Bar and commenced trying serious crime in the Regional Court in Butterworth in October.

My exceptional productivity on the Regional Court bench was favourably noted by senior police management in my presence at a meeting of all stakeholders in Butterworth called to discuss the severe case backlog in the region. The control prosecutor told me that my court's performance statistics were unparalleled and incomparably better than those of the other courts, and that she was accordingly allocating all the difficult cases to me for efficient disposal. My court was also featured in an article in the house magazine of the Department of Justice, with a photograph of me and my staff.

Only one of my judgments was taken on appeal, and it was upheld. Attorney Jerry Moshesh of Butterworth informed me that during argument the appeal court had remarked on the quality of my judgment.

While serving on the Regional Court bench, I drew an urgent application pro bono for the late Professor Sam Mhlongo to be heard as a friend of the court in the government's appeal to the Constitutional Court in the nevirapine case. The application I drew was praised as "a compelling argument" by Chief Justice Arthur Chaskalson in his judgment (but disallowed only on the basis that it was untimely).

My two-year contract with the Department of Justice expired in late 2003.

In early 2004 I was engaged by an international micronutrient company, enabling me to work full-time in deep research and public health advocacy

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in the field of antiretroviral drugs, in which subject I am an internationally recognised autodidact expert; have repeatedly been consulted by government confidentially at the highest level; have written and published several specialist books with commendations by high-ranking medical and scientific experts, and lawyers (see annexure A); and have addressed numerous international public meetings and specialist conferences all over Europe, and most recently in Russia last year. My work has been translated into Spanish, French, Russian, Italian, German, Dutch, Brazilian Portuguese, Xhosa, Tswana and Zulu.

Initially I was taken on as an external consultant to the company, but within a couple of weeks the quality of my output got me invited to work in-house with the offer of a dedicated personal secretary. A few weeks later I was appointed head of the office and official spokesman, with formally stipulated 'final say' in any internal contestation over operation and communication policy. I was also consulted in staff employment issues. As the company wound down its activities in Cape Town in 2007, I reverted to working as an external consultant; and when this ended shortly before the company closed doors, I obtained further grant support for my work for one year from another European funder.

As chairman of a public interest NGO that I founded, I have been working full-time over the past five years as a matter of imperative political and social responsibility to the poorest and most vulnerable people of our country.

In this period, I have continued performing high level legal work in litigation in the Cape High Court as in-house lawyer, inter alia drafting and vetting several sets of particulars of claim for actions instituted in the Cape High Court; drawing a successful friend of the court application for the national

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Traditional Healers' Organization; and preparing all the answering affidavits (complete or core content) in two separate, successive interdict applications, which I directed for the defence in close liaison with two sets of attorneys and junior and senior counsel, all of whom I selected, also researching and briefing them on pertinent statutory provisions and advising them on essential points to raise in their Heads of Argument.

In 2004 I met with the Registrar of the Medicines Control Council, Dr Olive Shisana, and other officials in Pretoria, where I presented written and oral legal submissions opposing proposed amendments to the Medicines and Related Substances Control Act, with a positive outcome.

In 2005 I met with the Director General of the Department of Health, Mr Thami Mseleku, and his legal advisors in Pretoria, where I made oral submissions on a written application I drew for his grant of a special exemption under his powers in terms of the provisions of the Medicines Act. The upshot was positive.

In 2006 I liaised with the Director of Inspectorate and Law Enforcement at the National Medicines Regulatory Dr Joey Gouws, and her departmental law advisors, and successfully refuted a spurious allegation of non-compliance with the provisions of the Medicines Act.

As a member of the executive board of Alliance Francaise du Cap since June 2009, I have rendered legal opinions in several matters as voluntary in-house legal advisor.

I have examined the 'Position purposes' and 'Key outputs' expected of me as Senior Litigator for the Legal Aid Board, and I sincerely believe that my twenty-five years of widely varied legal experience including five years of full-time

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public interest work, plus my knowledge of Zulu, have eminently equipped me to serve the Legal Aid Board in that capacity and to assist the poor in our country gain access to justice.

### **Competencies (skills, knowledge and attributes) required and satisfied**

I am an admitted advocate. I have an LLB and Right of Appearance in the High Court. I have twenty-five years of widely varied legal experience, half of which has been in High Court litigation, and at least 80% of which has been active court litigation. I have a valid Code 08 driver's licence. I have excellent leadership and people development skills, with a track record in successfully training aspirant lawyers. As an advocate I managed my own finances, and as a self-published writer I have experience in budget preparation and management. I am thoroughly *au fait* with the latest versions of MS Word, Excel and PowerPoint, and their features (I have MS Office 2007), and I have written and formatted innumerable legal papers, reports, entire books and other documents in Word; have worked and edited in PowerPoint; and have used Excel. I have not used the freeware networking programme AD Inifinitum before, which I have downloaded and am currently studying, but I am well familiar with Microsoft XP's network facility, and have networked my computer with my collaborator's, enabling us to share documents and information immediately. I have strong communication, problem solving and interpersonal skills derived from my many years experience in courtroom advocacy and trial adjudication, office management, international conference presentation, and international networking. My exceptional capacity for innovative, creative and analytical thinking, and my in-depth research ability, are all borne out by the reviews of my work in my avocation by scientists and clinicians at the top of their fields (see annexure A). My ability

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to interpret and apply the strategic policies of my employer was honed over several years of public health advocacy involving fiercely contested policy and knowledge paradigms at the national and international level. I have good standing in the legal fraternity and a proven track record in criminal and civil litigation. I am indeed a motivated, self-driven and mature individual, and a capable team player.

**REFERENCES**

The Honourable Mr Justice HQR Msimang, High Court, Pietermaritzburg

The Honourable Mr Justice KGB Swain, High Court, Pietermaritzburg

The Honourable Mr Justice JM Hlophe, Judge President, High Court, Cape Town

The Honourable Mr A Wilson, ret. Judge, High Court, Pietermaritzburg

Advocate DM Ntsebeza SC, Johannesburg Bar, Chairperson Barloworld

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**ANNEXURE A**

***Reviews of The trouble with nevirapine***

'an amazing job ... brilliantly dissects and avoidable tragedy: how misconceptions and misunderstandings about a new medicine ... caused a pointless, costly and toxic mess that still needs clearing up. An important story with lessons for all of us – and readable with it'

**Professor Andrew Herxheimer MB, FRCP, Emeritus Fellow of the UK Cochrane Centre, Oxford; tutor in clinical pharmacology and therapeutics at Charing Cross and Westminster Medical School, London University (ref.); advisor to the WHO; founder of *Drug Therapeutics Bulletin*; co-founder of the International Society of Drug Bulletins; and co-founder of DIPEX.org**

'an expertly written piece about this very dangerous drug' **Dr Jonathan Fishbein MD, formerly Director of the Office for Policy in Clinical Research Operations, Division of AIDS, National Institute of Allergy and Infectious Diseases, US National Institutes of Health**

'Brink's meticulously researched ... detailed exposé on the controversial AIDS drug ... reads like a sophisticated crime novel and is full of harrowing facts you won't find anywhere else' **Christine Maggiore, founder, Alive&Well AIDS Alternatives, LA, US**

***Reviews of Debating AZT: Mbeki and the AIDS drug controversy***

'superb, extremely well researched, analyzed, written. ... I could not have done a better job. ... Are you a scientist or do you collaborate with one? How could you survey so many scientific publications as an attorney? ... Could you publish your article or a variant of it in a medical/scientific journal? It would strengthen our case no end if scientific papers of that quality would come from several sources, not only from Berkeley and Perth.' 'I still can't believe he wrote that. He's really a molecular biologist pretending to be a lawyer' **Peter Duesberg PhD, Professor of Molecular and Cell Biology, University of California at Berkeley, member of the National Academy of Sciences of the United States of America**

'Absolutely spectacular ... superb ... the definitive refutation' **Harvey Bialy PhD, founding scientific editor, *Bio/Technology (now Nature Biotechnology)*, and scholar in residence, Institute for Biotechnology, National Autonomous University of Mexico**

'excellent ... the best, most comprehensive review on AZT currently available' **Etienne de Harven MD, Emeritus Professor of Pathology, University of Toronto, Canada**

'you are justified in sounding a warning against the long-term therapeutic use of AZT, or its use in pregnant women, because of its demonstrated toxicity and side effects. Unfortunately, the devastating effects of AZT emerged only after the final level of experiments was well underway ... Your effort is a worthy one. ... I hope you succeed in convincing your government not to make AZT available' **Richard Beltz PhD, Emeritus Professor of Biochemistry, Loma Linda University School of Medicine, California, inventor of AZT in 1961**

'[Brink] has tracked and digested every important reference to AZT in contemporary medical literature. The result is a comprehensive and alarming review of the findings of medical researchers on the clinical use of the drug. [Based on the research literature he reviews] the argument [against it] is devastatingly clear' **Martin Welz BA LLB, editor and publisher of *noseweek*, from his foreword to *Debating AZT***

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'It must be said in Mbeki's defence that Brink ... is an able lawyer who argues his case with persuasive force. ... "That was the first time I became aware of this alternative viewpoint," Mbeki told me. ... He was able to persuade the country's most experienced investigative journalist, Martin Welz, of the validity of his case, so that Welz not only published a series of ... articles on AIDS in his investigative magazine, *noseweek*, but also wrote a rapturous foreword to Brink's book on AZT' **Allister Sparks, *Beyond the Miracle: Inside the New South Africa* (Jonathan Ball, 2003)**

"That," Mbeki told me, "is what sparked it off ..."' **Mark Gevisser, *Thabo Mbeki: The Dream Deferred* (Jonathan Ball, 2007)**

'A hefty blow for free speech and against the strictures of dogma ... Crisp. Logical. Sometimes over the top. Bristlingly intelligent. Exhausting. Acerbic. Sometimes vicious. For anyone who wants to know what Mbeki's on about, it's all here, in a nutshell' **Yves Vanderhaeghen, deputy editor, *The Witness***

'Christ this is good ... beautifully written ... extremely accomplished ... so much data. Makes the opposition's platitudes look embarrassingly hollow ... Eleni and I think it's really great' **Valendar Turner MD, consultant emergency physician, Department of Health, Western Australia**

'No ... you don't [merely review the medical literature], it's the way you write, it's the way you put it' **Eleni Papadopulos-Eleopulos MSc, nuclear physicist, Department of Medical Physics and Engineering, Royal Perth Hospital, Perth, Western Australia**

'Anthony Brink is a man of many parts: magistrate or barrister by day, musician by night ... prose stylist. Above all, dedicated and fearless. ... his book ... is clear and crisp and his technical mastery most impressive' **Philip Johnson PhD, Emeritus Professor of Law, University of California at Berkeley, US**

'outstanding ... top dollar writing' **Hiram Caton PhD, Emeritus Professor of Politics and History, and former Head of the School of Applied Ethics, Griffith University, Brisbane, Australia**

'Deserves serious treatment. More strength to your arm' **Donald Woods**

Very good. Convinced me completely' **Paul Foot**

'Absolutely amazing ... a work of genius ... he writes really well ... I just love his one-liners' **Rian Malan**

'very nice writing ... you can't really be a lawyer ... I love the parallels with other past failed medical panaceas – calomel etc' **Denis Beckett**

'an outstanding piece of work ... enormously entertaining ... expert, trenchant devastation of AZT apologists' **Neville Hodgkinson, former medical correspondent, London Sunday Times**

'extremely courageous ... I thought I was beyond shockability but [Brink's] revelations were stupefying. I think the marketing of AZT to pregnant women is an obscenity' **James P Hogan, science writer and science fiction novelist, Sligo, Ireland**

'wonderful ... soldier on!' **George Kent PhD, Professor of Political Science, University of Hawaii, US**

'[AZT: *A Medicine from Hell*] is a well written, lucid article for anybody to read. ... your arguments about prescribing this drug are excellent . ... Perhaps when more people like yourself who are not scientists come out publicly to clarify the issue on this drug, pregnant

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women will be spared! Your article will now be additional prescribed reading for the students in my class' **Shadrack Moephuli PhD (toxicology), senior lecturer, Department of Biochemistry, University of the Witwatersrand**

'What a good comprehensive review of the literature you performed! ... During my research I noticed a lot of resistance from many different people to believe our data. In general there is resistance to the "bad news"' **Ofelia Olivero PhD, staff scientist, US National Cancer Institute**

'amazing' **Margarette Driscoll, senior feature writer, London Sunday Times**

'a masterful piece' **David Rasnick PhD, pharmaceutical biochemist and patent holder, California, US**

'a rare combination of incisive insight, entertaining wit, profound perspicacity, all of which and a lot more being available through his racy, delicious pen. He exhibits the uncommon gift of a timely turn of phrase that truly adds spice to the intellectual content. ... Mr Brink's book will have an Illichean impact likely to cure the increasingly sick HIV-AIDS establishment in particular and the medical and governmental establishments in general. His expose is both a diagnosis and a cure. ... [It] will remain a classic eye-opener to the misdeeds of modern medicine for decades to come. I am also sure that Mr Illich will give his imprimatur to Mr Brink at first reading' **Manu Kothari PhD, Emeritus Professor of Anatomy, Seth Gordhandas Sunderdas Medical College, King Edward Memorial Hospital, Mumbai, India**

'Humor kan soms 'n politieke daad van die ernstigste aard wees. Niks is gevaarliker as om onaantasbare persone en instansies belaglik te maak nie. ... Wees gewaarsku – die boek het 'n vreemde uitwerking op die leser. Enersyds laai dit iets ondraaglik swaar – grotesk eintlik – op jou skouers, iets waarvan jy nie meer met integriteit kan afkom nie. Andersyds moet jy nie verbaas wees as daar na dese 'n glimlag aan jou lippe kom pluk elke keer as jy die woord "AIDS expert" hoor nie. ... Die kersie op die koek – wat van *Debating AZT* 'n meesterstuk maak – is die humor waarvan elke reël, asook die spasies tussenin, deurtrek is. ... Brink se styl – die samespel van ligsinnige humor en dodelike erns – laat my byvoorbeeld onwillekeurig dink aan die profetiese literatuur in die Bybel. ... Anthony Brink deins nie terug vir "lawsuits" nie. Hy [skryf] in die styl van meeslepende fiksie. Die boek is 'n taboebreker – nie in die eerste plek omdat dit die taboe-gelaaide tema van VIGS in Suid-Afrika aanvat nie – maar ook en veral omdat dit alle genre-matige grense verontagsaam. Volgens die antropoloog Mary Douglas het taboe te make met verskynsels wat dreig om gevestigde klassifikasieskemas te ontwig. Ook die outeur van hierdie boek is in dié sin 'n taboeverskynsel: 'n advokaat uit KwaZulu-Natal wat met innemende hubris die heilige teoretiese grond van die mediese wetenskap betree. ... Ek kan nie *Debating AZT* sterk genoeg aanbeveel nie – of jy nou 'n literêre ervaring wil hê, boeiende geskiedenis wil lees, meer te wete wil kom oor die VIGS-polemiek, tot teologiese en filosofiese besinning gebring wil word, of sommer net lekker wil lag. As ek die pous was (of 'n leidende VIGS-navorsers) sou ek die stempel van goedkeuring op hierdie boek aangebring het: *nihil obstat*. Dit staan geskrywe. Niemand sal ooit kan sê: "Ek het nie geweet nie"' **Gerrit Brand PhD, books editor, Die Burger**

### **Anthony Brink: a personal and political history**

I was born in Durban in 1959, raised in the leafy suburb of Cowies Hill, and educated at the local government schools in Westville and at the University of Natal, Pietermaritzburg, where I took a BA in Zulu and Theology and an LLB.

My father was an attorney who initially practiced as an advocate at the Durban Bar with his best friends from boyhood, both of whom were as uncles to me: Andrew Wilson and the late John Didcott, later to become prominent liberal-left judges.

Shortly after my mother died in 1994, my father took a position as Evidence Leader for the Truth and Reconciliation Commission's Amnesty Committee. He died two years later in 1996 at 65. Though my relationship with him was difficult, I remember my father very fondly, and I'm alive to how I was profoundly influenced by his distinctly humane philosophical, political and moral outlook and values.

My paternal grandfather was an uneducated Afrikaner from a poor family who made good in business and gave my father the best private school education to be had: Highbury and Michaelhouse, and Wadham College, Oxford, where he took a master's degree in jurisprudence. My paternal grandmother was UK English, and my father's home language was English accordingly.

Despite his privileged background, I was always aware that my father stood outside and was critical of his class, the Natal English and the English establishment generally; and I still recall his acerbic observations about their hypocrisy and cruelty.

I was brought up in an intensely political home atmosphere. My father was an early member of the Progressive Party, and in 1966 tried for Parliament in Durban North. I remember his heated political quarrels with my National Party-supporting grandfather on Sunday visits, and his endless fulminations at mealtimes against NP radio propaganda. He was a keen amateur historian and built a massive library, much of which I read when growing up.

My mother, of predominantly Irish stock, was a potter and small art gallery owner, and a lifelong active member of the Black Sash; and from reading its journal *Sash* cover to cover as it arrived fortnightly in the post, especially the Advice Office case reports, I gained an

unusual knowledge and understanding of the human cost of apartheid at an early and impressionable age. I knew all about Steve Biko from *Sash*, and on hearing of his murder in my first year at university, I instantly appreciated the magnitude of the crime when everyone around me was oblivious.

As a boy I was unusually inquisitive and inventive. At 10 I had a provisional patent on a gadget I invented (start-up production costs were beyond my father's means). I taught myself chemistry and electronics to advanced levels. Fish culture too: thirteen tanks.

My adventures in chemistry culminated in the manufacture of homemade pipe bombs from steel electrical conduit pipe and nitroglycerine, which a friend and I used to explode in the wastelands to spectacular effect.

Starting with building radios, I went on to equip a recording studio that I built at my home with most of the sound processing gear constructed myself; and I built a powerful PA system that I used for jazz concert sound amplification.

Anticipating a career in law, I took Latin instead of biology at high school, but my maternal grandfather tutored me extramurally in microscopy and micro-technique, to the point where I was making microscopic slide mounts of triple-stained tissue cross-sections, blood smears and microorganisms, and taking photomicrographs of them on my own. At university some years later, a microbiology master's student told me that what I was up to at 16 in applied microbiology was way beyond anything she was doing at her advanced academic level.

I have three younger brothers, one of whom, Paul, was a leader of the End Conscription Campaign and travelled to Lusaka to meet Mbeki, the late Chris Hani, and other ANC and Umkhonto we Sizwe leaders in May 1990; and on his return became an ANC informant providing military intelligence to his contact, the late Archie Gumede.

In the hothouse political climate prevailing, I attended all political meetings at university, memorably addressed by Donald Woods, Nthatho Motlana, Alan Paton, Hennie Serfontein and Helen Joseph, and many others.

Notwithstanding a burning interest in and concern about the politics of the country, I found the conventional student political scene unappealing and never sought office on the

SRC. Nonetheless I was quickly marked by the security police, who opened a file on me. I learned of this in my first year from a student informer far gone in drink and in a fit of conscience over his treachery.

Later while I was a civil magistrate in Pietermaritzburg, the senior public prosecutor confided that the security police had called on him inquiring about my political reliability, because they believed that my association with African musicians at the time (with two of whom I shared my house illegally under the Group Areas Act) and my regular movements in and out the Pietermaritzburg townships and 'locations' late at night or in the early hours, sometimes stopped at security road blocks, was a cover for subversive political activity.

At university I taught myself to read music and to play flute, guitar, electric bass, double bass, and alto saxophone. I played in a music group, Ad Lib, most of whose songs carried hard-hitting anti-apartheid lyrics. I produced the band's LP record, and it received a lot of independent radio station airplay. Many years later I learned that it had been a hit in anti-apartheid circles in London.

The final year of my law degree was funded by the Department of Justice which required a year's service as a prosecutor in return. There were no available posts when I completed my degree so I was appointed Maintenance Officer in the Commissioner's office. Six months later, in July 1983, I was drafted into the army. Most of my friends had emigrated for moral/political reasons to avoid this: at one time I could count fifteen close friends or good acquaintances who'd left. I bargained on my law degree landing me an office job instead of a posting to a combat unit; and indeed, after a year at Personnel Services School in Pretoria for basic, administrative officer, and law officer training, I was posted to Natal Command on the Durban beachfront.

During my first year in the army, a friend in my platoon, who admitted that he'd 'done some work for NIS' while at university, told me that he'd accessed its database while on army leave and had found a file on me.

Before being awarded my lieutenant's rank, I was subjected to a special security enquiry by Military Intelligence. A major flew down from Pretoria to investigate me as a security risk, interrogating all the character referees I'd named – including Judge Didcott who was asked, he told me scornfully, whether I 'was a communist and/or a member of any secret

political organizations' as if he'd know, or if he did, would admit it. The officer's enquiries extended to interrogating some of the members of my band about the political content of our lyrics – notwithstanding that I'd pointedly left their names off my list of character referees.

I was evidently found to be an insufficient threat to the security of the apartheid state because I received my rank – a surprising outcome, because while at Natal Command I was stunned one day to hear some of my band's more strident anti-apartheid tunes being played in an adjoining lecture room filled with black beret wearing intelligence officers. One, whom I knew from university and who was doing a month long 'camp', told me afterwards that the music had been played as an example of the kind of 'anti-South African propaganda being spread at liberal university campuses'.

For weeks after this incident I expected to be visited and taken away from my law office at any moment, but the intelligence officers running the course evidently never made the connection between the 'anti-South African propaganda' and the law officer responsible for it in the office next door.

In mid-1985 I cleared out the army and commenced working as a junior prosecutor in Pietermaritzburg.

A couple of years later I constructed a recording studio in an outbuilding at my home, in which I recorded dozens of music groups, nearly all African, from *mbaqanga* to church choirs to *isichatamiya* to *maskanda* guitar/accordion/vocal, and so on. A classical string quartet, rock bands, and a 12 piece jazz orchestra too.

One African band that came to record was so outstanding that I took them on as manager and we toured the province in an old minibus I bought, winning a contest in Durban and making it to the national semi-finals in the Shell Road to Fame.

Towards the end of the eighties, at the height of the apartheid emergency era when Pietermaritzburg was embroiled in the Inkatha/UDF war (directly affecting my musician friends and their parents), I founded a multiracial jazz club with a legal colleague. We staged concerts every few weeks at a sports club by leading ensembles from Johannesburg, Cape Town and Durban, including Sakhile, Bayete, The African Jazz Pioneers, The Sharptown

Swingsters, Winston Ngozi, Barney Rachabane, Basil Coetzee, Robbie Jansen, and very many more. My colleague engaged the bands and I handled the publicity and the sound engineering. The *Witness* newspaper had me write reviews of the performances and I've kept a file of them. 'Capital Jazz' was a major cultural node for positive spirit and inter-racial solidarity and rapport in a time of bitter political conflict, both locally and nationally.

In the early nineties I wound up my intensely engaged musical life and redirected my time and energy to my young family and profession. In mid 1993 I began practice as an advocate at the Pietermaritzburg bar, having been a civil magistrate for four years, preceded by a year on the criminal bench, and before that a prosecutor for five years in the district and regional courts.

Soon after commencing at the bar I discovered the music of the internationally acclaimed jazz pianist and Steinway Artist Bheki Mseleku. I was so taken by 'Timelessness' that I when I discovered he was teaching as artist-in-residence at the Durban Technicon, I wrote him a letter of appreciation. He responded by telephoning me, and our call lasted for about an hour and a half: an instant connection at the deepest level, with everything to talk about. When we met face to face a few months later after a concert of his in Durban and I mentioned my name, he exclaimed 'My brother' and embraced me. It was a hell of a moment in my life. We met again a few times afterwards. I particularly remember one occasion after a performance by a Dutch musician finding him depressed outside, hardly coherent, speaking of 'the poverty of the people', maybe referring to his own as well.

I went on to buy up everything he'd recorded, mostly ordered from abroad (I have a big collection of other African jazz too). My last contact with Bheki was in 2001, shortly before I left Pietermaritzburg, when via a friend he requested me to be his manager. My family and professional commitments prevented it, and when I think back it's with terrible regret. I was an energetic music promoter and had helped rescue Bobby Mofokeng, who'd been sidelined as a nightclub and cocktail pianist by apartheid liquor legislation and reduced to working as a packer in a factory. Had Bheki and I paired up things might have turned out quite differently for him, and he possibly wouldn't have died in poverty and broken health in London in 2008. I get sorely moved thinking of him and listening to his genius.

In September 1996, I discovered by chance that the drug AZT being pushed on our new democratic government by the world's largest multinational pharmaceutical corporation was both deadly poisonous and therapeutically useless.

Mbeki biographer Mark Gevisser quotes the English poet Adrian Mitchell, a favourite of Mbeki's: 'I was run over by the truth one day / Ever since the accident I've walked this way.' My particular social and political background had primed me explosively to take the matter to heart and to respond with total, single-minded political commitment, come what may.

Completely alone in this country in the stupendous discovery I'd made, I decided to try hooking the interest of South Africa's leading independent investigative journalist, Martin Welz, editor and publisher of *noseweek*, to get him to break the story in his well-respected magazine, and from there take the matter to government.

Welz was won by my case and commissioned me to write five thousand words: the biggest space allocation for a single story in *noseweek's* history. Over a sleepless weekend I produced three pieces on AZT and related issues, but Welz found them more specifically focussed than he'd had in mind, and postponed breaking the story for a month or two by way of a more general introduction to the subject by his junior in-house writer, followed by further articles based on my work.

Since the AZT issue was pressing, I sent the most important piece I'd written for Welz, *AZT: A Medicine from Hell*, to the newspapers. The liberal media which had been promoting the drug predictably rejected it, but the right-wing *Citizen* picked it up and published it in March 1999.

I then sent the article, together with a response to it from the HIV/AIDS Clinicians Society, and my published reply, to Health Ministry special adviser Dr Ian Roberts. By agreement he held on to it pending Mbeki's new cabinet appointments at the start of his first term as President, and then confirmed having handed it to Dr. Tshabalala-Msimang.

On hearing a radio news report of Mbeki's warning about the drug in the National Council of Provinces on 28 October 1999, I realized that *Debating AZT* had reached him. I was contacted shortly afterwards by top ANC officials (Ngonyama, Motlanthe) for more

information, and was asked to help write the ANC's press statement following Mbeki's revelations.

Encouraged by the Mbeki's and the ANC's formal recognition that there was cause for serious concern about the safety and efficacy of AZT, particularly for the African poor, I published my debate of the drug, amplified by the many grave new research findings about it that were raining in at the time, plus some political history, as *Debating AZT: Mbeki and the AIDS drug controversy*. It was stocked in paperback by public libraries and sold by bookshops all over the country.

Apart from a derisory review of the manuscript by the *Mail & Guardian*, the book was ignored by the newspapers, but I was interviewed about it for twenty minutes on prime-time morning television and for an hour prime-time on national radio. I received a tremendous amount of positive feedback, including from many top-ranking scientists around the world.

Regrettably, my sense of national emergency in my work in researching AZT and bringing its hazards to public attention was not shared at home. As Naboth Mokgathle, the first African banned by the apartheid regime, later to die in political exile, put it in his classic *The Autobiography of an Unknown South African*, 'Although my wife was loyal to me, she never shared my convictions. She was always trying to pull me down, urging me to be like everyone else, and saying that I was making trouble for myself.' But she was quite correct in one perspicuous observation made long before I ran into AZT. When I remarked that politics (party politics) didn't interest me, she replied. 'Nonsense, you're political in every cell of your body.'

The upshot of having brought the deadly hazards of AZT to public attention by successfully convincing first our country's leading investigative journalist, followed by the President of the country and the top echelons of the ANC, was the end of a settled, comfortable professional and bourgeois life for me.

In mid-2001 I went to the UK to get some air but also to further publicize the cause I'd succeeded in placing on the political map. I had a marvellous meeting and briefing session with *New African* editor Baffour Ankomah, who proceeded to cover the issue; and I made contact with Welz's English counterpart, the late great investigative journalist Paul Foot. He

was amazed by my book ('Very good, convinced me completely') and wrote a piece about it for *Private Eye* which he read to me over the phone. It didn't make it to print only because the London *Sunday Times* got there first with a major feature article I had set up about the Hayman case brought by the widow of an attorney killed by AZT.

Within a week of my return from my trip abroad, my wife landed a research position in Cape Town and two days later I was approached to act as a Regional Court magistrate in the Eastern Cape. I sold my house and on 1 October 2001 we began separate lives, with new jobs in new places.

I'd hardly arrived when the nevirapine drama began. My expectation that my sojourn in the Eastern Cape would be a time to recover and relax after the AZT episode, with the immense stress and personal disruption it entailed, was disabused by my even more intense engagement with nevirapine. I worked closely behind the scenes with the late Peter Mokaba MP, who Mbeki had delegated to manage the nevirapine case politically, and twice flew to Johannesburg to consult with and advise him, culminating in an amicus curiae application I drew for the Constitutional Court; I was in regular telephonic contact with and advised Dr Tshabalala-Msimang, and drafted an enquiry she sent to the Medicines Control Council; and I twice submitted memoranda of advice to Mbeki at his request via the late Professor Sam Mhlongo. The preface of my book *The trouble with nevirapine* (free online at [tig.org.za](http://tig.org.za)) recounts most of the story.

In early 2004 a couple of months after my contract with Justice had ended, I was telephoned by a local representative of the German micronutrient promoter Dr Matthias Rath who had heard that I was in Cape Town and contacted me with an offer of support for my research work on ARVs. Rath and I had a successful meeting, and a couple of months later I began work as an external consultant. Soon afterwards I was asked to work in-house.

Personally, I have no interest in micronutrient supplements, but anything beats ARVs. I was impressed by Rath's militant left-wing political background and by his manifestly sincere mission to change the Western healthcare system, entirely dominated by the pharmaceutical industry for more than a century.

Nearly all my time and energy continued to be applied to researching and writing about ARVs. On reading my book *Poisoning our Children: AZT in pregnancy*, an exhaustive review

of the foetal and neonatal research literature reporting the toxicity AZT for unborn and newly born children, the Australian biophysicist Eleni Papadopoulou-Eleopoulos and colleagues, authors of the most rigorous published critiques of the drug at the molecular pharmacological level, remarked to me: 'Clearly your knowledge-base in this subject extends far beyond ours.' After reading the research reports I'd unearthed and analysed, Professor Richard Beltz, the inventor of AZT in 1961, changed his mind about giving AZT to pregnant women and warned strongly against it.

Rath's support enabled me to work full-time as a researcher/writer/activist for some years and to travel across and live in Europe for months at a time, during which periods I attended and addressed innumerable international conferences and meetings, and briefed international solidarity NGOs and journalists on the South African government's struggle against the depredations of the pharmaceutical industry.

A bad managerial appointment at Rath's Cape Town office resulted in the departure of all its brains and political energy, including mine, and for about a year and a half after this Rath continued supporting my work, but on an external footing, as I'd begun.

Unfortunately he didn't heed my advice to take the Treatment Action Campaign seriously as a political force, given their massive resources and reputation with the courts as human rights champions rather than a pharmaceutical interest group promoting the industry's merchandise. Tactical errors enabled the TAC to trounce him in litigation, and in the end he gave up defeated, closed his doors and went home.

After Rath's departure, another concerned European supporter of my work stepped in to continue maintaining it for a fixed term. This has come to an end, and at the same time political conditions have changed substantially for the worse. The pharmaceutical industry and the medical industrial complex and propaganda apparatus around it have achieved complete policy capture and political and commercial hegemony in South Africa. Mbeki's bid to facilitate a medical and scientific reappraisal of the safety and the utility of ARV drugs for administration to the African poor, especially to the unborn and newly born, has been effectively suppressed. As their markets for ARVs collapse in the West, the pharmaceutical industry is dumping them in Africa, paid for by the \$48 billion US PEPFAR fund 'to fight AIDS in Africa'. The injury that these drugs are causing unborn and newly born babies, nearly all

African, that Mbeki predicted and warned against in 1999 on the basis of the research literature I brought to his attention, is now starting to attract local and foreign medical academic notice (Potterton, Durban, April 2009; Peter Wall Institute for Advanced Studies, Stellenbosch, November 2009).

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25 Baker Road  
Prestbury  
Pietermaritzburg 3201  
12 October 2010

Adv Paul Hoffman SC  
Director: The Institute for Accountability in Southern Africa  
P.O. Box 33  
Noordhoek  
Cape Town 7979

Dear Paul

**A question of accountability  
In a matter entailing serious constitutional issues, not tried before**

We've never met, but sharing a keen interest in our country's political life I spotted you at several Wolpe and SAIIA talks in Cape Town, where I lived for several years before shipping back to Pietermaritzburg in January. Nonetheless you're sure to have heard of me, because I'm a singularly notorious person – to many people as close to the Devil as yesteryear's witches; to others a raving, drooling lunatic. Unless familiar with the hard work I've done, I mean the hard work itself and not the crummy depiction of it and of me in the newspapers and several angry books, you may well share these unpleasant preconceptions. Martin Welz doesn't, and there's a man with his head screwed on, you'll agree (search on Welz at <http://j.mp/bHgZUI> , [j.mp/cOpMi0](http://j.mp/cOpMi0) , and [j.mp/c2gXYO](http://j.mp/c2gXYO)).

If on the off-chance I'm unknown to you, even by foul reputation, a look at [www.tig.org.za](http://www.tig.org.za) will put you in the picture. The problem, you'll see, is I contradict deeply piled conventional Western wisdom in the most highly ideologically and politically charged knowledge and policy controversy of our time, with gargantuan implications, at so many levels and on so many fronts. And for opposing the transnational pharmaceutical industry's marketing designs in our country – both its merchandise and its underlying business model – one doesn't expect to go unpunished. Especially when these are supported by American foreign policy and the \$48 billion PEPFAR fund pumping behind it.

'Truth,' Schopenhauer famously observed, 'is revealed in three stages. First it's ridiculed, then it's violently attacked, and finally it's considered self-evident.' What seemed so outrageously perverse and wrong-headed on 28 October 1999, when Mbeki warned the country against the dangerous toxicity of the AIDS drug AZT in a speech in the National Council of Provinces, is a commonplace now (Mbeki is

quoted on page 2 of the enclosed leaflet ‘Why do President Mbeki [...]?’ (it’s online at [j.mp/97SThG](http://j.mp/97SThG))).

GlaxoSmithKline’s response was that Mbeki had been ‘gravely misinformed’ (by me, *Nature* charged), and of the entire media establishment only Welz and Martin Williams on *The Citizen* paused to question this lie and the corporation’s protestation, compounding it, that it was ‘a reputable company. We do not lie to people.’ On the contrary, the entire media establishment and every human rights commentator around came down against Mbeki in one voice in a crescendo of morally inflamed, hateful vituperation – typified by an article by the *Mail & Guardian*’s David Beresford under the title ‘Mbeki lets babies die in pain’ and a Zapiro cartoon in that paper of Mbeki ascending a Golgotha staircase of African skulls to board his jet. More such denunciation is quoted at [j.mp/c7kzzI](http://j.mp/c7kzzI).

In fact, as the enclosed leaflet ‘Why do Zackie Achmat [...]?’ shows, the reality of what AZT does to unborn and newly born children – in our country nearly all African – couldn’t be more horrible (it’s online at [j.mp/azQyu1](http://j.mp/azQyu1)). I canvass this tragedy exhaustively in my book *Poisoning our Children: AZT in pregnancy* (online at [j.mp/aYuuiz](http://j.mp/aYuuiz); for the latest horrors, search on Botswana, Potterton, and Stellenbosch).

UNAIDS’s response to Mbeki’s warning was to scoff that AZT ‘causes slight side effects ... but ... so do many medicines. ... Worries about AZT’s safety surfaced in the early 1990s but have long faded.’ Why, ‘it is perfectly acceptable to use drugs slightly more toxic than an aspirin’ (search on Perriens at [j.mp/c2gXYO](http://j.mp/c2gXYO)).

On 21 July this year, over a decade later, UNAIDS admitted on Russia Today: ‘AZT is indeed a dangerous drug, we know it’, likening it to the lunacy of ‘suggesting to treat syphilis with arsenic as was done in the beginning of the century’ [*sic*: actually until the mid-1950s] – a comparison I drew in the enclosed press release on AZT in pregnancy in October 2007 (online at [j.mp/brE9M9](http://j.mp/brE9M9)). In the same television programme, a top marketing consultant, hired to market AZT in the late ’80s, admitted that it’s ‘incredibly toxic’ (see [j.mp/braKII](http://j.mp/braKII)). Which is to say considerably ‘more toxic than an aspirin’.

Six months earlier, on 18 December 2009, the Environmental Protection Agency for the State of California added AZT to its schedule of ‘chemicals known to the state to cause cancer or reproductive toxicity’, i.e. foetal injury and developmental deficits (see [j.mp/9nQI2o](http://j.mp/9nQI2o)). In fact this was already known to the American FDA at the time it was being licensed (search on Chernov at [j.mp/9Q2Gt0](http://j.mp/9Q2Gt0)).

As for the almost universal conviction among the white liberal/progressive/left that Mbeki is responsible for the loss of hundreds of thousands of African lives on account of his reluctance (ultimately overwhelmed) to conform to the demands of the pharmaceutical industry that his government spend billions on buying AZT and similar chemicals from it (and I'm ultimately blamed), see my recent post on Politicsweb at [j.mp/axAowD](http://j.mp/axAowD).

At this point in history, then, both the message and the messenger on AZT are somewhere in between Schopenhauer's three stages. And this has caused me the trouble I write to you about.

I've just stumbled onto your website and was encouraged by your mission statement:

'The Institute for Accountability in Southern Africa (IFAISA) is devoted to **upholding constitutionalism** in Southern Africa through the inculcation of the values of **accountability and responsiveness** to the needs of the people of the region in its governments, **parastatal organizations** and civil society, including business and industry. **Accountability is the obligation of those with power or authority to explain their performance and justify their decisions. Eliminating the abuse of power ... Promoting constitutionalism and respect for the rule of law.**'

You tell us: '**IFAISA assists people and organizations to claim their rights, through litigation when necessary, and to hold those in authority responsible for their conduct and omissions.**'

And: 'The creation of IFAISA is intended to fill an existing gap in the NGO sector by providing a vehicle for the **vigorous advocacy of a truly accountable and responsive order** in South, and ultimately Southern Africa. **Exacting accountability implies doing whatever is necessary to hold those in authority to account legally, civically and through objective scientific analysis and monitoring of issues which present the challenges of the day. This requires rigorous constructive engagement on the issues and sometimes involves resort to "lawfare" in extreme cases in which public interest litigation is the only viable or sustainable option left. Both conduct and systems will be scrutinized to exact accountability: this involves an examination of the constitutionality, rationality and legality of both.** As accountability encompasses generic components an IFAISA 'audit' of these components is possible to **help correct that which is dysfunctional**, leading to policies (the why component), strategies (the what), tactics (the how), **processes**

**(the who and where) procedures (specific rules), practices and their elements that, taken together and implemented properly, produce conduct and systems which function accountably.’** (boldface emphasis added)

All music to me and here’s why.

I have a question and would appreciate your expert opinion. Although I’m a fellow lawyer, I claim no special expertise in the legal terrain in question, and I’m alive to the adage about only fools being their own lawyers.

My tale is told in my letters to Legal Aid South Africa (‘LASA’) CEO Vidhu Vedalankar and further, without gloves on, to LASA’s COO Jerry Makokoane at pages 1 and 21 of the enclosed Document Bundle.

Arising from the response I got to my letter to Vedalankar (and I’ve received none from Makokoane) I filed a comprehensive request for records under the Promotion of Access to Information Act (Bundle, page 49–69), delivered on 30 August. Consistent with the dilatory behaviour and hostile and contemptuous animus towards me recounted in my letters, my request went ignored, not even acknowledged, until the PAIA Unit of the South African Human Rights Commission intervened on my behalf and got LASA to undertake to deal with it, promising a response by the 20<sup>th</sup> instant.

I’m not expecting compliance and delivery, however – more likely dodging and delaying. This is because, as you’ll appreciate once you’ve a handle on the facts, my records request goes to the rotten heart of the matter like a bolt from a crossbow: it will expose the illegality I complain of, and will set LASA up for a corrective strike in the courts. Since open cooperation and compliance with my records request will be fatal to LASA’s position, I’ll probably need the SAHRC’s aid, if not judicial compulsion, to surmount the defensive obstruction and cover-up I anticipate.

I’m confident that the records or lack of records will tend to show on the probabilities that I’ve been unlawfully discriminated against for doing as Section 195 (e) in Chapter 10 of the Constitution enjoins: ‘the public must be encouraged to participate in policy-making’.

My first offence was to have informed the government about the pros and cons of AZT in the form of a book manuscript I sent up, *Debating AZT: Questions of safety and utility*, in which I debated the merits of the drug with the country’s top AIDS treatment expert Dr Desmond Martin. The government was under heavy pressure of a multi-pronged, multi-agency marketing/lobbying campaign to coerce it to

spend billions on buying AZT from the world's largest pharmaceutical corporation at the time, GlaxoSmithKline, for administration to HIV+ pregnant women, nearly all African. The company was manoeuvring to create a new market for the drug in the Developing World, using South Africa as its strategic marketing portal.

The government's reservations at that point had gone only to cost and affordability. *Debating AZT* stopped Mbeki and Tshabalala-Msimang dead in their tracks, other top ANC officials too, and spun them around 180 degrees; and for this I've never been forgiven. Particularly because Zackie Achmat and his Treatment Action Campaign pitching for the drug, and soon to be paid millions for doing so, had already been anointed by journalists and commentators of every stripe as the very soul of everything good, right and true. And of light, reason, and compassion – the embodiment of Western progress and Western civilization in a country of 'newly-liberated' aborigines, to save them and their progeny from the consequences of their 'unbridled sexuality', as Professor Jerry Coovadia shamelessly puts it, by which he means their out of control sex lives (Achmat, Cameron J, even Mbeki biographer Mark Gevisser talk the same ugly way; apparently it's very liberal to think of African people like this, and of African men particularly).

I enclose for your possible interest a copy of the book I published with further damning data a year later, under the new subtitle *Mbeki and the AIDS drug controversy*. It's ten years old now, and tons more negative findings have been reported since it came out, but you'll get the general idea. It's online at [j.mp/cOpMi0](http://j.mp/cOpMi0).

My second offence was to have opposed the Treatment Action Campaign in the nevirapine case in the Constitutional Court. LASA funded the TAC's litigation against the government, in what its CEO considers to be LASA's finest hour, its greatest victory for human rights. In fact the consequences have been atrocious; all this is canvassed at page 11 of the Bundle.

Although as a seasoned trial lawyer experienced on both sides of the bar and bench (Bundle, page 71), I'm not given to denying anything I find evidence for, I'm routinely denounced as a 'denialist' – rather like a 'communist' in the apartheid era; and the sting, the opprobrium, and the menace inherent in this smear is much the same. I know, because I recall the chill of being denounced as a 'communist' while on a training course at Justice College in Pretoria in the apartheid era. In their 1985 *Kairos Document*, Rev Frank Chikane and Father Albert Nolan explained the mindset:

‘We all know how the South African State makes use of the label “communist.” Anything that threatens the status quo is labelled “communist.” Anyone who opposes the State and especially anyone who rejects its theology is simply dismissed as a “communist.” No account is taken of what communism really means. No thought is given to why some people have indeed opted for communism or for some form of socialism. Even people who have not rejected capitalism are called “communists” when they reject “State Theology.” The State uses the label “communist” in an uncritical and unexamined way as its symbol of evil.’

In short, I’m a diabolical person in the eyes of all good, right-thinking people who get their information and opinions from the morning newspapers and the evening television. Including those LASA management board members who immediately acted to prevent the confirmation of my selection for the Senior Litigator position in question, as soon as my name came up.

And I’m certain I’m being discriminated against for the worst of reasons in the post-apartheid, democratic, Constitutional era, namely on account of my ‘conscience’ and ‘belief’ and for ‘campaigning for a cause’ – all explicitly protected by the Bill of Rights and the statutes enacted to enforce it, having regard to the suppression and punishment of dissent that characterized the apartheid regime (see pages 2–4 and 36 of the Bundle).

The issue I’m mulling on, and it’s for your expert opinion that I write, is whether in the particular circumstances of my case the decision to abort the recruitment process as soon as my selection was announced is an ‘administrative action’ within the meaning of the Promotion of Administrative Justice Act, which ‘materially and adversely affects [my] rights or legitimate expectations’ and is required to be ‘procedurally fair’. And whether in the circumstances I’m entitled to a statement of the ‘reasons for the action’. Since they were sprung from illegal political prejudice against me, I’m assuming that I’m not going to see the reasons stated in any of the records I’ve requested. Or do you consider the decision process above accountability?

This is the burning question. If your answer is positive, I’ll corner LASA by requesting the unspecified ‘various reasons’ alleged (Bundle, page 19).

On your Institute’s website you quote Margaret Meade: ‘A small group of thoughtful people can change the world, indeed, it is the only thing that ever has.’ Yes indeed. Edward Said speaks to us too: ‘All societies are made up of a majority of average citizens who follow all the established patterns and a tiny number who

by virtue of their talent and their independent inclinations are not at all average, and in many ways are a challenge and even an affront to the usual docile majority.’ Also: ‘Everything I have written in these lectures underlines the importance to the intellectual of passionate engagement, risk, exposure, commitment to principles, vulnerability in debating and being involved in worldly causes.’

An aphorism coined by your namesake Abbie Hoffman, counter-cultural leader in the ’60s, is particularly relevant: ‘You measure democracy by the freedom it gives its dissidents, not the freedom it gives its assimilated conformists.’ And it points up what I think is the immense Constitutional significance of my case. Our newly Constitutionally guaranteed rights to liberty of conscience and opinion, to act upon them, and to participate in and contribute to public discourse and public policy formulation, have never been prosecuted in the courts before. So this case will be a first and it could be huge.

Looking forward very much to hearing from you.

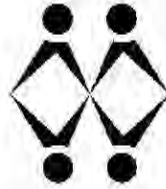
All the best

ANTHONY BRINK

arbrink@iafrica.com  
033 344 2420  
083 779 41 74

This letter was posted on Thursday 14 October. Effectively crossing in the post, LASA CEO Vedalanker's letter refusing the records request arrived on Monday the 18th. It alleged a reason for the abortion of the recruitment process, disposing of the need for Hoffman SC to opine as to whether reasons for it were compellable, and he was immediately informed accordingly.





**Legal Aid**  
South Africa

18 October 2010.

Adv Anthony Brink  
25 Baker Road  
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Pietermaritzburg 3200

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Private Box X76  
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[www.legal-aid.co.za](http://www.legal-aid.co.za)

by Fax: 0866720776

Dear Advocate Brink,

**Re: Promotion of Access to Information Act: Request for Records: Senior Litigator Position, Pietermaritzburg**

I acknowledge receipt of your letters addressed to the CEO and COO dated 26 August and 1<sup>st</sup> September respectively. Whilst not responding to each and every allegation contained therein, an omission to address any aspect should not be construed as an admission of the correctness on our part, and we reserve our rights to respond to any such allegation should the need arise.

1

The test to be applied to a request for information in terms of the PAIA, as laid down by the court in the case of *National Teachers Union v Superintendent General: Department of Education & Culture, Kwazulu-Natal and Another (D38/08) [2008] ZALC 18*, is as follows:

- a) *In dealing with a request in terms of the Act, the question is not whether the requester is entitled to information but about whether the information is relevant for the purpose of enabling the requester to exercise a right that maybe breached, rendered unenforceable or weakened by the non disclosure.*

2

In considering your request for information we were guided by this principle, together with Section 32 of the Constitution and the relevant provisions of the PAIA.

Section 32 of the constitution grants access to information in the following terms:

“(1) *Everyone has the right of access to:-*

- (a) *Any information held by the State; and*
  - (b) *Any information that is held by another person and that is required for the exercise or protection of any rights.*
- (2) *National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state”.*

3

The national legislation enacted for this purpose is the Promotion of Access to Information Act which you have sought to use in this matter. In terms of Chapter 4 of the Act, specifically sections 62 to 70, the information officer of a public body must refuse access to information falling into the following categories, save in circumstances provided for in the Act:

- a) Mandatory protection of the privacy of a third party who is a natural person.
- b) Mandatory protection of certain confidential information of a third party.
- c) Mandatory protection of records privileged from production in legal proceedings.
- d) Mandatory protection of research information of a third party.

The refusal of information falling into the above categories is however not without qualifications. In this regard section 46 provides as follows:

*“Despite any other provision of this Chapter, the information officer of a public body must grant a request for access to a record of the body contemplated in section 34 (1), 36 (1), 37 (1) (a) or (b), 38 (a) or (b), 39 (1) (a) or (b), 40, 41 (1) (a) or (b), 42 (1) or (3), 43 (1) or (2), 44 (1) or (2) or 45, if—*

- (a) *the disclosure of the record would reveal evidence of—*
  - a substantial contravention of, or failure to comply with, the law; or*
  - an imminent and serious public safety or environmental risk; and*
- (b) *the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.”*

5

Your request for information was considered against this background and it was in terms whereof that it was decided that (i) your request for information goes beyond your individual

circumstances and extends to information on other third parties, (ii) the information on third parties does not fall within the section 46 category above.

6

Noting the above and without waiver of any of our rights, the following explanation is provided in so far as it relates to the senior litigator positions within Legal Aid SA:

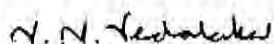
- 6.1 A defined number of Senior Litigator positions were created linking to particular High Courts.
- 6.2 Noting the seniority of these positions, it was decided to implement a two stage interview process in the appointment to these posts.
- 6.3 The first stage takes place at Regional Office level where an Interview Panel will make a recommendation for candidates to proceed to the second stage of interviews.
- 6.4 The second stage comprises an interview process by a national office panel, including the Chairperson of the Board, National Operations Executive (NOE), Legal Development Executive, Human Resource Executive and the Chief Operations Officer. This panel does not have to recommend for appointment any of the recommended candidates from the first phase interviews conducted by the region.
- 6.5 The recommendation of the second stage of interviews are finalised by the responsible executive in terms of section 8.2.2 (b) of the Legal Aid SA Approval Framework. As per this Approval Framework, the relevant Regional Operations Executive (ROE), in the case of the Durban and Pietermaritzburg positions the ROE for KwaZulu-Natal together with the NOE and CEO approve the final appointment. The Approval Framework is approved by the Board of Legal Aid SA from time to time, and was last approved on 27 February 2010. The relevant extract of the approval framework is hereby made available and attached for ease of reference.
- 6.6 The NOE, as the executive responsible for operations may also motivate a change in the organisational structure, including the freezing of positions, for discussion and finalisation with the CEO (refer S.8.1.2 (b) of the Legal Aid SA Approval Framework).
- 6.7 Due to the effects of the recession, anticipated funding for the 2010/11 financial year did not materialise. This had the effect of cutting our baseline funding by a significant amount. It was accepted that this required a reduction to our staff establishment in the 2010/11 financial year in order to meet this shortfall. Since early this year, management has had to identify positions which could be frozen. In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be immediately frozen.

Noting the above and without waiver of any of our rights, the following explanation is provided in so far as it relates to your individual application for the senior litigator position and the circumstances that followed.

- 7.1 You were interviewed together with other candidates in the first round of interviews.
- 7.2 You were recommended together with other candidates, for the second round of interviews. As explained above that however was not a guarantee that you would get the position. We have instances in the past when our nationally constituted panel has not recommended for appointment any of the recommended candidates from the first phase interviews conducted by the region.
- 7.3 The NOE and CEO took the decision that all senior litigator posts that were vacant would be frozen. Therefore, the three vacant Senior Litigator positions for Durban, Pietermaritzburg and Mthatha have been frozen.
- 7.4 You were sent a final letter of regret from our Regional Operations Executive dated 23 August 2010 indicating that Legal Aid SA will not be proceeding with the filling of the Senior Litigator post. A copy of the aforementioned letter is also attached for your reference.
- 7.5 Should we decide to unfreeze these positions in the future, the positions will be duly advertised and you will be at liberty to submit your application for any of the positions.

The above information is provided to clarify the position and to definitively address your suspicion that your right to a fair administrative process is threatened, breached or may be rendered unenforceable. Accordingly your request for the detailed information requested in your letter, other than the information and explanation provided above, is declined as it is not relevant to you exercising any right you may have in law.

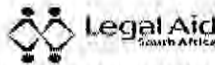
**Yours faithfully,**



---

**Ms Vidhu Vedalankar**

**CEO & Information Officer**



Your voice. For justice.

**LEGAL AID SOUTH AFRICA : APPROVAL FRAMEWORK**

**CHANGES INDICATED IN RED FONT .  
THE COLUMN ON THE EXTREME RIGHT INDICATES CHANGES IN ROWS IN THIS VERSION**

<b>Key to Levels</b>		<b>Key</b>	=	
A:	Final approval	CEO	=	Chief Executive Officer
B:	Must agree	COO	=	Chief Operations Officer
C:	Must be consulted (before)	NOE	=	National Operations Executive
D:	Must be informed (after)	CFO	=	Chief Financial Officer
E:	Originates	EXEC	=	The executive responsible for the line function in question (Exec includes ROE and Board Secretary but excludes JCE)
<b>Key to Other</b>		CSE	=	Corporate Services Executive
AC	Audit Committee	ROE	=	Regional Operations Executives
RC	Remuneration Committee	HRE	=	Human Resources Executive
LSC	Legal Services Committee	LDE	=	Legal Development Executive
LSTC	Legal Services Technical Committee	ISE	=	Information Systems Executive
Board	Board of Directors (refer Note 29 & 30)	CE	=	Communications Executive
B/Exec	Board Executive Committee	BS	=	Board Secretary
Man/Exec	Management Executive Committee	CLM	=	Corporate Legal Manager
BAC	Bid Adjudication Committee	ISM	=	Impact Services Manager
		JCE	=	Justice Centre Executive

In the event of any conflict between this approval framework and any other Legal Aid South Africa policy the Approval Framework will prevail.

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	Changes
1	<b>STRATEGY AND PLANNING</b>									
1.1	Strategic Plan		A	C	E				C/All Committees	
1.2	Business Plan		C	A	B	E			C/All Committees	

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exec	CED	COO/ NDE (31)	CFO	EXEC	OTHER	Other notes

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	CLASSIFICATION
<b>8</b>	<b>HR MATTERS</b>	5								
8.1	<b>Personnel Structure</b>									
8.1.1	Approval and periodic revision of grading policy		A	C	C	C		E(HRE)	C/RC	
8.1.2	(a) Establishment of new positions, regrading existing positions and abolition of posts at executive senior managerial & within budget (levels 14-18)		A		B	C		E C (HRE)	C/RC	
	(b) Levels (11-13) & OSD - CM -1 ; OSD - LP - 9 & 10 and MR - 5				A	B		E C (HRE)		
8.1.3	Establishment of other new positions, regrading existing positions and abolition of posts within existing structure & within budget (levels 1-10) and OSD - SU - 1 & 2 and OSD - LP 1 - 8				B	A		E C (HRE)		
8.2	<b>Appointments</b>	17 & 21								
8.2.1	(a) CEO (Level 18)		A/E						C/RC	
	(b) COO or NOE (Level 18.5)		A		B/E				C/RC	
8.2.2	(a) Executive (other than the CEO, COO & NOE),		C B/Exco		A/E	B/E			D/RC	
	(b) Senior Management and Senior Professional staff (levels 11-13, QSD - CM -1 and OSD - LP - 9&10, OSD - MR - 5)				B	B		E A	D/RC HRE (17)	
	(c) OSD - SU - 1 & 2 and OSD - LP-8					B		A/E (ROE)	HRE (17)	
	(d) Other permanent staff (below level 11 and OSD - LP - 1 to 7)							A incl JCE		



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**CONFIDENTIAL**

23 August 2010

Mr Anthony Brink  
25 Baker Road  
Pietermaritzburg  
3200

Dear Mr Brink

**APPLICATION FOR EMPLOYMENT: SENIOR LITIGATOR [DURBAN & PMBURG] (REF. 2009/06/25)**

Thank you for your application and for attending the interview for the above advertised position.

Please be advised that Legal Aid South Africa will not be proceeding with the filling of this post. We apologise for the delay in informing candidates of the outcome of the interview process.

I would like to take this opportunity to wish you well for the future and thank you for your interest in the Legal Aid South Africa.

Yours sincerely

**LEGAL AID SOUTH AFRICA**

**VELA MDAKA  
REGIONAL OPERATIONS EXECUTIVE  
KZN REGION**

**Your voice. For justice.**

25 Baker Road  
Prestbury  
Pietermaritzburg 3201  
30 November 2010

The Honourable Mr Justice Dunstan Mlambo  
Judge President: Labour Court  
Chairperson: Legal Aid South Africa

Labour Court  
6<sup>th</sup> and 7<sup>th</sup> Floors, Arbour Square Building  
Cnr. Juta & Melle Streets  
Braamfontein  
Johannesburg

And to:

The Board of Directors: Legal Aid South Africa

Mr M Makume, Mr J Maree, Ms N Mgadza, Prof P Kruger, Mr V Jarana,  
Prof Y Vawda, Adv P du Rand, Ms E Gandhi, Mr M Moabi, Ms M Naidoo,  
Judge E Molahlehi, Ms S Monaledi, Ms A Mosidi, Ms N Memka, Ms A Rhoda,  
Dr D Konar, Ms T Mhlungu, Ms J Luthuli, Mr E Moolla, and Mr I Ramdas

Legal Aid South Africa  
29 De Beer Street  
Braamfontein  
Johannesburg

And to:

Ms Chantal Kisoona  
Head: PAIA Unit  
South African Human Rights Commission  
29 Princess of Wales Terrace  
Houghton  
Johannesburg

Dear Judge Mlambo

**Pietermaritzburg Senior Litigator post:**

**• Illegal political / racial discrimination – covered with false reasons advanced to justify it, and two African candidates selected and recommended for similar posts sacrificed to effect it; • failure by members of the Management Executive Committee to execute a key component of Legal Aid South Africa’s Strategic Plan, concealed from the Board of Directors and from the Parliamentary Portfolio Committee for Justice and Constitutional Development; • multiple contraventions of the Public Finance Management Act, including the presentation of false financial information in Legal Aid South Africa’s 2009/10 Annual Report; • and refusal to comply with a request for records in terms of the Promotion of Access to Information Act on bogus legal and factual grounds**

1. When a year ago I told my partner, my sons, my brothers, and a couple of my closest friends that my interview for the Pietermaritzburg Senior Litigator post had gone extremely well and that I was certain I’d been selected for it (confirmed to me last month), I was met with unwelcome scepticism: ‘They’ll never appoint you, you’re too politically controversial.’ ‘They’re going through the motions formally, but behind the scenes they’ll just do whatever they want.’ One even suggested that ultimately I’d be disqualified for being white.
2. These disagreeably pessimistic predictions sprung from the fact that to many people whose opinions are informed by the newspapers I’m indeed a ‘politically sensitive person’, to cite the lingo of PW Botha’s State Security Council and its operatives, with the extreme prejudice such an appellation attracted. And indeed I’m indubitably a white person too.
3. I remember rebuking their cynicism vehemently: ‘No, you don’t understand. The process is transparent, it’s clean. Things have changed. We’re not living

under apartheid anymore, we have a constitutional democracy now.’ Words and sentiments along those lines.

4. By ‘clean’ I meant the recruitment process was being managed by honourable and honest executives of impeccable and unquestionable integrity who would never do anything illegal and who would never think of telling lies.
5. I really believed it and I insisted, even as the months passed by, but I could not convince them.
6. As things turned out, I was to be sorely disappointed in my absolute confidence and conviction that the recruitment process was being managed by honourable and honest executives of impeccable and unquestionable integrity who would never do anything illegal and who would never think of telling lies.
7. I found that in fact the recruitment process was not transparent and clean; that the executives managing it were not honourable and honest; and that they didn’t stint at acting illegally and telling lies to cover up the illegal things they’d done.
8. The ‘Introduction’ to ‘Corporate Governance Arrangements’ in Section 4 of LASA’s Annual Report 2009/10 states that ‘processes and practices are reviewed on an ongoing basis to ensure compliance with the legal obligation to use funds in an economic, efficient and effective manner and to adhere to good corporate governance practices’.
9. It assures us: ‘Processes are underpinned by the principles of openness, integrity and accountability.’
10. And it explains: ‘Corporate governance is concerned with structures and processes for decision making, accountability, control and behaviour. It starts at the Board of the organisation and this sets the tone for behaviour down to operational level at Justice Centres.’
11. Finally the ‘Business Conduct’ subsection records that ‘Legal Aid South Africa has an ethics programme which promotes ethical behaviour in the workplace. This is supported by a written business conduct policy dealing with ethics,

which is applicable throughout Legal Aid South Africa. The continued focus on the business conduct policy has raised awareness of the need for ethical behaviour across the organisation. Employees are required to maintain high ethical standards and to ensure that Legal Aid South Africa's business practices are conducted in a manner that is above reproach.'

12. And it's relevant to mention that section 50(1) (b) of the Public Finance Management Act 1 of 1999 ('PFMA') stipulates that 'The accounting authority for a public entity must act with fidelity, honesty and integrity and in the best interests of the public entity in managing the financial affairs of the public entity.'
13. Having regard to the Board of Directors' oversight responsibility to ensure that 'good corporate governance practices' based on 'principles of openness, integrity and accountability' are observed by the Management Executive Committee in 'decision making, accountability, control and behaviour', and the Board's concern about 'ethical behaviour in the workplace', that 'high ethical standards' be observed, and that 'business practices' should be 'above reproach' – which is why their 'processes and practices are reviewed on an ongoing basis' – I write to report gross, in fact illegal, breaches in this regard by certain individuals on the Management Executive Committee.
14. The basic history is set out in my letters to CEO Vidhu Vedalankar and to COO Jerry Makokoane at pages 1–17 and 21–39 of the Document Bundle appended hereto, read with NOE Brian Nair's and CEO Vedalankar's responses at pages 19 and 101–108. (I will henceforth refer to all LASA officers simply by their surnames.)
15. One might even conclude from the 'behaviour' described in these letters, compounded by the dishonest cover-up that followed it (to be detailed and exposed below) that far from respecting 'the rights enshrined in our constitution' (per LASA's 'Vision') and 'principles of openness, integrity and accountability' in 'decision making' (per LASA Annual Report 2010), the

executives in question have no respect for these rights and principles and that they actually despise them.

16. In my letters to Vedalankar and Makokoane mentioned above, I'd assumed political prejudice against me – something I'm accustomed to. (Bundle, page 11, paragraphs 5.1–14 and pages 93–99 (a letter to Adv Paul Hoffman SC, director of the Institute for Accountability in Southern Africa, including information intended for the unwritten 'Postscript' mentioned in paragraph 58 of my letter to Makokoane)). I've recently appreciated, however, though I doubt it, that the prejudice may simply be racial, albeit no less illegal, inasmuch as my selection and recommendation for the appointment in question might have been inconvenient for the targets set out in LASA's 'Employment Equity Plan for 2010-2015'.
17. Arising from the 'behaviour' in question, I filed an extensive request for records under the Promotion of Access to Information Act ('PAIA') with Vedalankar as LASA's information officer ex officio on 30 August. (Bundle, pages 49–69)
18. On 29 September, the day before the end of the month provided by the Act for compliance with my request, and not having received any response to it, not even an acknowledgement of receipt, I approached the South African Human Rights Commission ('SAHRC') with a plea for assistance.
19. Kindly taking the matter up for me, the director of the SAHRC's PAIA Unit Chantal Kisoona ably negotiated an undertaking from LDE Patrick Hundermark to deal with my records request. Although Vedalankar was out of time for compliance (there was a mix-up over the computation of the period prescribed), I didn't mind, I was just glad that my request would be given attention at last.
20. On 18 October I received a letter from Vedalankar rejecting my request. (Bundle, pages 101–108)

21. Although the letter bears Vedalankar's electronic signature (a scanned image of it is pasted above her name at the end, identical to the image at the end of her CEO report in the 2009/10 Annual Report) it's unimaginable to me that she actually wrote it, and indeed it seems doubtful that she even read it with any attention. I say this having regard to the letter's contents, which are irreconcilable with my understanding of her personal integrity, noted in my letter to her of 12 July. (Bundle, page 10, paragraph 1.1) The letter is replete with false statements, deceptive red herrings, deceptive non-disclosures, and a breathtakingly brazen false statement of the law in regard to the application of PAIA, advanced as a justification for not complying with her obligations under the Act and for refusing my request for records.
22. Vedalankar seems to have authorized the letter drawn in her name trusting that it was in order. I therefore hold her clear of culpability for its disgraceful contents and hope you will too. Although I accept that Vedalankar never actually wrote the letter, for reference sake I must continue referring to it and its contents as if she did. I apologise to her in advance for the hard criticism to follow: it's directed at the real author of the letter, and not at her as the nominal author only.
23. The letter begins with a fraud. Numbered paragraph 1 claims:

The test to be applied to a request for information in terms of the PAIA, as laid down by the court in the case of *National Teachers Union v Superintendent General: Department of Education & Culture, KwaZulu-Natal and Another (D38/08) [2008] ZALC 18*, is as follows:

- a) *In dealing with a request in terms of the Act, the question is not whether the requester is entitled to information but about whether the information is relevant for the purpose of enabling the requester to exercise a right that maybe breached, rendered unenforceable or weakened by the non disclosure.*

24. (There is no paragraph ‘b’) and the phrase ‘is as follows’ is italicized in the original as above.)
25. The use of indented block paragraphs is a universal writing convention to distinguish quoted text from the writer’s own prose. One understands, therefore, that the indented block quote is an excerpt from the judgment. This impression is further emphasized by the use of distinguishing italics in the indented paragraph. Indeed, the indented, italicized block paragraph is preceded by the explicit claim that the ‘test to be applied ... as laid down by the court ... is as follows:’.
26. To read the National Teachers Union case is to discover that in truth no such ‘test to be applied’ was ‘laid down by the court’. The judge said nothing of the sort. He said precisely the opposite. The alleged ‘test to be applied’ is pure invention, with the lie compounded by dressing it in fake legal authority, even putting words in the judge’s mouth that he never spoke. From the CEO of Legal Aid South Africa. Magnificent!
27. In paragraph 32 of his judgment Pillay J pertinently noted to the contrary: ‘Unlike access to information from another person, access to information from the state is manifestly not constrained by the requirement that information should be for the exercise or protection of any rights.’ (The judgment is online at <http://j.mp/dxh3sZ>. (All shortened internet URLs in this letter will henceforth be given simply as ‘j.mp [.....]’))
28. Having sucked this so-called ‘test to be applied’ out of her thumb, pretending that a ‘court ... laid [it] down’, Vedalankar proceeds to apply her false test to my records request. Paragraph 2 commences: ‘In considering your request for information we were guided by this principle, together with Section 32 of the Constitution and the relevant provisions of the PAIA.’
29. Decorating her decision in bits of the Constitution and PAIA quoted at me at some length, in a manner possibly quite impressive-looking to legally unschooled persons, Vedalankar concludes by refusing my records request on

wholly unrelated grounds, namely ‘(i) your request for information [sic: for records] goes beyond your individual circumstances and extends to information on third parties, (ii) the information on third parties does not fall within the section 46 category above’. (Bundle, page 102, paragraph 5)

30. Of course, this reason given has nothing to do with the fake ‘test’ or ‘principle’ that I’d only be entitled to the records requested if ‘the information is relevant for the purpose of enabling the requester to exercise a right that maybe breached, rendered unenforceable or weakened by the non disclosure’. And as hard as one looks, nowhere in PAIA does one find entitlement to records of a public body excluded by reason of being ‘beyond [the requestor’s] personal circumstances’. It’s just made up out of thin air, once again.
31. The so-called ‘principle’ by which ‘we were guided’ bobs up at the very end of the letter in paragraph 8. My request for records is ‘declined’ for the further reason given that ‘it is not relevant to you exercising any right you may have in law’ – only it’s a ‘test’, a ‘principle’ that has no bearing on a request for records from a public body, as PAIA makes clear, and the court in the National Teachers Union case plainly stated.
32. And as the Supreme Court of Appeal underscored in *Mittalsteel SA Ltd v Hlatshwayo* [2006] SCA 94 (RSA): ‘The issue before us is ... whether the appellant at the relevant time and in creating the requested documents was a “public body” as that term is to be understood in PAIA. If it was then the respondent is entitled to the documents requested by it in terms of s 11 of PAIA. The section is headed “Right of access to records of public bodies”. Subsection 11(1) provides that a “requester *must* be given access to a record of a public body if” (emphasis added) [in the judgment] (a) the requester complies with all the procedural requirements of the Act and (b) access to the record is not refused in terms of any ground set out in the provisions of PAIA dealing with the records of public bodies. None of these provisions is applicable to the

respondent's request, and compliance with procedural requirements is not in issue.' (j.mp/bKUmCW)

33. Despite the obstacles I encountered due to (a) LASA's failure to publish a PAIA manual on its website (a stale version of the manual was stuck under a bright new cover and posted on the website some weeks after I'd raised this problem with the SAHRC), and (b) CE Mpho Mphasha's failure to respond to my emailed enquiry about the identities of LASA's information officer/deputy information officer, I duly complied 'with all the procedural requirements of the Act' (per Mittalsteel) and I was and remain accordingly entitled to the records I requested.
34. As to the first excuse manufactured for not complying with the Act – '(i) your request for information [sic: for records] goes beyond your individual circumstances and extends to information on third parties, (ii) the information on third parties does not fall within the section 46 category above' – a glance at the list of records that I seek will show I wasn't asking for 'information on third parties'. (Bundle, pages 59– 68). This is because I have no interest in any 'information on third parties' whatsoever.
35. What I require – and it's a relatively small part of my request – are records of communications with certain third parties or sworn confirmation, as PAIA requires, that such records don't exist, showing that contrary to what has been suggested to me such communications never took place.
36. To protect their privacy – if privacy really was the issue rather than a false pretext for refusing my request – records of communications to and from third parties have only to 'be edited by blanking out the name of any third party whose privacy would otherwise be infringed by disclosure', as Brand JA put it in *Unitas Hospital v Van Wyk* [2006] SCA 32 (RSA). (j.mp/cHDY5D)
37. The particular records of communications with third parties or lack of them will be probative in establishing that my constitutional rights have been violated. By a public legal body professing to serve the Constitution.

38. And since the ramifications of this are awesome to contemplate, it seems this is why Vedalankar should have strained to seize upon this most peculiar, manifestly untenable pretext for refusing my entire request for records, the great majority of which have nothing to do with third parties by any stretch of the imagination.
39. Since Vedalankar's provision of the records I requested could not conceivably 'involve the unreasonable disclosure of personal information about a third party', as Section 34 (1) of PAIA puts it, the provisos in Section 46 cited and discussed in paragraph 3 of Vedalankar's letter are perfectly irrelevant.
40. But even if it were relevant, Section 46 would anyway require my access to the records for the reasons that '(a) the disclosure of the record would reveal evidence of ... a substantial contravention, or failure to comply with, the law ... and (b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question'.
41. The fundamental premise of my records request, supported by the evidence I present, is that the disclosure of the records would indeed reveal further documentary 'evidence of ... a substantial contravention of, or failure to comply with, the law'.
42. Here I'm referring to the Constitution and to the Acts I've cited prohibiting discrimination on unlawful grounds in the democratic era, including by reason of 'conscience and belief' and because, motivated by these, I 'campaign for ... a cause'. (Bundle, pages 2–4, paragraphs 6–15 and pages 34–36, paragraphs 56–65) And by reason of race, unless justified by the provisions of the Employment Equity Act 55 of 1998 and the reported cases elucidating its practical application. I'm referring also to Acts and regulations, mentioned below, governing the operation of public bodies.
43. As for 'the public interest' – proviso (b) of Section 46 – the public have a clear interest in the disclosure of the records in this case, because they have a fundamental interest in having the certain assurance that they will not be

subject to illegal discrimination of any form when applying for employment with a public entity responsible through Parliament to the people of South Africa. It's clearly in the public interest that any breach of constitutional rights by publicly accountable institutions, especially those within the sphere of justice and constitutional development, be exposed. The hard won political gains of justice and human rights for all citizens of our country are jeopardized if a major public entity whose purpose is to secure justice for those citizens can subvert and undermine those very principles of justice and human rights without being held accountable.

44. With the 'tone' of Vedalankar's letter 'set' in the first half of it (cf. paragraph 10 above), it will not surprise you to learn that the second half only goes downhill.
45. In paragraph 6 of her letter, Vedalankar alleged the 'explanation' of why, after I'd been selected and recommended by the KwaZulu-Natal regional professional selection board on 12 November 2009 for appointment as Senior Litigator at the Pietermaritzburg Justice Centre, she and Nair moved to terminate the recruitment process – 'immediately' was the word used – in July, eight months later, thereby preventing your assessment and approval or disapproval of my selection and recommendation. (Bundle, page 103, paragraph 6.7 and page 104, paragraph 7)
46. Vedalankar's statement of the alleged financial reason for the abortion of my recruitment just prior to the confirmation or otherwise of my recommended appointment was 'provided to clarify the position and to definitively address your suspicion that your right to a fair administrative process is threatened, breached or may be rendered unenforceable'. (Bundle, page 104, paragraph 8)
47. It was intended to allay my conviction – founded on the evidence already available, weighed with the probabilities – that certain members of LASA's Management Executive Committee have illegally discriminated against me for exercising my basic civil liberties motivated by my 'conscience and belief' and guaranteed in the democratic era by the Bill of Rights in Chapter Two of the

Constitution, and indeed ‘encouraged’ in Chapter 10 (Section 195(1)(e)). (Bundle, page 11–16, paragraphs 5.1–5.14 and pages 93–99) If not just for being a white.

48. Vedalankar’s stated ‘explanation’ for aborting my recruitment is, however, inconsistent with and contradicted by the known facts. It’s inconsistent with LASA’s budget and operations over the relevant period. It’s inconsistent with and contradicted by information given, and not given, to the Parliamentary Portfolio Committee for Justice and Constitutional Development. It’s inconsistent with and contradicted by prior communications to me by other management executives. It’s inconsistent with and contradicted by LASA’s communication with Legal Aid attorney Bongani Mngadi. The letter furthermore contains a number of demonstrably false and misleading statements, aside from the fraud with which it begins.
49. Quoted in italics for clarity, I’ll deal with paragraphs 6.1 to 6.7 of her letter seriatim.
50. ‘6.1 *A defined number of Senior Litigator positions were created linking to particular High Courts.*’ Indeed so. This took place within a few months of a question posed to you on 30 May 2007 at a meeting of the Parliamentary Safety and Security Select Committee, at which ‘Dr van Heerden asked if the LAB appointed senior litigators’. This was in view of ‘a complaint’ conveyed by Mr Moseki about ‘service delivery to the effect that LAB lawyers were inexperienced’, and ‘the issue,’ as Mr Mzizi put it, ‘of lawyers being seen as apprentice lawyers’. There’d obviously been prior discussion of this concern in committee.
51. You replied that ‘The LAB was aware of the constant criticism that they employed inexperienced lawyers to do the work.’ And you ‘reported that candidate attorneys made up 45% of the total component of the LAB staff’.
52. ‘Mr Shiceka also insisted that LAB needed to push the issue of salaries. There was a perception being created that the best lawyers would leave government and that the private sector was better. Mr Shiceka was of the opinion the LAB

must be involved in a campaign of changing the perception of their profession and said that it was necessary to obtain a view independent from the government.’ You confirmed this real problem of the ‘migration of lawyers to magistrate’s offices’ for better salaries and career prospects.

53. Vedalankar attended the meeting with you and addressed it too. (j.mp/9eK6rd)

54. It’s noteworthy that as recently as the 3rd of this month, at a meeting of the Portfolio Committee on Justice and Constitutional Development for briefings inter alia by LASA on ‘Delays impacting on Remand Detention population’, ‘The Chairperson remarked that public perceptions of Legal Aid SA were important. It was perceived as being embedded in government. He asked how it was marketed as an entity that could render fair assistance. Mr Hundermark replied that all practitioners were members of law societies. If service rendered was inferior, or people were being forced to plead guilty or if there was collusion with the state, they could be struck from the roll. He conceded that there were still remnants of the perception that one had to plead guilty.’ (j.mp/hC2UpE)

55. This is to say, negative public ‘perceptions’ still endure that LASA delivers second rate legal services, and since Parliament considers it ‘important’ to address and clear these it is concerned that LASA should ‘market’ itself as an ‘entity’ offering top-deck legal expertise, particularly in the courts.

56. On her return from the May 2007 meeting, and undoubtedly after discussion with you, Vedalankar moved decisively to address these perceptions, quell these criticisms, and surmount these shortcomings. Even though the ‘Summary of the minutes’ recorded her (or your) complaint that LASA’s ‘total budget of R5674 million [sic: R574 m.] was inadequate’, and even though no provision had been made in its budget for that year for the substantial new operating cost, nine new Senior Litigator posts were created shortly afterwards and advertised just a few months later in September. The intention was that seasoned lawyers with advanced expertise and experience would ‘do the work’

in the upper courts, where such advanced expertise and experience are required.

57. Presumably this major initiative, with its substantial strategic, business, human resources and budgetary implications was carried out under the provisions of Section 1.1 of the Approval Framework\*, and was accordingly originated by Vedalankar as CEO, with the whole Management Executive Committee and all Board Committees consulted, and the Board of Directors finally approving it. (\*Bundle, pages 105–7) And not just by Vedalankar and Nair acting on their own. (Cf. Bundle, page 103, paragraphs 6.6 and 6.7)
58. LASA had considerable trouble finding a suitably qualified Senior Litigator for Pietermaritzburg, however, (for other centres too) and had to advertise and readvertise in search of suitable applicants at least four times to my knowledge before finding me more than two years later.
59. Vedalankar explained the reason for this difficulty in an interview by the Legal Resources Centre, conducted on 10 November 2009, two days before mine. Asked, ‘What is the biggest obstacle that human right lawyers face today ...?’, she replied, ‘To attract and retain lawyers committed to human rights litigation ... Legal Aid cannot match the remuneration packages and working environments offered by the corporate law firms.’ (Bundle, page 16, paragraph 6) This is to say, most skilled and experienced lawyers aren’t attracted by the salaries LASA offers, other than those very few lawyers driven by a public service ethos rather than the usual commercial one.
60. It’s remarkable that on 12 October, during the discussion following LASA’s presentation of its Annual and First Quarter Reports to the Portfolio Committee on Justice and Constitutional Development, Nair diametrically contradicted Vedalankar’s manifestly truthful statement, on both scores, thereby misleading and misinforming the Committee, in claiming falsely that ‘LASA had no problems with regards to recruiting lawyers and the salary levels were an indication of this’. (j.mp/aXPna7)

61. *‘6.2 Noting the seniority of these positions, it was decided to implement a two stage interview process in the appointment to these posts.’* This is exactly what I understood from the beginning, and it was confirmed to me by both KwaZulu-Natal RHRM Baboo Brijlal and national HRE Amanda Clark, and recorded in my correspondence. (Bundle, page 5, paragraph 21 and page 6, paragraph 28)
62. *‘6.3 The first stage takes place at Regional Office level where an interview Panel will make a recommendation for candidates to proceed to the second stage of interviews.’* This statement is a farrago of truth, half-truth and untruth. In the first instance, apart from Brijlal, who kept the minutes and put a few formal questions, the professional selection board was constituted of six senior legal professionals, all advocates and attorneys, whose delegated function was to screen all the applicants, shortlist the pick of them, interview them, interrogate their legal experience and expertise, assess and debate it, and make a selection and recommendation of the single best candidate – not ‘candidates’ plural – for appointment to the position, subject to your approval following a second interview by you.
63. This was the procedure followed in the case of LASA attorney Ashok Kaloo several months before me – selected and recommended for appointment to the Pietermaritzburg Senior Legal Litigator post but disapproved by you following his second interview.
64. There were only four candidates shortlisted for the two Senior Litigator positions at Pietermaritzburg and at Durban respectively. I was selected and recommended for the Pietermaritzburg post as the best candidate, and no one else. This is because the regional professional selection board’s job was precisely to select and recommend a particular candidate for appointment from among the several candidates it had shortlisted and interviewed.
65. In both Kaloo’s case and later on mine, the professional selection board made a specific single selection and recommendation for the Pietermaritzburg Senior Litigator position accordingly. Cape Town’s Senior Litigator was likewise the

single candidate selected and recommended by the regional selection board which interviewed and assessed her; there were no ‘candidates’, plural, for confirmation at a second interview (on the same day as Kaloo’s), and no other ‘candidates’ went up for a second interview.

66. The KZN professional selection board did not recommend several ‘candidates’ for appointment as Pietermaritzburg Senior Litigator, as sub-paragraph 6.3 falsely implies, it selected and recommended me as the best candidate alone. This deplorable misrepresentation of the true facts is a repetition of Clark’s false claim to me on 30 April. (Bundle, page 6, paragraph 28)
67. One is struck by the persistent, determined straining to distract from the grating fact that at the conclusion of my interview I was selected and recommended for appointment.
68. *‘6.4 The second stage comprises an interview process by a national office panel, including the Chairperson of the Board, National Operations Executive (NOE), Legal Development Executive, Human Resources Executive and Chief Operations Officer. This panel does not have to recommend for appointment any of the recommended candidates from the first phase interviews conducted by the region.’* Although Brijlal informed me that the regional professional selection board’s selection was subject to your approval following ‘a final interview by the chairman, a Judge of Appeal [sic]\*’, I’ve since heard from Kaloo that he and the applicant selected for the Senior Litigator position in Cape Town were interviewed by a triumvirate of you, Nair and Clark – and no one else, not the CEO, COO, and LDE as well. (\*Bundle, page 5, paragraph 21) This is to say, their second interview was not conducted in the manner Vedalankar claims is prescribed – opening another can of worms.
69. From the outset I’ve been aware that my selection and recommendation by the professional selection board was subject to your approval at a second interview, and I was content to abide myself by this – even as I pulled up sticks in January, painfully separated from my sons, and relocated from Cape Town to Pietermaritzburg in optimistic anticipation (having been asked at the

interview, ‘If appointed, when can you begin?’), passing up not one but two other professional offers made to me after I arrived so as to remain available. But since no second interview was held, because it was blocked, Vedalankar’s detailing of the approval process in this paragraph in the context is more than irrelevant, it’s misleading.

70. Likewise: ‘6.5 *The recommendation of the second stage of interviews are [sic] finalised by the responsible executive in terms of section 8.2.2 (b) of the Legal Aid SA Approval Framework. As per this Approval Framework, the relevant Regional Operations Executive (ROE), in the case of the Durban and Pietermaritzburg positions the ROE for KwaZulu-Natal together with the NOE and CEO approve the final appointment. The Approval Framework is approved by the Board of Legal Aid SA from time to time, and was last approved on 27 February 2010. The relevant extract of the approval framework is hereby made available and attached for ease of reference.*’ The pitifully inarticulate and muddled contradictions herein aside, all this is immaterial given that the recruitment process was aborted after my selection and never reached the second interview and final approval stage alleged here.

71. ‘The relevant extract of the approval framework ... made available’ contradicts and exposes the lie in Nair’s claim to me in his letter of 3 August that ‘the person responsible for the final approval of the Senior Litigator appointments in our organization would be the line function executive, which in this case is myself’. (Bundle, page 19 and pages 22–23, paragraphs 10–16 ) The lies just pile up.

72. ‘6.6 *The NOE, as the executive responsible for operations may also motivate a change in the organisational structure, including the freezing of positions, for discussion and finalisation with the CEO (refer S.8.1.2 (b) of the Legal Aid SA Approval Framework).*’ In this subparagraph Vedalankar (significantly referred in the third person as ‘the CEO’, further suggesting she’s not the real author of the letter) (a) quotes an inapplicable and irrelevant section of the Approval Framework; (b) anyway misrepresents its empowering provisions; and (c) deceptively implies that, even

had it been applicable, the section of the Approval Framework cited was duly complied with.

73. In providing for the ‘Establishment of new positions, regrading existing positions and abolition of posts’, section 8.1.2 (b) of the Approval Framework manifestly refers to individual posts. It could hardly have been contemplated that Vedalankar and Nair should have the power, on their own, to establish or abolish any number of posts, be it one or one hundred.
74. Any radical restructuring exercise affecting LASA’s ‘Strategy Plan’ (or at least its ‘Business Plan’), in which 30% (3/10) of LASA’s Senior Litigator posts are ‘frozen’, including both in KwaZulu-Natal – in a marked deviation from a strategic resolution taken at the highest level in 2007 in response to concerns expressed by Parliament to equip all Justice Centres at seats of the High Court with Senior Litigators to render a variety of critical professional and mentoring services – would plainly be governed, not by section 8 of the Approval Framework for ‘HR MATTERS’, but by section 1 of the Approval Framework for ‘STRATEGY AND PLANNING’.
75. Section 1 requires that (a) the Board of Directors and all Board committees be consulted before such a decision is made, and (b) that the entire Management Executive Committee approve it.
76. It follows that Vedalankar and Nair had no power in terms of the Approval Framework to ‘freeze’ the Senior Litigator positions, and acted unlawfully.
77. If I’m wrong about this and section 8.1.2 (b) indeed rules, and Vedalankar and Nair do have the power on their own to effect the ‘Establishment ..., regrading..., and abolition’ of Senior Litigator and equivalent level posts, and, they say, ‘freeze’ them too, be it one such senior post or one hundred such senior posts, Vedalankar omits to mention that section 8.1.2 (b) peremptorily requires consultation with the HRE before any such drastic action is carried out. And there wasn’t any.

78. A full five months after my interview and selection, and after my recruitment had very obviously already been ‘put on hold’ (Nair’s expression) or ‘frozen’ (Vedalankar’s), I telephoned HRE Clark on 14 April to find out what was going on. She told me she’d never heard of me, didn’t know about my pending recruitment for the position in question, and wasn’t yet involved in it. Hence the need to have ‘looked into the matter’ after my call. (Bundle, page 5, paragraphs 19–20)
79. It remains to be discovered who Clark asked when she ‘looked into the matter’, and who briefed her to ‘confirm it is still in progress and has not been concluded’, leading her to assure me, ‘I will endeavour to expedite the process in which I am not directly involved at this stage’, because I’ve recently discovered that Vedalankar and Nair were both with you in Cape Town on that day briefing the Justice and Constitutional Development Portfolio Committee on LASA’s Strategic Plan. ([j.mp/fFjVZ3](http://j.mp/fFjVZ3)) In my letter to Makokoane I’d (probably) incorrectly surmised Clark ‘likely’ spoke to Nair. (Bundle, page 25, paragraphs 23–25) Although a Blackberry email exchange during the briefing session, or a phone call before it began, is not precluded.
80. Clearly Clark was not consulted before the decision was taken to ‘put on hold’ or ‘freeze’ the Pietermaritzburg position for which I’d been selected and recommended, and the twin Durban post too.
81. It remains to be discovered whether COO Makokoane formally agreed to the freezing of the Senior Litigator posts, as section 8.1.2 (b), if indeed applicable, requires. Since he’s not mentioned in paragraph 6.6 of Vedalankar’s letter, one presumes not.
82. It follows therefore that even on Vedalankar’s version of the applicable section of the Approval Framework, she and Nair failed to comply with its provisions, and thus acted beyond their powers and unlawfully.
83. If my successful application had indeed been ‘put on hold’ for genuine financial reasons that were evident from ‘early this year’, Clark wouldn’t have

told me on 14 April that the ‘process’ to finalize it and appoint me was still on the go and that I could expect it to be concluded ‘soon’.

84. Nor would the Mthatha Senior Litigator post have been advertised two days before my call to Clark, on 12 April (application cut-off date 7 May), with shortlisted applicants interviewed several weeks later in July. (Interviews for the Pietermaritzburg and Durban Senior Litigator posts took place about two months after the advertised closing date for applications, so I presume there was a similar interval in respect of the Mthatha post. And I established from a call to the Mthatha Justice Centre earlier this month that interviews were indeed conducted.)
85. It’s also evident from what Clark wrote to me on 14 April that as at that date she hadn’t been party to any Management Executive Committee discussion of budgetary constraints requiring ‘staff reduction’ affecting her critical senior staff component.
86. Even when Clark unpleasantly wrote to me again on 30 April, two weeks later, there was still no mention, no suggestion even, that vacant Senior Litigator posts had been ‘put on hold’ or were going to be ‘frozen’ for any reason at all. (Bundle, page 5–8, paragraphs 23–36) To the contrary, after five months of silence, Clark said nonchalantly, ‘I think you should allow us to complete our process at the pace we have decided.’ (Bundle, page 7, paragraph 33)
87. Inconsistent with Vedalankar’s allegation – ‘since early this year, management has had to identify positions which could be frozen’ – Clark evidently knew nothing about any alleged process to reduce her staff budget and establishment, notwithstanding her attendance at regular Management Executive Committee meetings with Vedalankar, Nair and other MEC members. She hadn’t even heard any corridor talk or rumour that Nair was (allegedly) engaged in a lengthy investigation to determine which of her vacant staff posts could be frozen, including critical senior professional posts.

88. Not once had the subject of ‘freezing’ Senior Litigator posts come up for discussion at Management Executive Committee meetings before the end of April, or Clark would undoubtedly have responded differently to my telephone call, and then to my email about a week and a half later, when I tried reaching her again repeatedly over several days but she was avoiding and not returning my calls. (Bundle, pages 5–7, paragraphs 19–20 and 22–36)
89. Instead, after taking a week to think about what to tell me, how best to put me off, Clark replied that my application was still in the works, and would be finalized whenever she and her fellow executives felt like getting around to it. This time, unlike the last, she pointedly discouraged me from making further enquiries for information as to the state of play. And indeed I got none until I wrote to Vedalankar two and a half months later on 12 July and Nair replied on 3 August, nearly nine months after I was interviewed and selected and recommended, announcing his decision to abort my successful application. (Bundle, pages 5–7, paragraph 23–34 and page 19)
90. It’s evident therefore that by 30 April Clark had learned that the process for finalising my approval and appointment had practically been ‘frozen’ (‘put on hold’ in Nair’s language); but having been ‘frozen’ illegally on illegal political (or racial) grounds, she didn’t want to tell me it had been ‘frozen’, let alone that it had been ‘frozen’ illegally in a violation of my constitutionally protected civil rights.
91. Nor was the alleged ‘freezing of posts’, of vacant Senior Litigator posts, general and across the board: as mentioned above, on 12 April, five months after the particular post I’d been selected for had very obviously been ‘frozen’, inasmuch as my successful application for it had been dropped to die in the bottom drawer, ‘management’ was advertising a Senior Litigator post for the Mthatha Justice Centre. (Bundle, page 31, paragraph 32)
92. Clearly then, ‘early this year’ vacant Senior Litigator positions were not among the contemplated ‘positions which could be frozen’, which ‘management had

to identify’, as alleged in Vedalankar’s letter, or ‘management’ wouldn’t have advertised to recruit a Senior Litigator for Mthatha as late as April and proceeded with interviews for it in July.

93. It remains to be discovered when the ‘Establishment of [this] new [single] position’ at the Mthatha Justice Centre, per section 8.1.2 (b) of the Approval Framework, was effected – before or after the announcement of the national Budget allocations on 17 February. But whatever the case, the Budget announcement made no difference to the situation: in full knowledge of LASA’s budgetary allocation and available financial resources for 2010/11, the Management Executive Committee advertised for a Senior Litigator for Mthatha in April, offering R60 000 more a year than the advertised salaries for the Pietermaritzburg and Durban posts. (Bundle, pages 45 and 46) And after the applicants were screened and shortlisted, interviews were conducted in July, with a candidate selected and recommended for appointment.
94. Which also means that well into the ‘recession’ (see below) there’s sufficient ‘funding’ for a further Senior Litigator post (for higher pay), possibly not even part of the original budgeted staff establishment, depending on when the post was created and established.
95. *‘6.7 Due to the effects of the recession, anticipated funding for the 2010/11 financial year did not materialise. This had the effect of cutting our baseline funding by a significant amount. It was accepted that this required a reduction to our staff establishment in the 2010/11 financial year in order to meet this shortfall. Since early this year, management has had to identify positions which could be frozen. In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be immediately frozen.’*
96. Vedalankar’s claims are contradicted by the figures in the First Quarter Report 2010/11 presented to the Portfolio Committee of the Justice Department on 12 October, six days before her letter to me:

97. On page 23 of this April to June 2010 report, total budgeted establishment posts are shown increasing by 82 posts to a total of 2595. The number of staff recruited is shown increasing by 82 people to a total of 2434.
98. No less than seventeen additional Principal Attorneys and Professional Assistants were employed, i.e. admitted attorneys paid professional salaries not that much below those of Senior Litigators. (This increased the total number of LASA attorneys to 798, still 3% below the 96% incumbency target of 854.)
99. Eleven further Legal Supervisory managers were employed (raising their total to 263).
100. Forty-Nine more Candidate Attorneys were articulated (raising their total to 618).
101. As a government BuaNews report of the meeting summed up, ‘The organisation was also on track to achieve its objectives for the period under review by completing the expansion of its national footprint. This included the establishment of six new Justice Centres and 27 satellite offices in the past three years, as well as the launch of a client call centre in June 2010. ... CEO of Legal Aid South Africa, Vidhu Vedalankar, said key programmes had been implemented and delivery increased during the year.’ ([j.mp/aplNMF](http://j.mp/aplNMF)) The minutes of the meeting record Nair’s assertion to the Committee that ‘LASA had no problems with regards to recruiting lawyers ... and LASA would definitely expand from where it was right now.’ ([j.mp/aXPna7](http://j.mp/aXPna7)).
102. Nothing ‘frozen’; on the contrary, operations expanding tremendously, lots of new posts and lots of new staff hired to fill them.
103. The official news report has it that you ‘told the committee that one of the challenges Legal Aid South Africa faced was its limited response to civil matters because of financial constraints’. Vedalankar didn’t intervene to inform the Committee that she had ‘frozen’ three critical Senior Litigator posts a couple of months earlier, posts duly budgeted for, thus greatly inhibiting

LASA's ability to render professional services in 'civil matters' in the upper courts, particularly in KwaZulu-Natal.

104. It's not alleged in LASA's report to the Portfolio Committee, as it was alleged to me, that LASA had run into a funding emergency 'early this year' requiring 'management ... to identify positions which could be frozen' and that 'In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would immediately be frozen.' On the contrary, the Portfolio Committee was told how 'management' was hiring plenty of new staff, including qualified attorneys, at an impressive rate.
105. This reassuring information to the Portfolio Committee may have been spurred by the Committee's concern, expressed at its meeting on 4 May to discuss national Budget Vote 23, about the high vacancy rate in the Justice Department and public bodies subject to its oversight:
106. The report of this 4 May meeting recorded in paragraph 7.4 on page 13: 'The Department has acknowledged that a high vacancy rate remains a challenge. This is an ongoing problem, of which the Committee is well aware. It has several times previously expressed its concern about the negative consequences that vacancies can have for the delivery of justice services. Also, the committee believes that although the use of savings from vacant posts to fund other projects (such as the implementation of the OSD) may be understandable, the practice is potentially risky as it may discourage the filling of posts. While the Committee welcomes the Department's aim to reduce the number of vacant posts from the present 14% to 5% in the next two years, it believes that this is a formidable task. It seems to the Committee that the Department is struggling to fill its vacancies. The Department reported in its 2008/09 Annual Report that its vacancy rate was at 13.6%. The Department's aim to reduce this to 5% in the next two years indicates that there has been no progress in the meantime. The Committee recommends that all critical posts be filled as soon

as possible, especially given the fact that the Department has the budget for the posts. It intends to continue to monitor progress closely.’ (j.mp/9mG5pZ)

107. And indeed ‘the Department has the budget for the posts’ including and especially for such ‘critical posts’ as Senior Litigator posts, because these positions were budgeted for in terms of Section 53 (1) of PFMA, which requires: ‘The accounting authority for a public entity listed in Schedule 3 must submit to the executive authority responsible for that public entity at least six months before the start of the financial year or another period agreed to between the executive authority and the public entity, a budget of estimated revenue and expenditure for that year, for approval by the executive authority.’
108. The 17 February Budget for the Department of Justice was based on LASA’s estimates, and obviously included provision for salaries for Senior Litigators at Pietermaritzburg and Durban, and presumably Mthatha too. Or these posts wouldn’t have been advertised, and the applicants shortlisted wouldn’t have been interviewed, and the best selected and recommended.
109. In fact the Pietermaritzburg and Durban Senior Litigator posts had long been budgeted for. Following concern expressed in 2007 by the Parliamentary Safety and Security Select Committee, quoted above, about the perceived low quality of legal services LASA was offering the public arising from the inexperience of most of its lawyers ‘doing the work’, and the need to appoint Senior Litigators accordingly, an advertisement was placed in Legal Brief in October 2007 seeking nine Senior Litigators for all seats of the High Court besides Mthatha. The Pietermaritzburg and Durban posts were readvertised in late 2008 (attracting attorney Kaloo for Pietermaritzburg). The two posts, as well as Kimberley’s, were readvertised again in June 2009, and the Pietermaritzburg and Durban posts yet again in September 2009.
110. These nine Senior Litigator positions, including Pietermaritzburg and Durban, had therefore been fully budgeted for in the annual estimates up to

2009/10 presented to the Department of Justice before the 2010/11 national budget allocations of 17 February.

111. According to LASA's First Quarter Report, 2434 posts were filled out of a staff establishment of 2595 – a 93.7% occupancy, and a vacancy rate of 6.3%, which is lower than the Department of Justice's but still below its 5% target.
112. The main point voiced at the 4 May meeting in this regard was that 'the Committee ... has several times previously expressed its concern about the negative consequences that vacancies can have for the delivery of justice services. ... The Committee recommends that all critical posts be filled as soon as possible, especially given the fact that the Department has the budget for the posts.'
113. Vedalankar and Nair's alleged decision that 'we will not be proceeding with the filling of any of these posts'\* flies in the face of Parliament's repeatedly expressed concerns that 'all critical posts be filled as soon as possible' in view of 'the negative consequences that vacancies can have for the delivery of justice services'. (\*Bundle, page 19)
114. Despite the classification of Senior Litigators as critically necessary professional personnel, Vedalankar and Nair claim to have decided sometime in July, no doubt after my letter arrived, to have 'immediately frozen' the Pietermaritzburg post for which I'd been selected and recommended, and the Durban and Mthatha posts too.
115. At the 12 October presentation of LASA's 09/10 annual report and 10/11 First Quarter report to the Portfolio Committee, the top four management executives Vedalankar, Makokoane, Nair, and Hlabatau assured the Committee that LASA was increasing the number of its in-house lawyers, had no difficulty in recruiting them, and was expanding its coverage in both criminal and civil matters with increasing emphasis on the quality of legal services provided.
116. This assurance was given to the Committee in full knowledge that 'management' had purported to 'freeze' three critical Senior Litigator posts in

July in possibly the two poorest provinces, two of which posts had remained vacant for over two years. (CFO Hlabatau was also in the know, having been copied in when I wrote to Makokoane (Bundle, page 42))

117. Not only did these four management executives fail to report this important information to the Parliamentary Portfolio Committee, they also failed to report this major violation of, and failure to implement, LASA's strategic policy to the Board of Directors, four of whose members, yourself included, were also present at the 12 October briefing.
118. LASA's 'Strategic Plan 2009-12' submitted to the Minister of Justice and Constitutional Development in September 2009, two months before my interview, and furnished in updated form\* to the Portfolio Committee on Justice and Constitutional Development on 14 April records LASA's strategic policy under 'Programme P23: Review legal staffing/business models', inter alia to 'recruit specialist skills', and under 'Programme P24: Increased people capacity to deliver', 'Recruitment and retention of competent staff ... increased capacity of LAB ie more legal specialists ... capacitate civil unit ie more staff and more supervision'. (\*j.mp/fFjVZ3)
119. Vedalankar, Nair, and the two other executives failed to report to the Portfolio Committee that three Senior Litigator candidates selected and recommended by professional selection boards were prevented from assuming their key post occupations by Vedalankar's and Nair's unlawful decisions taken ultra vires without consulting the full Management Executive Committee, the Board of Directors, or the Department of Justice. This behaviour was a grave breach of their fiduciary responsibilities and the trust invested in them by the authorities to whom they are accountable.
120. According to the Vote 23 Estimates of National Expenditure for 2010/11 contained in the Budget of 17 February, LASA was allocated R991.9 m. in grant funding, an increase of 8% on 2009/10, which, added to the R16 m. in interest revenue, covered expenditure of R725.8 m. for employees costs, an

increase of 9.3% on 2009/10; R261.7 m. for goods and services; and R20.4 m. for depreciation. (j.mp/eLcRks)

121. According to page 3 of LASA's 2010/11 budget presented to the Portfolio Committee on 14 April, the grant received had increased to R1045.7 m., resulting from new funding of R40 m. plus an additional allocation of R13.6 m. for the carry through costs of employee compensation in terms of salary agreements and the appointment of additional public defenders, as recorded on page 477 of Vote 23.
122. According to page 4 of the 2010/11 budget presented on 14 April the total budget was R1083.7 m., an amount R38 m. higher than the grant at that date. This budget covered expenditure of R740.2 m. for salaries and related costs; R25 m. for case backlog; R90.7 m. for direct expenditure; R207.5 m. for operating expenditure; and R20.2 m. for capital expenditure.
123. On page 9 of the budget report it is recorded that OSD Phase 1 funding of R23.8 m. for 2010/11 had not yet been allocated. In addition to this assured funding there was budgeted interest income of R16 m., making a total of R39.8 m. accrued revenue to meet the estimated shortfall of R38 m. at 14 April.
124. According to page 13 of the First Quarter Report dated September presented to the Portfolio Committee on 12 October, the total grant had increased to R1069.9 m. as a result of the transfer of the outstanding OSD Phase 1 funding.
125. The total 2010/11 budget, as reported on page 14, had risen to R1167 m., an increase of R83.3 m. over the budget reported on 14 April. This total covered expenditure of R740.5 m. for salaries and related costs; R25 m. for case backlog; R174.1 m. for direct expenditure; R207.1 m. for operating expenditure; and R20.2 m. for capital expenditure.
126. All of the R83.3 m. increase in the budget in the six months from April to October had resulted from the increase in direct expenditure. The budget estimates for salaries had remained exactly the same.

127. The total employees costs (staff salaries) budget presented by ‘management’ on 14 April – three months before they allegedly decided to ‘freeze’ three Senior Litigator posts – was precisely the same as the employees costs budget presented on 12 October by the leading members of the Management Executive Committee, seated before the Portfolio Committee and members of the Board of Directors.
128. One understands why the Management Executive Committee members present didn’t disclose Vedalankar’s and Nair’s decision to ‘freeze’ three critical Senior Litigator posts. It had nothing to do with achieving a saving to meet a ‘significant ... shortfall’ in ‘baseline funding’ which ‘did not materialise’ as ‘anticipated’ in ‘the 2010/11 financial year’. Obviously.
129. According to page 16 of the First Quarter Report presented on 12 October the total 2010/11 budget for compensation of employees was R759.9 m. including provision for case backlog. The total allocated and transferred by the Department of Justice was the original Vote 23 estimate of R725.8 m., plus R13.6 m. for carry through costs, plus R23.8 m. for OSD Phase 1 funding, making a total of R763.2 m. which was R3.3 m. more than the budget presented on 12 October.
130. There was no shortfall in funding for the employees costs budget. There was a shortfall in funding for direct expenditure, which had been underestimated by R83.3 m. in the budget presented on 14 April.
131. The Management Executive Committee members expressed no concern about this shortfall in funding for direct expenditure during their report to the Portfolio Committee on 12 October. They reported an increase in the grant of 21%.
132. By the end of June the government had committed to a clear timetable to provide outstanding OSD Phase 2 funding, and the Minister of Finance had given an assurance that money was available for it. Vedalankar and Nair claim to have ‘frozen’ three critical senior legal posts without waiting for the

outcome of the negotiations and without informing the LASA Board, the Portfolio Committee or the Executive Authority that they had done so in contravention of the formally presented Strategic Plan.

133. By 14 April baseline funding had increased from R895 m. in 2009/10 to R1020.7 m. in 2010/11, a 14% increase considerably above the current inflation rate. This was before the transfer of OSD Phase 1 and 2 funding raised the increase to 21%. The salaries budget had likewise increased by 14% from R664 m. in 2009/10 to R759.9 m. in 2010/11. Contrary to Vedalankar's allegation in her annual report of 19 August these allocations don't disclose any 'cut... our baseline funding', either in 'a significant amount' or at all, nor do they disclose any 'cutting' of financial provision for employee remuneration.
134. According to page 8 of the 14 April budget and page 15 of the 12 October budget, the salaries budget for 2010/11 was calculated to have increased by 19% over the previous year. 6% of this was attributed to cost of living increase, 3% to performance progression increase, 1% to the new Legal Aid Advice Line, 5% to OSD Phase 2, and 3% to a recruitment rate increase which is not explained. By 14 April it was known that consumer price inflation had decreased below 4%. It was expected that the Department would fund the Advice Line and provide the projected OSD Phase 2 funding of R30 m. which the Department and the Committee had discussed at their meeting of 4 May.
135. According to the estimates in Vote 23 on page 477, expenditure on employee remuneration 'is set to increase as a proportion of total expenditure, mainly due to LASA's strategy to reduce the outsourcing of legal representation [i.e. to reduce the briefing of expensive senior-junior and senior advocates in private practice]. This is expected to be achieved by appointing more staff and implementing the special occupational specific dispensation for legally qualified professionals.' Which is to say, by attracting and hiring highly and widely experienced senior trial lawyers like me to conduct litigation in-house.
- (j.mp/eLcRks)

136. Indeed, according to the Finance Minister's 'Medium Term Budget Policy Statement' presented on 27 October, LASA will receive millions in extra OSD funding for 2010/11. ([j.mp/bt1jR1](http://j.mp/bt1jR1), page 23)
137. Under the heading 'Administration', which includes LASA, Table 23B on page 478 of Vote 23 shows the number of Level 13 to 16 personnel posts filled/planned for on funded establishment rising from 62 posts in 2009/10 to 77 in 2010/11 – a 24% increase.
138. As mentioned above, the Portfolio Committee on Justice and Constitutional Development met to consider Budget Vote 23 on 4 May, three weeks prior to Parliament's vote on the 26th to approve it. The Committee's report of the meeting noted that 'The Committee held separate briefings for the National Prosecuting Authority and Legal Aid South Africa on their respective strategic plans and budgets for 2010/11' – LASA's being held on 14 April.
139. Section 5 on page 9 of the Committee's report records that you and Vedalankar 'gave details of LASA's Strategic Plan 2009–12. LASA aims to provide quality, professional legal services to ensure effective access to justice for the poor and vulnerable. ... LASA identified the negative growth of the overall budget as a challenge. Additional challenges include the need to ensure that there is one practitioner per court, especially at busy Regional courts, and the potential cost to LASA of complying with court orders that have directed that it provide legal aid in certain matters to defendants who have means.' And that was it.
140. It was not alleged to the Committee, as it was alleged to me, that 'the negative growth of the overall budget' 'required a reduction to our staff establishment in the 2010/11 financial year to meet this shortfall' and that this included 'a reduction to our staff establishment', even at the critical Senior Litigator level, but strangely to no other part of the 'staff establishment', just the Senior Litigator part of it, and in respect of vacant Senior Litigator positions that had been repeatedly advertised, in the case of Pietermaritzburg and Durban, and

for whom suitably qualified and experienced applicants had been shortlisted, interviewed, selected and recommended, or in the case of the Mthatha applicant was about to be. (Nair makes clear in his letter that selections and recommendations were made not only for the Pietermaritzburg Senior Litigator position, but for the Durban and Mthatha posts too: he speaks of ‘the recruitment process to finalise the appointments for all vacant senior litigator posts’. (Bundle, page 19))

141. In fact, even as Vedalankar alleged to me that ‘It was accepted that this required a reduction to our staff establishment in the 2010/11 financial year to meet this shortfall’ overall budgeted staff establishment was increased by 3.2% in the first quarter of 2010/11, including the hiring of many admitted attorneys.
142. On Vedalankar’s version of events stated in her letter, despite having only three other vacancies among the 98 critical staff (namely for JCEs, which vacancies, being critical, were therefore filled by acting JCEs), she and Nair needed five long months from the date of the Budget announcement to ponder and to finally decide that the vacant Senior Litigator posts should ‘immediately [be] frozen’ – all three of which had been part of the original budgeted and funded national establishment of Senior Litigators categorized by LASA as a critical occupation. All this is unexplained and inexplicable.
143. The report records that 99.5% of the 2009/10 budget was spent, which means R4.5 m. of the budget remained unspent.
144. The annual cost of three Senior Litigators amounts to R1.8 m. (~R600 000 p.a. x 3).
145. So there was no reason before the 17 February Budget announcement to have ‘put’ the Pietermaritzburg and Durban Senior Litigator posts ‘on hold’, because three combined Senior Litigator salaries represent well under half of the R4.5 m. that ‘management’ underspent in 2009/10 and had lying around spare.

146. R1.8 m. is a miniscule 0.24% of total employee expenditure of R740 m. in 2010/11.
147. The combined salaries of three Senior Litigators is thus a negligible amount relative to budget; and reducing LASA's wage bill by the one quarter of a percent that these salaries represent would hardly resolve a genuine 'funding ... shortfall ... cutting our baseline funding by a significant amount'.
148. Yet Vedalankar alleges that 'Since early this year, management has had to identify positions which could be frozen. In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would immediately be frozen.' She mentions no others. Which is to say, after prolonged deliberation she decided to resolve her alleged budgetary problems by 'freezing' these three posts, these three critical posts, saving a paltry R1.8 m. a year relative to a budget of R740 m. for salaries alone – an insignificant drop in the ocean.
149. And it's not as if not hiring Senior Litigators saved LASA the sum of their salaries, because Justice Centres lacking such senior in-house lawyers are bound to brief senior-junior and senior advocates in private practice, and this substantially reduces the already picayune salary saving in real terms.
150. What's more, Vedalankar's and Nair's decision to put three major Justice Centres to the cost of briefing private advocates, for want of in-house counsel, contradicts LASA's declared strategy to reduce the outsourcing of legal representation. (j.mp/eLcRks, page 477 of Vote 23)
151. I know the Pietermaritzburg Justice Centre's attorneys, and without meaning to offend I can absolutely confirm without fear of contradiction that with the level of expertise currently at the Centre's disposal it does not have the capacity to conduct any major litigation in-house.
152. Depriving Justice Centres of the professional advisory and training capacity that Senior Litigators are intended to provide their junior lawyers impoverishes

them inestimably and has a corresponding negative impact on the quality of legal services rendered to the poor:

153. The advertisement for the Pietermaritzburg and Durban Senior Litigator positions specifically envisaged that Senior Litigators would ‘Assist with in-house legal training sessions as identified/agreed by the ROE or LDE’ and ‘Develop the litigation expertise within the LAB by providing individual mentoring and coaching to legal staff as identified by ROE, involving other LAB practitioners to assist in legal matters and other means.’ (Bundle, page 45) The 2009/10 Annual Report similarly contemplates that Senior Litigators will ‘provide support for practitioners in more complex matters’. (Report, page 34)

154. Vedalankar’s and Nair’s decision to deprive Justice Centres in the poorest provinces of Senior Litigators also violates the Batho Pele Principles, which require the ‘alignment of staffing plans, human resources development processes and organisational capacity building with the needs of citizens’\* – ‘needs of citizens’ the Management Executive Committee itself recognized when creating Senior Litigator positions in 2007 and persistently sought to fill, until my name came up, when suddenly, ‘immediately’, three years later, ‘we will not be proceeding with the filling of any of these posts’. And only when I approached Vedalankar directly for information, following eight months of silence after I was selected and recommended for appointment.

(\*j.mp/fTyfeD)

155. In her CEO report dated 19 August at the start of LASA’s Annual Report 2009/10, Vedalankar mentioned, ‘Our strategic shift also incorporated changes to our support platform to support the delivery of quality legal services. ... our priority continued to be increasing access to quality legal aid services. ... The revised civil legal aid strategy mentioned above will to a certain extent increase capacity to assist clients in civil legal aid matters.’ (Report, pages 10–11)

156. She remarked that ‘The impact of the recession is significant for us, with no new government grants, cuts in our budget in real terms and an actual budget

cut in the MTEF 2010-2013 cycle period.’ Consequently, she stated, ‘The major challenge will be minimizing the cutting back of our services in response to the cuts in funding. Reduced funding will result in an increased workload for our staff and inevitably a reduced service to our clients.’

157. There is no mention in her CEO report of the need to have ‘frozen’ three critical Senior Litigator posts just one month earlier.
158. In her letter to me of 18 October, pleading poverty, Vedalankar didn’t tell me that earlier in the month LASA had just received a large 14% increase to its baseline funding, plus a firm commitment of further OSD funding.
159. As for the ‘impact’ of the overdue provision by the government of further OSD funding on LASA’s operations, Vedalankar identified the extent of this ‘impact’ in her CEO report: ‘The non-implementation of Phase 2 of the Occupation Specific Dispensation for our legal professionals due to lack of funds continues to impact negatively on staff morale.’ Long faces, and nothing more. (Report, page 12)
160. Vedalankar’s letter implies that LASA’s ‘anticipated funding for the 2010/11 financial year’ was R1.8 m. short of what LASA was actually allocated, and that the cost saving achieved by ‘freezing’ three Senior Litigator posts enabled LASA to stay in budget. It’s a patently ridiculous proposition.
161. All these facts and figures contradict the allegation that the post I was selected and recommended for was ‘frozen’ (along with two similar others) in order for LASA to operate within budget.
162. It’s hugely telling that there’s no mention anywhere in LASA’s 2009/10 Annual Report of the alleged need to ‘freeze’ any posts, and that three critical Senior Litigator posts had just been frozen accordingly.
163. Nor was it alleged in LASA’s briefing of the Portfolio Committee on its Annual and Quarterly Reports on 12 October, six days before Vedalankar’s letter to me, that in view of budgetary constraints three Senior Litigator posts had been frozen in July – posts that Government is particularly concerned

should be filled. (LASA's report: [j.mp/bD7VUn](http://j.mp/bD7VUn); minutes of the briefing: [j.mp/aXPna7](http://j.mp/aXPna7))

164. And accordingly, there was no mention of this alleged fact in the Portfolio Committee's 'Budgetary Review and Recommendation Report' on 26 October. ([j.mp/aXPna7](http://j.mp/aXPna7))
165. According to Vedalankar's letter to me of 18 October, 'Since early this year management has had to identify posts which could be frozen' as 'It was accepted that [the 'cutting [of] our baseline funding by a significant amount'] required a reduction to our staff establishment in order to meet this shortfall.' But when meeting with the Portfolio Committee 'early this year' – in fact well into it – on 14 April, she made no reference to the need for 'a reduction to our staff establishment' nor for the 'freezing' of posts.
166. Vedalankar did not tell the Committee that 'management' had been engaged in a cost-cutting exercise 'Since early this year', and that 'management' had resolved its alleged critical budgetary problems by taking 'the decision that all senior litigator posts that were vacant would immediately be frozen'.
167. Particularly because, as the First Quarter Report for 2010/11 shows, both staff establishment and recruitment substantially increased from April to June.
168. Only after Vedalankar had committed herself to her decision to 'freeze' the post I'd been selected and recommended for, did she first raise the question of the need to possibly 'freeze' posts – impliedly at a future stage – if OSD funding was not built in to baseline funding, as recorded in the audio recording of the 12 October meeting with the Portfolio Committee and in the Committee's recommendations in their report of 26 October. (Audio recording: [j.mp/f6mFSU](http://j.mp/f6mFSU); 'Budgetary Review and Recommendation Report': [j.mp/aXPna7](http://j.mp/aXPna7)) This was a week before Vedalankar's letter to me, and at the time it was being cooked up.
169. Vedalankar's deliberately vague and non-specific allegation to me – 'It was accepted that this [the alleged 'cutting [of] our baseline funding by a significant

amount'] required a reduction to our staff establishment in the 2010/11 financial year to meet this shortfall' – conceals by whom 'It was accepted'. It would have been a simple matter to have stated that 'It was accepted' by the Board of Directors, the entire Management Executive Committee or by specified executives to show that the formally regulated process of authorisation, accountability and decision-making was observed. The reason Vedalankar doesn't say by whom 'It was accepted', is because in truth no 'reduction to our staff establishment' was 'accepted' for this alleged financial reason. And this is why Parliament has never told any such thing at any stage.

170. Certainly it's inconceivable that you and the Board of Directors 'accepted' that KwaZulu-Natal – the second most populous province after Gauteng, and home to more than ten million people, 85% African, mostly poor – should be discriminated against vis a vis every other province by being deprived of the services of a Senior Litigator.

171. In their contriving to shut me out, Vedalankar and Nair have demonstrated a stunning disregard for the needs of the majority poor in KwaZulu-Natal.

172. Nor is the 'shortfall' quantified: on Vedalankar's version, the shortfall was necessarily equivalent to the sum of three Senior Litigator salaries, and it sufficed to 'meet' it by 'freezing' these posts. I've disposed of this ludicrous suggestion above.

173. Vedalankar's letter speaks of 'a reduction to our staff establishment in the 2010/11 financial year ... required ... to meet this shortfall'. A 'reduction to our staff establishment' means 'abolition of posts' (to cite the phrase used in the Approval Framework). But it's not alleged that posts have been abolished, merely 'frozen' – in July, all of a sudden, 'immediately'.

174. If 'It was accepted that this required a reduction to our staff establishment', why was 'our staff establishment' not in fact 'reduc[ed]'? Why was 'our staff establishment' kept intact? Why did 'management' only abort the recruitment of professional personnel for the 'staff establishment', leaving it unchanged

without any ‘reduction’? There are no intelligent, honest answers to these questions.

175. On top of this internal contradiction, there’s another: In his letter to me Nair implied two decisions were made about this, not one.

176. First ‘the recruitment process to finalize all vacant Senior Litigator posts were [*sic*] put on hold due to various reasons’. (Bundle, page 19)

177. Since he says ‘all’, not both (Pietermaritzburg and Durban), this means that when this first decision was allegedly taken interviews for the Mthatha post had already been conducted and a selection made, because ‘all’ means at least three posts. And since the cut-off date for applications for the Mthatha post was 7 May, and the interviews were likely conducted a couple of months later in July, this implies that the decision to ‘put on hold ... the recruitment process to finalize all vacant Senior Litigator posts’, according to Nair, was first taken in July. Just as Vedalankar expressly alleges in her letter.

178. Of course this is inconsistent with the fact that the Pietermaritzburg post had already been ‘put on hold’ for eight months – with no decision ever taken, on Nair’s version, to ‘put [it] on hold’. As if for a period of eight months no decision had been taken in regard to the finalization of the critical Senior Litigator post for which I’d been selected and recommended, namely a decision to practically ‘freeze’ it. As if this was some minor assistant filing clerk job application overlooked and forgotten about. It’s plain, even to the most childlike intelligence, that a decision had been taken off the record, unofficially, but practically very effectively (so far), to kill my recruitment, and that the decision was taken ‘immediately’, as soon as my unliked name (or my CV with its odious annexure\*) surfaced in Johannesburg after my selection and recommendation for appointment following my interview in Pinetown.

(\*Bundle, pages 80 – 82)

179. Nair’s version is also inconsistent with the fact that as early as ‘April/May’, attorney Mngadi who’d applied for the Durban post had already been informed

by email that vacant Senior Litigator posts weren't going to be filled – so he told me when I telephoned him earlier this month on the 12th, on the sad anniversary of our interviews, to ask him what he'd heard about his application. (I didn't meet Mngadi in the waiting room, as I did the two other candidates; Kaloo identified him to me a couple of months ago at a chance social meeting.) Mngadi was certain of the time period when I queried it: it was 'in April/May' that he was notified. (When I spoke to him again on 22 November, he wasn't so sure and volunteered to hunt down the relevant email.) Mngadi told me he'd been given no reasons; he'd assumed an 'internal restructuring' had taken place.

180. This raises important questions: Why was Mngadi told that bets were off, but I wasn't? Why did 'management' treat one candidate differently from the other? And why were Mngadi and I given contradictory information – Mngadi told that the Durban post he'd applied for wasn't going to be filled and that the recruitment process had been ended; whereas I was told it was still on the go? Why was the Durban Senior Litigator post frozen 'in April/May' according to 'management's' communication with Mngadi, but according to Vedalankar's letter it was frozen in July, along with the Pietermaritzburg and Mthatha posts?
181. After alleging that 'the recruitment process to finalize the appointments of all vacant Senior Litigator posts were put on hold due to various reasons' – necessarily in July – Nair alleged in his letter that a second final absolute decision was taken: 'I can now confirm that we will not be proceeding with the filling of any of these posts'.
182. Vedalankar makes no reference to any such two-stage process; she claims a single sudden, 'immediate' decision was taken after many months of deliberation over the question of what senior, critically important positions to 'freeze'. And she suggests that she and Nair may decide to 'unfreeze the positions in the future'. (Bundle, page 104, paragraph 7.5)

183. The whole story is a shambles, but this is what happens when you begin with a crooked story in bad faith and with something to hide, and you try maintaining it as it's persistently tested. We trial lawyers see this in court every day.
184. The probable explanation as to why there was no communication with me, until I forced it many months after my interview and selection, is because only the Pietermaritzburg and Durban posts were 'put on hold' – off the record, unofficially, and unlawfully. The reason is that when my repugnant name came up as the applicant selected and recommended, 'management' didn't know quite what to do. They couldn't act legally to kill my successful application, so they did nothing, very effectively. They couldn't very well arrange a second interview for the Durban candidate selected but not for me, so they were compelled to practically 'freeze' both the Pietermaritzburg and Durban posts expecting me to conclude I'd been unsuccessful at my interview, to lose interest in the post, and to walk away. The gambit failed. In April, after a five-month wait for information, I pressed for it. After Clark was informed I wasn't wanted by fellow 'management', and given the whispered reason why, she tried putting me off with her disgracefully unprofessional snarling email of the 30th. At this point 'management' acted, 'in April/May', by telling Mngadi (and maybe the other two applicants interviewed with us, but not me) that the posts weren't going to be filled. But complicating 'management's' scheme, the Mthatha Senior Litigator recruitment project was already underway by this time. Still waiting in the dark, I pressed for information again in July, this time approaching Vedalankar directly. A suitable candidate for Mthatha had just been selected and recommended. My shock letter to Vedalankar on the 12th brought things to a head: Clark's endeavour to put me off in April evidently hadn't worked. Vedalankar's and Nair's unlawful 'freezing' of the Pietermaritzburg and Durban posts was catching up with them. The problem needed fixing with a bold stroke. Vedalankar and Nair now 'froze' the Mthatha

post too, and tried shaking me off with Nair's allegation that 'I can now confirm that we will not be proceeding with the filling of any of these posts'. No reasons given. But this trick fails too: I'm not shaken off; I appeal to COO Makokoane to intervene to set things right (he doesn't) and I ask for copies of relevant records, inter alia, records supporting Nair's claims. Naturally my request for records is refused. And in her letter refusing my request, Vedalankar concocts the most transparently feeble and unconvincing reason to cover what has happened, the unlawful things she and Nair have done.

185. A further contradiction: According to Nair, the decision to abort the recruitment of Senior Litigators was 'due to various reasons', i.e. a variety of at least three; in Vedalankar's letter these 'various reasons' have shrunk to a single one: an alleged 'shortfall' in 'funding'. (Bundle, page 19 and page 103, paragraph 6.7)
186. And another: Nair's letter made no mention, as Vedalankar did, of the story, 'Should we decide to unfreeze the positions in the future, the positions will be readvertised'. (Bundle, page 104, paragraph 7.5) Nair's message was a final 'we will not be proceeding with the filling of any of these posts'. He did not say the posts had merely been 'frozen' until better days. (Bundle, page 19)
187. In truth my application had practically been 'frozen' eight months before Vedalankar and Nair claim to have 'frozen' all three vacant Senior Litigator posts. After I was interviewed and selected, no action was taken to finalize my recruitment, and I was even denied information about the outcome of my interview\* and any other information about the progress of the matter – total inaction and silence until Nair's letter in August, nearly nine months after my interview and selection, responding to mine to Vedalankar in July, telling me blankly that 'due to various reasons ... we will not be proceeding with the filling of any of the three vacant Senior Litigator positions. (\*Brijlal seems to have been specifically instructed not to tell me I'd been selected. (Bundle, pages 4–5 , paragraphs 17–18 and 20–21))

188. What's clear is that it was only when Vedalankar got my letter in July asking when I might meet you to enable you to approve/disapprove my selection and recommendation by the regional professional selection board, and it was evident to her that Clark had failed to discourage me, even with her unbelievably insolent but revealing proposal that I 'withdraw'\* my application for the position, that she claims to have 'immediately frozen' it on financial grounds – in a peculiar coincidence, the same month as my letter arrived, eight months after my successful interview, and nothing else to spur her sudden decision at the time. (\*Bundle, page 6, paragraph 25 and page 19)
189. Once it had become plain from my letter to Vedalankar in mid-July that I was pursuing my appointment, and the prospect of appointing me as a political (or racial) undesirable was too dreadful to contemplate, it became necessary to announce a 'freeze' of all the vacant Senior Litigator posts, including the Durban and Mthatha posts, for the time being to create a cover with a semblance of due planning, in a strategy contrived to anticipate and rebuff any legal challenge by me.
190. I was singled out for special treatment: deliberately kept in the dark as to the outcome of my interview with the intention that I should assume I'd been unsuccessful. This was the cynical game-plan to avert a legal showdown over the real illegal reason for 'freezing' my recruitment, the calculated endpoint being that I would grow tired of waiting, and that I would pull out of my own accord. Their problem solved for them. By me.
191. LASA 'management's' failure to communicate with reasonable promptness with applicants interviewed for its advertised Senior Litigator positions in Pietermaritzburg and Durban (in Mngadi's case he was kept waiting five or six months, in mine nearly nine) is so strikingly unprofessional, so at variance with what one might expect from a properly managed public body with 'Best Employer' status, that the inaction of the responsible management executive(s) in this regard itself speaks to something seriously out of order.

192. It wasn't only me that Vedalankar and Nair, and, after my email on 22 April, Clark, didn't want to inform that the Pietermaritzburg and Durban Senior Litigator posts had been unlawfully 'frozen'. Immediately before telephoning Clark on 14 April, I telephoned Pietermaritzburg Justice Centre Executive Bertus Appel, asking whether he'd heard anything. He said he'd no idea of the reason for the delay in the finalization of the recruitment process and told me that whenever he asked at meetings with KZN ROE Vela Mdaka, a member of the Management Executive Committee, when he could expect to get his Senior Litigator, he draw a blank response. (Appel suggested I enquire from Mdaka. I chose to approach Clark instead, assuming that as national HRE she was managing the recruitment process. In fact, as she told me, she didn't even know about it.)
193. As at mid-April, Management Executive Committee member Mdaka evidently hadn't heard any discussion of budgetary constraints requiring that his province's vacant Senior Litigator positions had been or might be 'frozen'. Or he would have informed Appel, when Appel repeatedly enquired about progress in the appointment of his Senior Litigator.
194. It remains to be discovered when Appel was notified, if at all, of Vedalankar's and Nair's purported 'freezing' of his Justice Centre's Senior Litigator post after mid-April, and why. And similarly, it remains to be discovered when, if at all, the Durban JCE was told the same in regard to his centre's equivalent post.
195. Finally, concerning paragraph 6.7 of Vedalankar's letter and her claim that LASA is too skint to hire three Senior Litigators, the matter of executive bonuses:
196. The minutes of the 12 October meeting of the Portfolio Committee record its member Mrs DA Schäfer's dismay that LASA's Annual Report had not been made available to the Committee timeously. Had the Committee had more time to examine it before the meeting, they might have made some shocking discoveries.

197. Table 3 in section 4.1 at page 106 of LASA's Annual Report for 2009/10 provides the basic analysis of the executive management's remuneration. This table presents false totals of the individual components of total remuneration, misleading the reader to understand that basic salaries, total bonuses and incentives, expenses/allowances and other unspecified payments are considerably less than they actually are.
198. The basic salary total is shown as R5 469 566 when the true total is R8 248 588.
199. The bonus and incentives total is shown as R1 704 062 when the true total is R2 780 127.
200. The expenses/allowance total is shown as R2 825 767 when the true total is R4 473 045.
201. The unspecified 'other' payments total is shown as R673 639 when the true total is R849 552.
202. It's a serious criminal offence under PFMA for the accounting authority of a public entity to present false and misleading figures in its published annual financial statements. Especially false and misleading figures claimed to be 'a true and fair presentation'. (Report, page 115)
203. Section 51 (1) (a) of PFMA prescribes that 'An accounting authority for a public entity must ensure that that public entity has and maintains ... effective, efficient and transparent systems of financial and risk management and internal control.'
204. A glance at executive bonus and related payments jars against Vedalankar's claim that LASA has been low on funds for salaries during the recession. There's no evidence of belt-tightening by management executives at all, instead during these allegedly hard times their girths have steadily swelled:
205. For 2009/10 the bonuses for the top five management executives was 39.2% of basic salary. Expenses/allowances and other unspecified payments is 62.6% of their basic salaries.

206. The global recession reached South Africa in about October 2008\*, yet in that year bonuses for the top five executives goes up to 42.5% of basic salary. This is after Parliament challenged but ultimately allowed bonuses of 30% in 2007, which is to say, bonuses of 30% of salary were the upper limit of what Parliament considered acceptable – and this was before the recession.  
(\*j.mp/aiLLAF)
207. And in this recession, total salaries for the top five executives increase 14.1% in 2009/10.
208. The true totals show total basic salaries for executive management increased by 29.3% from 2008/09 to 2009/10; bonus and incentives by 23%; expenses/allowance by 33%; ‘other’ payments received by 32%; and total remuneration by 29.5% – the increases partly a result of an additional two executive members.
209. Basic salaries for the top five executive members increased by 15.5% from 2008/09 and total remuneration by 14.1%.
210. And as mentioned, top five executive members’ total bonus/incentives were an increased 39.2% of their basic salary, considerably higher than the figure of 30% about which you were interrogated in Parliament in October 2007.
211. The false understated totals presented in respect of executive bonuses, expenses, allowances, and other payments misled the Committee not to query these.
212. While Nair was allegedly engaged in a lengthy process to cut costs in the teeth of the recession, which he finally resolved by ‘freezing’ three critically necessary Senior Litigator posts in two of the poorest provinces, he was enjoying a 19.6% increase of his basic salary and a 16.6% increase in his total remuneration.
213. Just the increase alone in total executive bonus/incentives, expenses/allowance, and ‘other’ payments from 2008/09 to 2009/10 was greater than the saving from ‘freezing’ three Senior Litigator posts.

214. More specifically, the cost of the three Senior Litigator posts was just 22% of the total executive bonus/incentives, expense/allowance, and ‘other’ payments taken home by the members of the Management Executive Committee.
215. I deal now with the statements and allegations in Vedalankar’s paragraph 7. The paragraph is drenched in disingenuity and low cunning.
216. *‘7.1 You were interviewed together with other candidates in the first round of interviews.’* Of course I was interviewed with other candidates. What’s omitted is the hard and inconvenient fact that I was interviewed eleven months prior to the date of this seemingly neutral statement, on 12 November 2009.
217. *‘7.2 You were recommended together with other candidates, for the second round of interviews. As explained above that however was not a guarantee that you would get the position. We have instances in the past when our nationally constituted panel has not recommended for appointment any of the recommended candidates from the first phase interviews conducted by the region.’* The first part of the first sentence – that I was recommended for appointment, subject to approval at a second interview – is true at last, but the rest is false, and the senior advocates and attorneys on the KwaZulu-Natal regional professional selection board who interviewed and selected me will all confirm that the allegation that I was ‘recommended together with other candidates, for the second round of interviews’ is a lie. As will the minutes of the selection interviews I attended, a copy of which Vedalankar is reluctant to provide to me.
218. In truth I was the only candidate they selected and recommended for the Pietermaritzburg Senior Litigator position.
219. This disgraceful subterfuge tellingly epitomizes and exposes the mala fides which have characterized ‘management’s’ dealing with me.
220. It’s consistent with Clark’s false claim to me in her email of 30 April that ‘At this stage it is not even clear which applicants will be considered in the second or if indeed we will proceed with a second round.’ (Bundle, pages 6–7, paragraphs 28–31)

221. It's also consistent with the false implication of Nair's letter on 3 August, and of Mdaka's substantially identical letter three weeks later on the 23rd, to the effect that I was on equal terms with the other candidates interviewed for the Pietermaritzburg Senior Litigator position, when the truth of it is that they'd been rejected by the professional selection board and were out of the running. I was the sole successful candidate chosen and recommended for appointment to the Pietermaritzburg post, subject to your approval at my final interview. (Bundle, pages 19 and 20) Mdaka well knew this because as an attorney he was on the professional selection board which interviewed me.
222. The question arising is why Vedalankar, Nair and Clark were reluctant to confirm that I'd been selected and recommended. And why, when Vedalankar finally did so, nearly a year after my interview, she smudged this fact with the lie that I was still on equal terms with the other candidate(s) who'd been interviewed for the same position but rejected.
223. Apropos the second statement – 'As explained above that however was not a guarantee that you would get the position' – Vedalankar parrots precisely the utterly irrelevant platitude Clark intoned in her email of 30 April. (Bundle, page 7, paragraph 32) Of course there was no 'guarantee that [I] would get the position', and I've never claimed or suggested otherwise. But I was convinced that I'd been selected and recommended as the best qualified applicant (Vedalankar finally confirmed it, nearly a year later) and I was confident that you would approve my selection and recommendation if given sight of my exceptional CV\*, and, after interviewing me, satisfying yourself that my personal and social values\*\* are aligned with LASA's mission and vision, and that with my extensive experience I'm eminently up to the professional and mentoring tasks expected of a Senior Litigator – in sum, that LASA couldn't have hoped for a better incumbent for the position. (Bundle, \*pages 71–82 and \*\*pages 83–92)

224. This is why it was essential for Vedalankar and Nair to intervene to prevent my final interview by you. ‘Freezing’ my application after I’d been selected and recommended was their only certain ‘guarantee’ that I would not be approved, confirmed and appointed.

225. Concerning the third statement – ‘We have instances in the past when our nationally constituted panel has not recommended for appointment any of the recommended candidates from the first phase interviews conducted by the region’ – I know this full well, and Vedalankar knows I know, because I was interviewed for the Pietermaritzburg Senior Litigator position precisely because Kaloo, selected for appointment in late 2008, had been disconfirmed by you following his second interview. I knew this from the beginning, and mentioned it in my email to Clark in April. (Bundle, page 26, third bullet point) But again the statement is totally irrelevant. It’s totally irrelevant because Vedalankar and Nair acted ‘immediately’ to prevent the ‘nationally constituted panel’ headed by you from evaluating my application and from deciding whether I was the right man for the job or not.

226. *‘7.3 The NOE and CEO took the decision that all senior litigator posts that were vacant would be frozen. Therefore, the three vacant Senior Litigator positions for Durban, Pietermaritzburg and Mthatha have been frozen.’* Insofar as ‘the decision’ by Vedalankar and Nair is alleged to have been financially motivated, I’ve comprehensively addressed and refuted the allegation above. I’ve also exposed her allegation as to the date of the decision as false.

227. *‘7.4 You were sent a final letter of regret from our Regional Operations Executive dated 23 August 2010 indicating that Legal Aid SA will not be proceeding with the filling of the Senior Litigator post. A copy of the aforementioned letter is also attached for your reference.’* This pointless statement of the steps Vedalankar and Nair took to create a patina of due process to cover their illegal discrimination against me hardly forms any part of ‘the ... explanation ... provided in so far as it relates to your individual application for the senior litigator position and the circumstances

that followed'. Still it's interesting that Vedalankar speaks here of not filling a single 'Senior Litigator post', not three.

228. It's most significant that despite Nair's claim to me that he'd be instructing 'our HR department to send out regret letters to all persons who were interviewed during the first round of interviews', Mngadi told me (on 22 November) that he never received any such 'regret letter' in August like I did. (Bundle, page 19) The reason is simple. Mngadi at least, and possibly the others too, had already got their 'regret letters' 'in April/May', and Nair knew it perfectly well. It was only me he had in mind for a mollifying 'regret letter' to create a fake appearance of due process, after my letter to Vedalankar had cranked up the pressure.

229. This would explain Vedalankar's reluctance to provide me with copies of the 'regret letters' allegedly sent to the three other candidates interviewed in August, or confirm on oath that these alleged 'regret letters' were never sent and don't exist, because doing so would expose Nair's insincerity and disingenuity in his dealing with me.

230. A copy of the email sent to Mngadi 'in April/May' will prove the untruthfulness of the statement in Vedalankar's letter that 'In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would immediately be frozen.'

231. The first curiosity about the 'regret letter' I got from Mdaka on 23 August, three weeks after Nair had already written that 'we will not be proceeding with the filling of any of these posts', was that it told me the same thing. So what was the point of it? The second is that it was marked 'CONFIDENTIAL'. (Bundle, page 20) Since there was nothing confidential about its contents, it seems to me that it was hoped I'd keep it a secret, for the reason that it would be compromising and embarrassing if it was brought up. As indeed it is:

232. The heading of Mdaka's letter refers to both the Durban and Pietermaritzburg Senior Litigator posts. It asks me to 'Please be advised that

Legal Aid South Africa will not be proceeding with the filling of this post’ – post, singular; he doesn’t say which one. ‘Thank you for your application and for attending the interview for the above advertised position.’ He means the Pietermaritzburg Senior Litigator post, the problem one. And he adds: ‘We apologise for the delay in informing candidates of the outcome of the interview process.’ 1. The ‘delay’ is not explained, and it’s not explained precisely because there is no honest explanation that ‘management’ wishes to give for it. 2.

Mdaka was not notifying the ‘outcome of the interview process’; I got the ‘outcome of the interview process’ from Vedalankar two months later, nine months after my interview. 3. Like Clark and Nair did, Mdaka also falsely made out as if I was still on equal terms with the other applicants after the interviews had been conducted. 4. Contrary to the false impression deceitfully contrived, namely that he was simultaneously ‘informing’ other ‘candidates’, he wasn’t. As mentioned above Mngadi, who was interviewed for the Durban post on the same morning as me never received any such letter; he’d already been emailed ‘in April/May’ that the post he’d applied for wasn’t going to be filled.

233. If one has regard to Vedalankar’s version of events, to the actual history of the Pietermaritzburg Senior Litigator position, and her claim that her action to abort my successful application had nothing to do with my ‘individual circumstances’, Paragraph 7 concludes most oddly:

234. *‘7.5 Should we decide to unfreeze these positions in the future, the positions will be duly advertised and you will be at liberty to submit your application for any of the positions.’*

LASA had already been to considerable trouble and expense advertising and readvertising the position several times. At long last it had finally recruited an ideal candidate for the Capital of KwaZulu-Natal: an extraordinarily widely experienced and highly skilled trial lawyer, with a degree in isiZulu, and a history of progressive social commitment and selfless, intense political engagement at considerable personal risk and cost in the interests of the poor and the weak. At the very tail end of the recruitment process, just before his

final approval interview, the post had been ‘immediately frozen’. After being informed of this, nine months after his interview, selection and recommendation for appointment to the post, this ideal candidate makes plain that he remains keen for the job. He’s not told: ‘If we unfreeze the post, we’ll pick up where we left off and arrange for you to meet Judge Mlambo for him to decide whether you’re the sort of extraordinarily widely experienced and highly skilled trial lawyer, with a degree in isiZulu, and a history of progressive social commitment and selfless, intense political engagement at considerable personal risk and cost in the interests of the poor and the weak, that we are after.’ Instead he’s told: ‘Should we decide to unfreeze these positions in the future, the positions will be duly advertised and you will be at liberty to submit your application for any of the positions.’

235. Vedalankar appears to have overlooked Section 51 (1) (b) which requires that ‘An accounting authority must take effective and appropriate steps to prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity.’ Such as the ‘fruitless and wasteful expenditure’ incurred in re-advertising a position for which an outstanding candidate has already been found after a two-year search and has already been selected and recommended for appointment. And the further ‘fruitless and wasteful expenditure’ incurred in re-advertising for the Durban and Mthatha posts.

236. Paragraph 7.5 of Vedalankar’s letter supports the inference – the speculative inference – that ‘management’ is applying an undeclared unlawful racial bar in dealing with the recruitment of a Senior Litigator for Pietermaritzburg. Perhaps wishing to improve demographic representation in the ranks of LASA’s lawyers – and this is an imperative I sincerely support, just as I whole-heartedly support the National Democratic Revolution – ‘management’ ‘froze’ my appointment, with a view not to ‘unfreezing’ it when there’s allegedly enough money for it, but to keep re-advertising the position and interviewing for it until

such time as a candidate of favoured ethnic origin shows up: an illegal approach to achieving otherwise legitimate employment equity targets, as the current Gouws case illustrates, backed by supportive legal precedent.

(Statement of Claim in the Labour Court: [j.mp/b2TY62](http://j.mp/b2TY62). The general legal principles applicable are well presented for lay readers in a recent online magazine article: [j.mp/b3Mz8d](http://j.mp/b3Mz8d))

237. Vedalankar's allegation that the Pietermaritzburg Senior Litigator position, and two others, were 'frozen' for financial reasons doesn't cover, much less does it explain, the fact that my application had already been 'put on hold' (as Nair put it) which is to say effectively 'frozen' (Vedalankar's term) for more than three months before the Budget announcement on 17 February that allegedly gave rise to financial reasons for 'freezing' it in July.

238. And if such alleged financial considerations really did arise with the announcement of the Budget on that date, why on Vedalankar's version did it take five months to 'immediately' 'freeze' the posts? (That is, the Pietermaritzburg and Durban posts only; the Mthatha recruitment proceeded in April, a candidate was interviewed, selected and recommended in July.) And why no word to me as the applicant selected and recommended for the Pietermaritzburg post, and, from my persistent approaches with Brijlal and Clark, clearly aching for information as to what was going on? More significantly, why no word to the Department of Justice and Constitutional Development, and to Parliament?

239. All this is unexplained and inexplicable. Obviously the game is up.

240. I hope I won't be thought rude for mentioning that sections 81 to 86 of PFMA cover criminal and disciplinary proceedings relating to 'FINANCIAL MISCONDUCT' and state in section 83 (2): 'If the accounting authority is a board, every member is individually and severally liable for any financial misconduct of the accounting authority.'

241. If this matter must be prosecuted further, rather than resolved by the Board of Directors now, then to surmount Vedalankar's stated objection to providing me with the records I've requested, or confirming on oath that they don't exist, I record that all and any identifying particulars of third parties may be blacked out from the records that I've requested – even if such particulars do not comprise 'information on third parties' in any meaningful sense, as Vedalankar puts it, or would 'involve the unreasonable disclosure of personal information about a third party', as Section 34 (1) of PAIA does.
242. And if I have to carry on, I'll be amplifying my records request with a supplementary annexure to PAIA Form A, annexed to this letter. The records listed, or lack of them, will obviously further support my case.
243. For as Cachalia JA pointed out to President Zuma's counsel in the latter's appeal to the Supreme Court of Appeal on 22 November against an order directing the presidency to comply with the *Mail & Guardian's* PAIA request for a copy of a report on the Zimbabwean elections in 2002 written at the request of former President Mbeki, 'Surely there's a letter of appointment, there's a note, there's a minute. Government does not operate like a glorified spaza shop ... In the absence of any paper trail must we just accept that [officers in the Presidency] are people of standing and they will never mislead, just like Colin Powell never misled the Security Council [in lying that Iraq had weapons of mass destruction]?' And as Nugent JA remarked (per the *M&G* report), 'in a democratic South Africa government officials have to justify their decisions on the basis of facts. "In the old days you used to get these affidavits that said 'I've locked up Mr Cachalia because it's in the public interest'. Boom. 'Court, I don't care what you think' ... The point is we've now moved beyond that.'" (j.mp/fNVphG) We require claims to be documented nowadays, even by CEOs and NOEs.
244. My records request is clearly lethal to 'management's' position, because it exposes it for the lying sham it is. Vedalankar's refusal to comply with it, in

contempt of the legal responsibilities PAIA imposes on her, is manifestly intended to conceal real evidence, or the absence of real evidence, that would support the evidence I've already presented – a conspectus of which establishes a reasonable and cogent basis for my 'suspicion that [my] right to a fair administrative process' has been 'breached' and that I've been illegally discriminated against. (Bundle, page 104, paragraph 8)

245. Unless this matter is resolved without further prevarication from the Management Executive Committee, it's to be hoped that Vedalankar will finally apply her mind properly to my records request as LASA's information officer, put aside her home-brewed completely wrong 'principle' by which 'we were guided', and give attention instead to the clear provisions of PAIA as spelt out in the National Teachers Union and Mittalsteel cases quoted above; and that in doing so she will at last respect and comply with her constitutional obligations.

246. As mentioned on its website, 'The SAHRC promotes, protects and monitors human rights in South Africa. It also has a specific responsibility to promote and monitor the implementation of PAIA.' ([j.mp/fmzuVw](http://j.mp/fmzuVw)) And indeed, section 84 of PAIA requires the SAHRC to report annually to Parliament on compliance by 'each public body'.

247. I've shown in this analysis that even irrespective of the alleged 'explanation' for 'freezing' my application, for 'freezing' the post I was selected and recommended for, the action taken was administratively unlawful. I've shown that the alleged 'explanation' given for 'freezing' my application is false and is contradicted by the available evidence. I've shown that it was followed by a dishonest cover-up in which a fake reason was invented for doing so many months afterwards. I've shown that I've been dealt with differently from at least one other applicant interviewed. I've shown that I've been treated not only without the candour expected from servants of a public body in a constitutional, open democracy but secretively and dishonestly,

notwithstanding LASA's claim that its 'Processes are underpinned by the principles of openness, integrity and accountability.' I've shown that the reasons given for refusing my records request are insupportable both in law and on the facts.

248. I've presented considerable circumstantial evidence of illegal discrimination against me in the handling of my application for the Pietermaritzburg Senior Litigator post thus far. My rights not to be discriminated against illegally on political (or racial) grounds and to apply my professional qualifications and experience gained by determined, dedicated application over many years is a fundamental human right, not only enshrined in section 22 of our Constitution's Bill of Rights, but in all other major human rights charters as well, viz: the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; and the African Charter on Human and Peoples' Rights. The matter is accordingly extremely serious.

249. I believe – and as a seasoned lawyer yourself I'm sure you'll agree – that the available evidence establishes a prima facie case of illegal discrimination fit for trial.

250. All this said, I would very much like to see this ballooning problem deflated by way of a conciliatory meeting. I'm sure it would dispel the negative image Vedalankar and Nair harbour of me. My sharp words in this letter aside, I bear no ill will. Although it's been a hard year, with my children unnecessarily deprived, I understand very well that the prejudice that's been exhibited towards me is sprung from an irrational negative sentiment rather than any substantial, objectively justifiable opposition to me. It's a prejudice based on a caricature of me by pharmaceutical interests and their supporters as a political and moral ogre in an intensely contested public health controversy with deeply sunk ideological roots and massive competing interests in play in a hyper-saturated, intensely emotive, morally charged propaganda climate. But no one who knows me personally shares this antipathy. (As I've mentioned, although

I'd surmised the prejudice against me has been political, it may be racial – or both: in his letter Nair speaks of 'various reasons', one of which may be an undeclared policy against hiring more whites.)

251. To illustrate my point: Last month I attended a two-day celebration of my law school's centenary, and after some years away I was greeted by all – by judges and lawyers from all ranks – with hugs (two from judges, both Indian) and warm handshakes; not a single cool reception. A hug from an African judge I ran into a couple of months ago as well. I had a lovely conversation with Board Director Ela Gandhi, reminding her that the colonial Natal Law Society had opposed her grandfather's admission to the Bar in 1894 solely because he wasn't 'of European extraction', and mentioning that I'd studied copies of the original papers in the Pietermaritzburg Archives. (Although she was banned and house-arrested for a decade for her moral, social, and political conscience, I didn't mention the deeply dispiriting discrimination I was currently suffering at the hands of LASA's Management Executive Committee for the same reason.) An Indian attorney colleague whom I met just before the law school function told my partner in my presence that I was 'the most loved advocate at the Pietermaritzburg Bar for his non-racialism and progressive attitudes'.


252. Like a helicopter, the truth must eventually land. My personal interest in this matter aside, constitutional principles of the first importance are involved. I admit that to some I'm an extremely politically controversial person for having contradicted the propaganda and exposed the abuses of the \$500 billion transnational pharmaceutical industry in our country, with all its massively funded lobbyists and interest groups serving it, and American foreign policy backed by the \$48 billion PEPFAR fund gushing behind it – a fool's errand against unimaginably powerful interests and forces (getting two South Africans killed, one president deposed and another threatened with his life\*) – but this doesn't reduce me to a non-person without rights like a 'non-white' under apartheid. (\*j.mp/e6kn37) As Trengrove SC remarked earlier this month on

winning a case for a lowly prostitute, even ‘the least of us enjoy the rights enshrined in the constitution’. ([j.mp/cQGwg0](http://j.mp/cQGwg0)) LASA’s own motto proclaims, ‘Justice for all!’

253. And I admit I’m white, but so was Bram Fischer, my role model for professional and political integrity and absolute personal commitment to social justice.

254. CEO Vedalankar’s claims of fact in her letter to me have raised the stakes in this matter very considerably indeed, and if they are to be adjudicated and determined publicly in an unfriendly forum, following searching document discovery and equally searching cross-examination of all major actors under oath, the cost is likely to be considerable, quite irrespective of the costs of suit. Personally I would prefer to look ahead in a positive spirit, than to trawl through the sordid history of this case in court. None of the mistakes made thus far are irreversible, and they can easily be fixed. I accordingly hope very much that you and the Board of Directors of Legal Aid South Africa will act promptly to end this trouble amicably here and now.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Anthony Brink', enclosed in a light grey rectangular box.

ANTHONY BRINK

Advocate of the High Court of South Africa

[arbrink@iafrica.com](mailto:arbrink@iafrica.com)

033 344 2420

083 779 4174

A reminder: All documents on the internet to which I’ve referenced the facts and quotations in this letter with shortened URLs – e.g., [http:// j.mp/bjvgaJ](http://j.mp/bjvgaJ) – may be retrieved and read by typing the main code only into the address bar of an internet browser, e.g., [j.mp/bjvgaJ](http://j.mp/bjvgaJ).

## **PAIA records request: Supplementary Annexure to Form A**

Note: All text quoted below originates from paragraphs 6.6 and 6.7 of LASA CEO Vedalankar's letter to the records requester Adv A Brink on 18 October 2010.

1. Records/relevant excerpt(s) from records reflecting the quantum of LASA's 'anticipated funding for the 2010/11 financial year'.
2. Records/relevant excerpt(s) from records reflecting the quantum of the lower 'funding' that actually 'materialise[d]'.
3. Records/relevant excerpt(s) from records reflecting the quantum of the 'funding ... shortfall ... cutting our baseline funding by a significant amount'.
4. Minutes reflecting NOE Nair's 'motivat[ion of] a change in the organizational structure', namely 'a reduction to our staff establishment in the 2010/11 financial year in order to meet this shortfall', alternatively the mere 'freezing of positions' without an actual 'reduction to our staff establishment to meet this shortfall' in 'funding' that was lower than 'anticipated' by a 'significant' amount.
5. Minutes reflecting NOE Nair's consultation with HRE Clark and noting her views, in terms of section 8.1.2 (b) of the Approval Framework, concerning his intended 'decision that all vacant senior litigator posts that were vacant would be immediately frozen'.
6. Minutes of 'management' meetings held 'Since early this year' recording its discussion that 'a reduction to our staff establishment' was 'required ... in order to meet this shortfall' in 'funding' lower than 'anticipated' by a 'significant' amount.
7. Minutes of 'management' meetings held 'Since early this year' recording the work 'management ... had' to perform 'to identify positions which could be frozen ... in order to meet this shortfall' in 'funding' that was lower than 'anticipated' by a 'significant' amount.

8. Minutes and/or notes kept/made 'Since early this year' in which 'positions which could be frozen' were 'identif[ied]' by 'management'.
9. Minutes reflecting COO Makokoane's agreement, in terms of section 8.1.2 (b) of the Approval Framework, with NOE Nair and CEO Vedalankar's 'decision that all vacant senior litigator posts that were vacant would be immediately frozen'.
10. The resolution passed by 'management' in terms of section 8.1.2 (b) of the Approval Framework, following consultation with HRE Clark and COO Makokoane's agreement, in relation to the claim: 'In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would immediately be frozen.'
11. Written notification of the Board Executive Committee of the 'decision ... the NOE and CEO took ... In July 2010 ... that all senior litigator posts that were vacant would immediately be frozen'.
12. Email to Durban Justice Centre attorney Bongani Mngadi notifying him (he says 'in April/May') that the Durban Senior Litigator post for which he'd applied wasn't going to be filled.

25 Baker Road  
Prestbury  
Pietermaritzburg 3201  
8 December 2010

Ms Bee-Mari Schoeman  
Secretary to the Board of Directors  
Legal Aid South Africa  
29 De Beer Street  
Braamfontein  
Johannesburg

Dear Ms Schoeman

**A letter to LASA Chairperson Judge Dunstan Mlambo  
and the Board of Directors**

Thank you for your email on Monday the 6th in this matter, which I quote below for ease of reference and the record:

Dear Mr Brink

I hereby wish to confirm that the Chairperson of the Board of Legal Aid SA, Judge Dunstan Mlambo, is in receipt of your letter dated 30 November 2010.

Judge Mlambo is however presently out of the country and has asked me to advise you that he will respond to your letter as soon as he is able to do so.

Kind Regards

Bee-Mari Schoeman

Board Secretariat

[...]

Several questions arise.

Did Judge Mlambo say for how long he'd be out of the country?

Did he not perhaps ask you to inform me when he'd be back?

Did he ask you to ensure that all Directors of the Board received my letter?

Did he ask you to place the matter on the agenda of the next general Board meeting or to arrange a special Board meeting?

I see that Board Director Adv Pieter du Rand copied you in when emailing me on the 1st: 'Receipt acknowledged. It will be taken up with Secretary to the Board for further attention.' Have you received a copy of my letter yet, along with its supporting Document Bundle? If not, both can be accessed and downloaded as secure printable PDFs from a dedicated private internet archive:

[www.tig.org.za/LASA](http://www.tig.org.za/LASA)      username: lasa      password: LASA2010

Once you've read them, you'll appreciate the extraordinary seriousness of the matters I canvass: a succession of illegal and unethical actions by certain members of the Management Executive Committee, one compounding the other, to wit: • illegal discrimination in violation of Chapter Two of the Constitution and statutes enacted to give effect to it; • a dishonest cover-up by way of a demonstrably false alibi improvised and advanced for it; • multiple contraventions of the Public Finance Management Act; and • a refusal by the CEO to comply with her obligations qua information officer under the Promotion of Access to Information Act ('PAIA') to provide copies of public records pursuant to a duly filed request for them – to justify which, disregarding the clear provisions of PAIA underlined in reported cases on the subject, she manufactured and applied a fake 'test' for entitlement to the records I requested, even going so far as to cite a judgment claimed to support her refusal which she deceptively misquoted, attributing dicta to the judge that he never uttered, and failing to quote his actual dicta against her.

Besides these several instances of unlawful and grossly unethical conduct by Management Executive Committee members, my letter also details their deliberate failure to implement a key aspect of LASA's Strategic Plan, and the concealment of this from both the Board of Directors and the Parliamentary Portfolio Committee for Justice and Constitutional Development.

I've no doubt that these matters will present the most serious challenges that the Board of Directors have ever had to address.

Certainly they require discussion and resolution by the Board of Directors in committee, and not by Chairperson Judge Mlambo acting alone, and he'll consequently not be placed to respond substantively to my letter until such time as the Board has met to debate and resolve the grave issues I've raised.

LASA's latest Annual Report describes your 'SECRETARIAT FUNCTION':

The Board of Directors has access to the advice and services of the Board Secretary. ... The Board is assisted by the Board Secretary in identifying key issues that should form the focus of the directors' attention. The Board Secretary also ensures that all relevant matters are placed on agendas for discussion. The Secretariat, together with the other assurance functions, monitors Legal Aid South Africa's compliance with the requirements in terms of the Public Finance Management Act, Legal Aid Act and other legislation, and regularly reports to the Board in this regard.

This is to say, your office entails considerably more responsibility than the usual passive functions of a private secretary: taking dictation, typing, answering the phone, taking and passing messages, and so forth. It involves actively 'identifying key issues that should form the focus of the directors' attention'; 'ensur[ing] that all relevant matters are placed on agendas for discussion'; and 'monitor[ing] Legal Aid South Africa's compliance with the requirements in terms of the Public Finance Management Act, Legal Aid Act and other legislation', including the Promotion of

Access to Information Act. And ‘in this regard’ you are required to ‘regularly report... to the Board’ as a whole.

In short, you are charged with an independent duty and responsibility to the Board of Directors to ‘report’ ‘key issues’ and ‘relevant matters’ warranting their ‘attention’, including such urgently ‘relevant matters’ and ‘key issues’ as the Management Executive Committee’s contravention of such legislation as the Public Finance Management Act, the Promotion of Access to Information Act, the Labour Relations Act, and the Promotion of Equality and Prevention of Discrimination Act, and other grossly unethical behavior in contempt of the ethical standards the Board declares binding on LASA’s servants at all levels.

It’s accordingly your particular responsibility to see to it that matters of likely concern to the Board of Directors, especially evidence of unlawful and unethical conduct by the Management Executive Committee, are immediately (a) brought to the Board’s attention, and (b) placed on the agenda for discussion and resolution at a Board meeting held at the first opportunity.

Naturally in your discharge of these pivotal functions you do not need anyone else’s authority or decision before acting.

I’ve only been able to email my letter and its supporting documents to a few Board Directors whose email addresses I’ve found via online searches; and since I’ve received no acknowledgement other than from Adv du Rand, I’m not sure that the email addresses I’ve used are still good.

In the situation, please confirm that you’ll ensure that all Board Directors receive my letter and its annexure, so that they have sufficient time to apprise themselves fully of the issues I raise before the next Board meeting.

Section 5 (2) of the Legal Aid Act stipulates: “The chairperson of the board may at any time, and shall at the request in writing of not less than eight members of the

board, convene a special meeting of the board, to be held at such time and place as he or she may determine.’

Given the extraordinarily serious nature of the issues raised in my letter and the importance of resolving them both urgently and in-house, please enquire from Chairperson Judge Mlambo whether he agrees that this is no routine matter for listing on the agenda of the next ordinary Board meeting among other conventional business, and whether he agrees that the several grave issues I’ve reported to him warrant a special Board meeting to arrest and dispose of the trouble mentioned before further harm is caused.

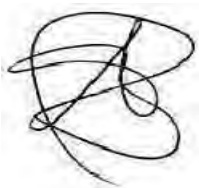
And in your group email to the Board of Directors confirming that they’ve all had sight of my letter and its annexure, alternatively informing them of it (it’s accessible online as mentioned above), please canvass the desirability of a special meeting with them. An affirmative eight votes will be decisive.

Finally, please provide me with your assurance that as Board Secretary you’ll deal with this matter on an urgent priority basis. It’s been more than a year since the illegal discrimination at the core of the matter took place, and I’ve no further time to lose in my absolutely determined quest for justice in whatever forum necessary.

Again, for the record, I’d be grateful if you’d reply by letter under LASA’s letterhead, and email it to me as an attached file as the CEO and NOE have done in their communications with me.

I thank you in anticipation.

Yours sincerely

A handwritten signature in black ink, appearing to be 'ADV ANTHONY BRINK', written in a cursive, somewhat scribbled style.

ADV ANTHONY BRINK

**Email to Board Secretary Schoeman, covering letter of 8 December 2010**

(Email sent away from home via browser)



25 Baker Road  
Prestbury  
Pietermaritzburg 3201  
15 December 2010

Ms Vidhu Vedalankar  
Chief Executive Officer  
Legal Aid South Africa  
29 De Beer Street  
Braamfontein  
Johannesburg

Dear Ms Vedalankar

PROMOTION OF ACCESS TO INFORMATION ACT  
SUPPLEMENTARY REQUEST FOR RECORDS  
SENIOR LITIGATOR POSITION, PIETERMARITZBURG

Further to my request for records under the Promotion of Access to Information Act ('PAIA') on 23 August, I enclose a supplementary records request arising from (a) your allegations in your letter to me of 18 October, in which you unlawfully refused to comply with my request on spurious legal and factual grounds, and (b) your contradictory statements to the Parliamentary Portfolio Committee for Justice and Constitutional Development on the 12th, six days earlier (transcript enclosed). These matters and others are now before the Board of Directors.

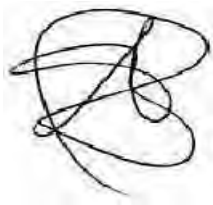
I mailed a cheque for the prescribed R35 request fee by registered post earlier today. Please inform me of your access fee once it's been computed.

Those who've ill-advised you concerning your constitutional obligations as LASA's Information Officer, and who've thereby exposed you to the ignominy and disgrace of a High Court mandamus compelling you to perform them, would do

well to consider the judgment in *The President of RSA v M & G Media* (570/10) [2010] ZASCA 177 delivered by the Supreme Court of Appeal yesterday, particularly the introductory observations made in paragraphs 1–11. The judgment points up the enormous gravity and implications of your apparent contempt for what are described as the ‘founding values ... of accountability, responsiveness and openness’ in our new constitutional democracy. For easy reference I’ve put the judgment online at <http://j.mp/fgVErS>.

I’m looking forward to your delivery of all the records I’ve requested within 30 calendar days, alternatively, in some cases, your confirmation on oath that they don’t exist.

Yours sincerely

A handwritten signature in black ink, appearing to be 'ADV ANTHONY BRINK', written over a light grey rectangular background.

ADV ANTHONY BRINK

CC:

Judge Dunstan Mlambo: Chairperson, LASA

Ms Bee-Mari Schoeman: Board Secretary, LASA

Ms Chantal Kisoona: Director, PAIA Unit, SAHRC

**Supplementary PAIA Request**

**FORM A**

**REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY**

(Section 18(1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000))

**[Regulation 2]**

**FOR DEPARTMENTAL USE**

Reference number:

Request received by (state rank, name and surname of information officer/deputy information officer) on (date) at (place).

Request fee (if any): R .....

Deposit (if any): R .....

Access fee: R .....

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

**A. Particulars of public body**

**The Information Officer**

**CEO Ms Vidhu Vedalankar**

**Legal Aid South Africa**

**Private Bag X76**

**Braamfontein 2017**

**Johannesburg**

**B. Particulars of person requesting access to the record**

*(a) The particulars of the person who requests access to the record must be recorded below.*

*(b) Furnish an address and/or fax number in the Republic to which information must be sent.*

*(c) Proof of the capacity in which the request is made, if applicable, must be attached.*

Full names and surname : **Anthony Robin Brink**  
Identity number : **590225 5116 081**  
Postal address : **25 Baker Road, Prestbury, Pietermaritzburg 3201**  
Fax number : **086 672 0776**  
Telephone number : **033 344 2420**  
E-mail address : **arbrink@iafrica.com**

Capacity in which request is made, when made on behalf of another person:

**N/A**

### **C. Particulars of person on whose behalf request is made**

*This section must be completed only if a request for information is made on behalf of another person.*

Full names and surname : **N/A**  
Identity number : **N/A**

### **D. Particulars of record**

*(a) Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.*

*(b) If the provided space is inadequate please continue on a separate folio and attach it to this form. **The requester must sign all the additional folios.***

1. Description of record or relevant part of the record:
2. Reference number, if available:
3. Any further particulars of record:

**See annexure headed 'SUPPLEMENTARY PAIA RECORDS REQUEST:  
ANNEXURE TO FORM A'**

**E. Fees**

<p>(a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a <b>request fee</b> has been paid.</p> <p>(b) You will be notified of the amount required to be paid as the request fee.</p> <p>(c) The <b>fee payable for access</b> to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.</p> <p>(d) If you qualify for exemption of the payment of any fee, please state the reason therefor.</p>
--

Reason for exemption from payment of fees:

N/A

**F. Form of access to record**

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 hereunder, state your disability and indicate in which form the record is required.

Disability: N/A		Form in which record is required:	
<p>Mark the appropriate box with an "X".</p> <p>NOTES:</p> <p>(a) Your indication as to the required form of access depends on the form in which the record is available.</p> <p>(b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.</p> <p>(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.</p>			
<b>1. If the record is in written or printed form -</b>			
<b>X</b>	copy of record*		inspection of record

<b>2. If record consists of visual images -</b>				
(this includes photographs, slides, video recordings, computer-generated images, sketches, etc.)				
	view the images	<b>X</b>	copy of the images*	transcription of the images*
<b>3. If record consists of recorded words or information which can be reproduced in sound -</b>				
	listen to the soundtrack (audio cassette)	<b>X</b>	transcription of soundtrack* (written or printed document)	
<b>4. If record is held on computer or in an electronic or machine-readable form -</b>				
	printed copy of record*		printed copy of information derived from the record*	<b>X</b> copy in computer readable form* (on compact disc)
*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you?				<b>YES</b>
<b>A postal fee is payable.</b>				
<i>Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.</i>				
In which language would you prefer the record? <b>English</b>				

**G. Notice of decision regarding request for access**

*You will be notified in writing whether your request has been approved/denied. If you wish to be informed thereof in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.*

How would you prefer to be informed of the decision regarding your request for access to the record? **By email**

Signed at Pietermaritzburg on this 15<sup>th</sup> day of December 2010

A handwritten signature in black ink, consisting of several overlapping loops and lines, positioned above the signature line.

.....  
SIGNATURE OF REQUESTER

## **SUPPLEMENTARY PAIA RECORDS REQUEST:**

### **ANNEXURE TO FORM A**

#### **SECTION D: RECORDS REQUIRED**

Note: Save for record request 18, all text quoted below originates from paragraphs 6.6 and 6.7 of CEO Vedalankar's letter to the records requester Adv Brink on 18 October 2010. The words quoted in record request 18 are from CEO Vedalankar's oral report to the Parliamentary Portfolio Committee for Justice and Constitutional Development on 12 October 2010 concerning LASA's First Quarter Report ([www.pmg.org.za/node/23447](http://www.pmg.org.za/node/23447)). Adv Brink's transcription of CEO Vedalankar's oral report to the Committee is annexed hereto.

1. Records/relevant excerpt(s) from records reflecting the quantum of LASA's 'anticipated funding for the 2010/11 financial year'.
2. Records/relevant excerpt(s) from records reflecting the quantum of the lower 'funding' that 'materialise[d]'.
3. Records/relevant excerpt(s) from records reflecting the quantum of the 'funding ... shortfall ... cutting our baseline funding by a significant amount'.
4. Minutes reflecting NOE Nair's 'motivat[ion of] a change in the organizational structure', namely 'a reduction to our staff establishment in the 2010/11 financial year in order to meet this shortfall', alternatively the mere 'freezing of positions' without an actual 'reduction to our staff establishment to meet this shortfall'.
5. Minutes reflecting NOE Nair's consultation with HRE Clark and noting her views, in terms of section 8.1.2 (b) of the Approval Framework, concerning his intended 'decision that all vacant senior litigator posts that were vacant would be immediately frozen'.

Signed: Adv AR Brink



6. Minutes of 'management' meetings held 'Since early this year' recording its discussion that 'a reduction to our staff establishment' was 'required ... in order to meet this shortfall' in 'funding' that was lower than 'anticipated' by a 'significant' amount.
7. Minutes of 'management' meetings held 'Since early this year' recording the work 'management ... had' to perform 'to identify positions which could be frozen ... in order to meet this shortfall' in 'funding' that was lower than 'anticipated' by a 'significant' amount.
8. Minutes and/or notes kept/made 'Since early this year' in which the 'positions which could be frozen' were 'identif[ied]' by 'management'.
9. Minutes reflecting COO Makokoane's agreement, in terms of section 8.1.2 (b) of the Approval Framework, with NOE Nair and CEO Vedalankar's 'decision that all vacant senior litigator posts that were vacant would be immediately frozen'.
10. The resolution passed by 'management' in terms of section 8.1.2 (b) of the Approval Framework, following consultation with HRE Clark and with COO Makokoane's agreement, in relation to the claim: 'In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would immediately be frozen.'
11. Written notification of the Board Executive Committee of the 'decision ... the NOE and CEO took ... In July 2010 ... that all senior litigator posts that were vacant would immediately be frozen'.
12. Email to Durban Justice Centre attorney Bongani Mngadi (he says 'in April/May') notifying him that the Durban Senior Litigator post for which he'd applied wasn't going to be filled.

Signed: Adv AR Brink



13. Records/relevant excerpt(s) from records reflecting the total number of new LASA establishment posts created between 12 November 2009 and the date of response to this request.
14. Records/relevant excerpt(s) from records reflecting the number of new LASA posts created for permanent legal professional staff between 12 November 2009 and the date of response to this request.
15. Records/relevant excerpt(s) from records reflecting the number of permanent legal professional staff recruited and employed by LASA between 12 November 2009 and the date of response to this request.
16. Records/relevant excerpt(s) from records reflecting the annual salaries in respect of the various new LASA posts created for permanent legal professional staff between 12 November 2009 and the date of response to this request.
17. Records/relevant excerpt(s) from records reflecting the annual salaries paid to permanent legal professional staff recruited and employed between 12 November 2009 and the date of response to this request.
18. Minutes/excerpts of minutes of meetings of the Board of Directors and/or any of its committees and/or of the Management Executive Committee recording:
  - (a) mention of ‘the Minister’ of Justice and Constitutional Development’s statement to LASA Chairperson Judge Dunstan Mlambo that he ‘didn’t want’ LASA ‘to freeze posts’; and,
  - (b) the fact that ‘the Minister ... undertook to assist to resolve this issue’ of ‘OSD Phase 1 and Phase 2 funding’ and ‘did get involved and he had assisted ... in fixing ... some of the funding issues like OSD’ thereby obviating the potential future need ‘to freeze some posts’.

Signed: Adv AR Brink



**Transcript of audio recording of CEO Vidhu Vedalankar's address to the Portfolio Committee for Justice and Constitutional Development on 12 October 2010 during LASA's briefing on its Annual and First Quarter Reports** (audio recording:

<http://www.pmg.org.za/node/23447> ; transcript made by Adv Brink)

**Acting Committee Chairperson John Jeffery:** ... I think maybe highlight more the trends, the issues rather than an examination of the data. ...

**CEO Vedalankar:** OK Chair so the Quarterly report is also the I'm not sure because we've never done quarterly reports before so that is why what we did is we thought it would be useful to give you the high-level summary we give to our Board [inaudible] which is essentially the corporate dashboard and the corporate dashboard then that's what they track quarter on quarter to see if we are on track or not and that's what we thought would be the easiest and then also to then summarise. And I'm just going to indicate in terms of the overall performance that we are on track on all components of our Business Plan and we are confident that we will deliver this Business Plan in this financial year also. So we don't have any problem areas that we would like to report on. We do have challenges in terms of some of the funding issues like OSD but at the moment we are in the process of fixing it. In fact the Minister has been involved in that which relates to OSD Phase 1 and Phase 2 funding. And our Chairperson met with the Minister and he undertook to assist to resolve this issue through the medium-term sorry the mid-term adjustment budget.

**Committee Chairperson Jeffery:** [Occupational Specific] Dispensation, that's the salary increase for professionally qualified people.

**CEO Vedalankar:** And so that so that the Minister was in was and also because we indicated that if that didn't come through it meant that we would have to freeze posts. In this period of recession we don't have increases but there is also we have a budget cut that's coming in 2012, R34 million. So we were a bit worried because actually we run a very tight ship and if we didn't get the OSD money that we were meant to it would mean that we would have to freeze some posts but the Minister didn't want that and said that we needed to continue with the business. And so he did get involved and he had assisted. We just need to ensure that it's now, so it was in the mid-term adjustment, we need to ensure it's also in the end-tack [?] allocations because then that entails a change in the baseline because if we don't have that we still are going to go back to that problem. So overall we are on track in terms of Slide 1 you'll see. And then in terms of client and community I'm going to hand over to the head of our national operations Brian. And then after Brian speaks Jerry will take over and he'll talk to the finance and non-legal issues. Thank you Chair.

## Proof of emailing of second request for records

**PAIA: Brink - supplementary request for records**  
Anthony Brink [arbrink@iafrica.com]

This message was sent with High Importance.

Sent: Wed 2010/12/15 03:52 PM  
To: 'vidhuv@legal-aid.co.za'  
Cc: 'dunstanm@legal-aid.co.za'; 'BeeMari Schoeman'; 'ckisoori@sahrc.org.za'

Message | Brink\_supplementary\_PAIA\_records\_request.pdf (127 KB)

Dear Ms Vedalankar

I attach a letter to you covering a further request for records under PAIA, supplementary to my first request in August.

Yours sincerely

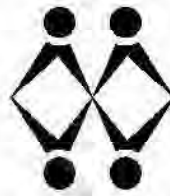
Adv Anthony Brink

CC:

Chairperson Judge Dunstan Mlambo

Board Secretary Ms Bee-Mari Schoeman

SAHRC PAIA Unit director Ms Chantal Kisoori



**Legal Aid**  
South Africa

29 De Beer Street  
Braamfontein  
Johannesburg 2017  
Private Box X76  
Braamfontein 2017  
Tel: 011 877 2000  
Fax: 011 877 2222

**[www.legal-aid.co.za](http://www.legal-aid.co.za)**

**BY E-MAIL**

Tuesday, November 09, 2010

Mr A Brink  
25 Baker Road  
Prestbury  
PIETERMARITZBURG, 3201  
**E-mail: [arbrink@iafrica.com](mailto:arbrink@iafrica.com)**

Dear Mr Brink

**PIETERMARITZBURG SENIOR LITIGATOR POST**

Your letter dated 30 November 2010 refers.

I have reviewed the actions of Legal Aid South Africa regarding your candidature for the Senior Litigator position in KwaZulu-Natal. I could find no unfairness or arbitrariness towards you as you allege or at all.

Regards

---

**Judge Dunstan Mlambo**  
Chairperson

Private Book X16  
Bouamfontem 2017.  
Tel: 011 877 2000  
Fax: 011 877 2222  
www.legal-aid.co.za

Tuesday, November 09, 2010

Mr A Brink  
25 Baker Road  
Prestbury  
PIETERMARITZBURG,  
E-mail: [arbrink@lafrika.com](mailto:arbrink@lafrika.com)

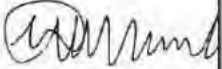
Dear Mr Brink

**PIETERMARITZBURG**

Your letter dated 30 Nov

I have reviewed the actio  
for the Senior Litigator pe  
arbitrariness towards you

Regards



**Judge Dunstan Mlambo**  
Chairperson

**Document Properties**

Description Security Fonts Advanced

Description

File: Response Letter to Mr Brink 15Dec2010

Title: Microsoft Word - Response Letter to Mr Brink 15Dec2010

Author: VidhuV

Subject:

Keywords:

Created: 2010/12/15 01:02:54 PM  
Modified: 2010/12/15 01:02:54 PM  
Application: PScript5.dll Version 5.2.2

Advanced

PDF Producer: Acrobat Distiller 6.0 (Windows)  
PDF Version: 1.4 (Acrobat 5.x)  
Location: C:\Documents and Settings\Anthony\My Documents\My Web Sites\TIG\LASA  
File Size: 28.23 KB (28,905 Bytes)  
Page Size: 8.26 x 11.69 in  
Number of Pages: 1  
Tagged PDF: No  
Fast Web View: Yes

OK Cancel

25 Baker Road  
Prestbury  
Pietermaritzburg 3201  
10 January 2011

Ms Bee-Mari Schoeman  
Secretary to the Board of Directors  
Legal Aid South Africa  
Braamfontein

Per email

Dear Ms Schoeman

BRINK/LASA

I write to enquire whether you're in a position to reply to my letter a month ago, a copy of which I attach to remind you.

Specifically, I need to know whether you've brought the matters raised in my letter to the attention of all Directors of the Board and whether you've placed these matters on the agenda for the next Board meeting.

Please ensure that you alert all members of the Board to the latest development since my last letter to you: the preparation of a set of draft papers in an imminent application against Legal Aid South Africa in the South Gauteng High Court (Johannesburg) to compel compliance with the Promotion of Access to Information Act.

The papers may be accessed at [www.tig.org.za/LASA](http://www.tig.org.za/LASA) ; username: lasa ; password: LASA2010 . (Search the founding affidavit on Schoeman.)

As mentioned before, I'd appreciate your reply under LASA's letterhead, for the record.

Yours sincerely



ADV ANTHONY BRINK

Cc: Board Directors: Adv Pieter du Rand, Attorney Jan Maree, and Dr Len Konar

Proof of email to Board Secretary Schoeman, 10 January 2011



25 Baker Road  
Prestbury  
Pietermaritzburg 3201  
10 January 2011

Adv Pieter du Rand  
Director: Court Services  
Department of Justice and Constitutional Development  
Pretoria

Per email

Dear Adv du Rand

BRINK/LASA:

APPLICATION TO ENFORCE LASA'S COMPLIANCE WITH PAIA

You'll recall that my letter to Judge Mlambo and the Board of Directors on 30 November last year commenced with the complaint that LASA CEO and information officer Vidhu Vedalankar had unlawfully refused to comply with the Promotion of Access to Information Act, and that she'd applied wholly inapplicable principles to justify doing so, grossly misquoting a judgment purportedly in support of her decision to refuse my request for records.

In his one-line dismissal of my petition, Judge Mlambo didn't deal with this at all.

I've accordingly drawn a set of draft papers in an application I intend launching before the end of the month in the South Gauteng High Court (Johannesburg), for an order compelling LASA to comply with its constitutional obligations under the Act.

The papers are accessible at [www.tig.org.za/LASA](http://www.tig.org.za/LASA) ; username: lasa ; password: LASA2010 .

For an explanation of this direct approach to you, search the draft founding affidavit on du Rand.

It's my impression that this matter hasn't been brought to the attention of all Directors of the Board, much less debated by them. In which connection, please note my letters to Board Secretary Bee-Mari Schoeman attached to my email to her today, in which I've copied you in.

I do trust and hope that you will take matters in hand, before further harm is done. Including to LASA's reputation in the public sector for exemplary corporate governance. In a *bo blink, onder stink* media scandal of titanic proportions.

As a fellow lawyer, you'll quickly understand the gravity of the case, and the 'Background' section in my draft founding affidavit will complete the picture.

If I may speak frankly, colleague to colleague, my surmise is that if anyone can fix this – within LASA – before it's too late, you can.

But if not, my next stop must be the Parliamentary Portfolio Committee on Justice and Constitutional Development, with my appeal to its oversight authority over LASA copied to the Minister and Deputy Minister.

And then finally to the high court for an order compelling LASA to conduct itself in conformity with the Constitution and to obey the laws of the land.

You'll understand my incredulousness that all that's happened in this matter has actually taken place in the post-apartheid era. Because I tell you, it certainly doesn't feel like it. But at least we have law and courts to deal with such abuses today.

I hope to hear from you by the end of the week.

Yours sincerely

A handwritten signature in black ink, appearing to be 'ADV ANTHONY BRINK', written in a cursive style.

ADV ANTHONY BRINK

Cc: Board Directors Dr Len Konar and Attorney Jan Maree; and,

Chantal Kisoona, Head: PAIA Unit, South African Human Rights Commission

25 Baker Road  
Prestbury  
Pietermaritzburg 3201  
10 January 2011

Chantal Kisoan  
Head: PAIA Unit  
South African Human Rights Commission

Per email

Dear Chantal

#### BRINK/LASA PAIA REQUESTS

Further to our correspondence last year, I've drawn a draft set of papers for an application in the South Gauteng High Court (Johannesburg) to compel LASA's compliance with my first and second records requests.

You can download them from [www.tig.org.za/LASA](http://www.tig.org.za/LASA) ; username: lasa and password: LASA2010 .

Like my first request, until you intervened, my second one emailed directly to CEO and information officer Vedalankar on 15 December has gone unacknowledged, and her month to comply is up in less than a week.

In my letter to Chairperson Judge Mlambo and the Board of Directors, which I copied to you, I complained about Vedalankar's refusal to deal with my first request properly and the spurious reasons she gave for rejecting it.

In his one-line response, Judge Mlambo didn't deal with this at all.

So under the powers invested in you by section 83 (3) (c), (d), and (e) of PAIA, please enlighten Vedalankar as to how PAIA applies to records requests like mine and disabuse her of her misconceptions noted in her letter. A personal visit with a copy of PAIA and my draft application papers might be in order. You're nearby.

I leave it to your discretion as to whether you think it appropriate to inform the other members of the Management Executive Committee and the Board of Directors in regard to the legal precipice towards which LASA is currently careering. I have the impression that most members of the Management

Executive Committee and the Board of Directors have not been consulted and are consequently unaware of where this matter is headed. And that they'd be most put out if they knew how it was being botched.

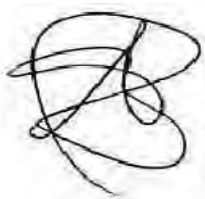
I write to you, on the record, in your formal capacity, in a bid to resolve this matter on the eve of an application to the high court. Please let me know the result of your final endeavours in this regard by letter under the SAHRC's letterhead, in MS Word or preferably PDF. I'll add it to the Document Bundle annexed to the founding affidavit if needs be.

You'll appreciate from the facts disclosed in the Document Bundle that there's an unhealthy conflict between Vedalankar's dual offices as CEO and information officer in this particular case, inasmuch as it's not possible for her to comply with my records requests without fatally compromising the fake cover she fabricated for the real, illegal reason she aborted my recruitment for the senior professional post I was selected and recommended for. So I'm not optimistic about your prospects in helping me obtain the records to which I'm entitled or sworn confirmation they don't exist, and litigation looks inevitable. I'll sound out Alison Tilley of ODAC and Paul Hoffman of IFAISA for this – the case should be right up their street – but if they're not in, I'll run it on my own (I've twice before successfully vindicated my rights in high court applications, and of course innumerable times for clients on brief).

I'd appreciate it very much if you would move briskly: unless a resolution is reached – *and it's really so very easy to fix what's broke* – I intend launching the application before the end of the month. The successive litigations I envisage will involve a long haul and I want to make an early start in this new year.

Thanks again for your able assistance in this matter to date.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Anthony Brink', written in a cursive style.

ANTHONY BRINK

Cc: Alison Tilley, Director: Open Democracy Advice Centre

Paul Hoffman SC, Director: Institute for Accountability in Southern Africa

25 Baker Road  
Prestbury  
Pietermaritzburg 3201  
10 January 2011

Alison Tilley  
Director: Open Democracy Advice Centre  
Cape Town

Per email

Dear Alison

#### BRINK/LASA PAIA REQUESTS

As a prominent free speech specialist lawyer in our country, you're sure to go with Voltaire's famous promise: 'I do not agree with what you say, but I'll defend to the death your right to say it.' Even if Oscar Wilde observed that 'In matters of opinion our adversaries are insane.'

Noam Chomsky put a point on this in his observation that 'Unless we believe in freedom of speech for those we despise, we do not believe in it at all.'

I write to you all too well aware that we have profoundly different opinions concerning the most important knowledge and policy controversy of our time. And whereas I consider your opinions flagged on the front of your HIV POSITIVE solidarity tee-shirt absolutely well-meaning but uninformed, you're likely to consider mine evil and despicable, particularly those recorded on pages 10–16 of the Document Bundle to which I'll presently refer.

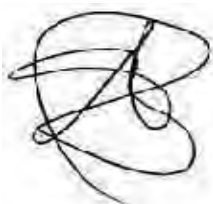
But our very different opinions aside, I'm certain we share a similar philosophical and political outlook in regard to the critical importance of freedom of expression in society. And it is with this in mind that I write to ask if ODAC will support me in a case likely to make history in South African constitutional law.

The reasons and the facts you'll quickly gather from my draft founding affidavit and the documents to which it refers in its supporting Document Bundle. I intend launching a preliminary PAIA application imminently, and have posted the draft papers I've drawn at [www.tig.org.za/LASA](http://www.tig.org.za/LASA) ; username: lasa ; password: LASA2010 . (Search the founding affidavit on Tilley.)

Please treat this approach in professional confidence. Although it looks unlikely, it's possible the matter may resolve before court, and I don't want to unnecessarily harm those currently opposed to me, and the public body they serve, by way of any unnecessary adverse publicity.

Looking forward to hearing from you.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Anthony Brink', written in a cursive style.

ANTHONY BRINK

Cc: Chantal Kisoona, Head: PAIA Unit, South African Human Rights Commission

Paul Hoffman SC, Director: Institute for Accountability in Southern Africa

25 Baker Road  
Prestbury  
Pietermaritzburg 3201  
10 January 2011

Adv Paul Hoffman SC  
Director: Institute for Accountability in Southern Africa  
Cape Town

Per email

Dear Paul

#### BRINK/LASA PAIA REQUESTS

Since our exchange late last year, there've been several increasingly dismal developments, which you'll find chronicled in the second half of the Document Bundle (see below), doubling the wad I sent you.

The look of it is we'll be off to court soon for the first phase in the litigation necessary to set things straight: a PAIA application. I've drawn draft papers and posted them in printable PDF at [www.tig.org.za/LASA](http://www.tig.org.za/LASA) ; username: lasa ; password: LASA2010 . (Search the founding affidavit on Hoffman.)

I write to ask you whether you'd be interested in taking this matter on: as I note in the 'Background' section of my draft affidavit, the case is likely to mark a very big first in post-apartheid constitutional jurisprudence.

Yours sincerely

A handwritten signature in black ink, appearing to be 'AB', with some loops and flourishes.

ANTHONY BRINK

Cc: Chantal Kisoona, Head: PAIA Unit, South African Human Rights Commission  
Alison Tilley, Director: Open Democracy Advice Centre

25 Baker Road  
Prestbury  
Pietermaritzburg 3201  
24 January 2011

Chairperson Judge Dunstan Mlambo and the Board of Directors  
Legal Aid South Africa  
29 De Beer Street  
Braamfontein  
Johannesburg

Per email: 13h45

Dear Judge Mlambo

BRINK/LASA  
FINAL APPEAL TO THE BOARD  
PIETERMARITZBURG SENIOR LITIGATOR POST

1. On Thursday last week, a concerned friend of mine, Christopher Rawlins, discussed our matter with Board Director Ela Gandhi at her home in Durban. A record of the meeting is annexed.
2. Chris, now 69, is South Africa's first conscientious objector, forced into political exile when he refused a call-up by the apartheid military in 1961 – finally coming home in 1994 immediately after the advent of democracy in our country.
3. And having paid a heavy personal price for his moral and political conscience, with some of his comrades killed for it, he's been especially outraged by LASA's illegal discrimination against me for exercising our newly won, constitutionally guaranteed rights of freedom of thought, opinion, research, expression, and participation in political discourse and public policy formulation.

4. Even if this means contradicting transnational pharmaceutical interests and their political/propaganda assets in the law, academia, media and political action groups.
5. Ms Gandhi is one of the Board members whose email address I'd been unable to find on the internet last year, and so had been unable to email her a copy of my letter to you and the Board of Directors of 30 November 2010.
6. My request to Board Secretary Bee-Mari Schoeman on 8 December 2010 to ensure that all Board Directors were apprised of my complaints of illegal discrimination and denial of access to LASA's records, and to place the matter on the agenda of the next board meeting, went unacknowledged. I therefore assumed, correctly, that Schoeman had disregarded my request and that Ms Gandhi was among the Directors deliberately kept in the dark.
7. Chris mentioned to me that Ms Gandhi lives near his house on the Durban Berea and volunteered to print and bind a hard-copy of my letter and Document Bundle annexed to it and deliver it to her.
8. He thought she would be concerned about LASA's unconstitutional, unlawful, and deceitful behaviour, given her promotion of her grandfather's absolute opposition to intolerance and discrimination and his absolute commitment to truth and justice.
9. With this in mind, I agreed; I also thought so.
10. Chris hand-delivered my letter and annexure to Ms Gandhi on 14 December 2010, and on 19 January 2011 phoned to follow up. He told me Ms Gandhi responded that she didn't see what I was concerned about because she'd been on the Board for four years with people she knew to be highly qualified, and there'd been unqualified audit reports for five years. Nonetheless, at his request, she agreed to meet him for a briefing about my case and invited him to her home for this.
11. At the meeting the following day, Ms Gandhi admitted having read my letter only 'quickly'; yet again she said she believed I had no cause for complaint.

12. During the meeting, Board member Yusuf Vawda telephoned her and spoke to her about my letter for some time.
13. Evidently her mind had been made up for her, and she'd been poisoned against me: Ms Gandhi concluded the meeting by slandering me as a libeller and extortionist. You can read what she said to Chris in his report of the meeting. I find it too perverse and disgusting to repeat.
14. It's obviously been decided to play dirty: instead of taking the trouble, for which they're paid, to apply their minds to evaluating and determining the merits of my complaints, and how to address and resolve them to avert remedial action in court, certain Board members and possibly executive managers have taken to assassinating my character and reputation by smearing me as an unconvicted criminal. Anything to avoid respecting the Constitution and the law of the land, when it comes to people they're politically prejudiced against.
15. This is the low mentality and viciously hostile animus I'm up against.
16. This is the quality and the level of the discussion currently taking place between certain Board members about my matter.
17. This is the shockingly irregular way in which my complaint is being dealt with at Board level: furtively; in cabals; behind the scenes; on the phone; off the record; dishonestly.
18. I'd be grateful if you'd direct the Board members and possibly management executives responsible for telling and spreading their foul lies about me to desist from doing so; and if you'd remind them that the proper place for a discussion of a matter as serious as mine is at a full Board meeting, on the record, with minutes taken recording the things they say. So that they can be reviewed by an independent judge if needs be.
19. Since she seems disinclined to do so, please also instruct Board Secretary Schoeman to place both this letter and my 30 November letter and its annexed Document Bundle on the agenda for discussion at the next Board meeting, and to prepare printed copies of both my letters and Document Bundle for the

Auditor General's staff, flagging for their attention the useless and wasted public expenditure caused by the abortion of my recruitment on illegal political grounds, and, as I discovered incidentally when investigating and exposing the false cover contrived for it, the presentation of false financial information in LASA's current annual report.

20. Like my first letter to her on 8 December 2010, Schoeman has not acknowledged my reminder to her on 10 January 2011 either. It seems plain, therefore, that she's been instructed to conceal the extraordinarily serious issues raised in my first letter and annexure from the Board as a whole, and to keep them off the agenda of the next Board meeting, thus concealing them from the Auditor General as well.
21. Who issued this illegal instruction to her, Schoeman will be compelled to reveal when she's cross-examined.
22. The Auditor General will be concerned to learn that my letter to CFO Rebecca Hlabatau on 1 September 2010, included in the Document Bundle, about the useless and wasteful expenditure issue went unacknowledged.
23. And that my letter to you and the Board of Directors about this and about the false financial information appearing in LASA's current annual report went unacknowledged by Audit and Risk Committee Chairperson Nonhlanhla Mgadza, whom I emailed on 30 November 2010.
24. And that no steps have been taken by the Board under its obligations as LASA's 'accounting authority' imposed by section 51(1)(b) of the Public Finance Management Act to 'take effective and appropriate steps to prevent ... fruitless and wasteful expenditure'. Such as readvertising and re-interviewing for a senior professional post for which an eminently suitable candidate has already been recruited – per Vedalankar's letter to me of 18 October 2010.
25. And that those members of LASA's Board whom I've been able to reach are apparently unbothered about the serious contraventions of the Public Finance Management Act that I've brought to their attention:

26. Besides yourself as Chairperson, of the nine Board Directors whose email addresses I found by searching the internet, only Adv du Rand, Dr Konar, and attorney Maree acknowledged receipt of my first letter to you and the Board – and then did nothing about it. My follow up letter on 10 January 2011 to du Rand, copied to Konar and Maree, was again formally acknowledged by du Rand, but again has otherwise been ignored.
27. Your perfunctory one-line response that you emailed me on 30 December 2010 – although dated 9 November (sic: 9 December?) 2010 – did not address my opening complaint that Vedalankar, as LASA information officer, has unlawfully refused my request for access to LASA’s records under the Promotion of Access to Information Act.
28. I was hoping that as a senior judge you would appreciate the gravity of her refusal to comply with the Act and her disrespect for section 32(1)(a) of the Constitution behind it, and that you would instruct her to obey the law forthwith.
29. Did you actually write the letter? According to its PDF properties file, Vedalankar did – on 15 December 2010, while you were still away in the US. It’s even signed off with ‘Regards’, just as she does – a strikingly unconventional and inappropriate style for formal business letters. Moreover, a complaint I never made was dismissed, and those I did make weren’t addressed. All this suggests a legally unqualified person wrote your letter, and indeed Vedalankar has left her fingerprints on it.
30. In view of your and the Board’s indifference to Vedalankar’s defiance of the Promotion of Access to Information Act, just to start with, I’ve drawn draft papers for an application to compel in the South Gauteng High Court (Johannesburg); and I’m just waiting for her response to my supplementary request for records, which she undertook to give me by 29 January 2011, so as to include it in the papers.

31. Since she's already informed me that in her opinion I'm not entitled to access to any of LASA's records – grossly misquoting a reported case against her, which she claimed to support her position – I'm expecting her to refuse my second records request as well.
32. Given the malicious false interpretation of my repeated appeals for an amicable resolution of my illegal discrimination complaint, it seems futile, even dangerous, to repeat it.
33. Nonetheless I'm still faintly hoping that at least some Board members will have the presence of mind to appreciate their exposure in this looming scandal and will call for an urgent special meeting under section 5(2) of the Legal Aid Act to discuss and resolve my matter properly, on the record, before it spills into open court.
34. As you well know, the financial reasons given in Vedalankar's letter to me of 18 October 2010 for aborting my recruitment are lies.
35. (Who actually wrote her letter – she's mentioned in the third person as 'the CEO' – and who instructed the real author of the letter to tell these lies, will emerge in cross-examination.)
36. These lies are comprehensively interrogated and refuted in paragraphs 44ff of my first letter to you and the Board. And the records I've requested, or, more pertinently, Vedalankar's sworn confirmation they don't exist, will further reveal them for the lies they are.
37. As you also know, the Senior Litigator post for which I was selected and recommended has been budgeted for and funded as part of LASA's critical professional senior staff establishment since as far back as 2007/2008.
38. The issue of delayed OSD funding has never had anything to do with it – but in any event, this had already been resolved by the time Vedalankar wrote to me falsely claiming budgetary constraints as the reason for aborting my appointment.

39. In her oral report to the Portfolio Committee on 12 October 2010, Vedalankar mentioned that ‘the Minister’ told you he didn’t want any posts frozen. Yet in brazen defiance of his express wishes Vedalankar claims to have frozen my post.
40. Leaving the majority poor in KwaZulu-Natal, unlike all other provinces, without the services of a Senior Litigator for nearly four years now.
41. And again, this is in defiance of the express wishes of the Portfolio Committee’s predecessor, the Parliamentary Safety and Security Select Committee, conveyed to you and Vedalankar at your meeting on 30 May 2007, namely that LASA should appoint Senior Litigators.
42. Topping which, in ‘freezing’ my post Vedalankar didn’t even deign to comply with LASA’s Approval Framework – such is the lawless breakdown of proper corporate governance at LASA.
43. As indicated in the conclusion of my appeal to COO Jerry Makokoane on 1 September 2010, failing the Board’s prompt intervention and resolution of my illegal discrimination and unlawfully denied records complaints, I’ll shortly be reporting them and the disgraceful manner in which they’ve been dealt with at Board level to the Portfolio Committee, to the Minister of Justice and Constitutional Development, and to the Deputy Minister. (Before granting interdictory relief, the courts require one to show that all available non-litigious remedies have been exhausted.)
44. To repeat once again, the solution to the catastrophe LASA is facing is quite simple: the illegal political prejudice against me must be put aside, the patently false cover invented for it must be abandoned, and my appointment to the senior professional post for which I was duly selected and recommended by a delegated expert panel of my professional peers must be finalised in the ordinary course.
45. Even if this is unpalatable to those in LASA who’ve unlawfully opposed themselves to me for political reasons – solely on account of my thoroughly researched, published criticisms of the safety and utility of certain patented

chemicals plied by enormously wealthy and powerful Western corporations on the African poor.

46. Unfortunately for those persons who've moved to oppose me politically, however, we have a progressive, enforceable Constitution these days; and as our own Navi Pillay, now United Nations High Commissioner for Human Rights has pointed out: 'More than pure aspirations, human rights are real rights that can be tested in courts of law.'
47. The draft papers in my preliminary PAIA application, testing my real right of access to LASA's records, are posted for your perusal at [www.tig.org.za/LASA](http://www.tig.org.za/LASA) ; username: lasa ; password: LASA2010. The application is substantially ready for launching in February.
48. My main case to vindicate and enforce my other even more basic constitutionally guaranteed human rights, disrespected and trampled on by LASA, will follow once I have my records or Vedalankar's confirmation on oath that they don't exist.
49. Please let me have the Board's assurance that the Pietermaritzburg Senior post for which I was selected and recommended will not be readvertised until my pending claim for appointment to it has been resolved, either by settlement or by order of court. Without such assurance I'll be bound to act to protect my rights with an interim interdict application.
50. Would you ask Board Secretary Schoeman to forward this letter to all Board members so that they are all fully informed of the dangerously advanced state of play and the rapidly fading prospects of a sensible internal resolution? As mentioned above, she's ignored both of my requests to inform all members of the Board. I only have some Board members' email addresses, and the rest would presumably want to know about the rocks towards which LASA is currently headed, threatening to wreck its exemplary reputation as an impeccably well managed public body (Deputy Minister Andries Nel remarked in *Business*

*Day* on 12 January: ‘The world would be a better place if it were run by Legal Aid.’).

51. If I haven’t heard from you by the end of this week, I’ll take it that your position against me remains unchanged, and I’ll petition the Minister, the Deputy Minister, and all members of the Portfolio Committee as the next levels of authority and accountability – all four of my successive appeals to the Management Executive Committee and the Board of Directors having been spurned.
52. Please appreciate that whatever Vedalankar decides concerning my second records request, and even if she reverses her decision to refuse the first one, I will still be petitioning the Minister, the Deputy Minister, and the Portfolio Committee to intervene and remedy my main illegal discrimination complaint, unless the Board moves to resolve it immediately. I’ve been waiting over fourteen months now.
53. And if I get no joy from Parliament, I’ll claim my constitutional rights in court, with its patient and efficient machinery for separating truth from lies.
54. This case is shaping up to be a historical, landmark development in South African constitutional jurisprudence. It’s just dismal to think that LASA is set to be forever memorialized in the law reports for its shameful contempt of the basic civil liberties enshrined in our democratic Constitution.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Anthony Brink', written in a cursive style.

ANTHONY BRINK

Advocate of the High Court of South Africa

033 344 2420

083 779 4174

Cc:

To: Board Directors du Rand, Gandhi, Jarana, Konar, Kruger, Maree, Memka, Mgadza, Mhlungu, Monaledi, Mosidi, Naidoo, and Vawda;

And to: Board Secretary Schoeman;

And to: Attorneys Kisoona and Bokaba:

PAIA Unit, South African Human Rights Commission

## Record of Meeting

Ela Gandhi and Christopher Rawlins

20 January 2011

2 P.M.

Ms Gandhi's home

During my meeting with Ela Gandhi on Thursday she received a telephone call from fellow board director, Prof. Yusuf Vawda, immediately informing him that she was busy discussing your letter with me. After the call, I explained that I had telephoned Prof. Vawda the previous Friday 14th January when he told me that he knew nothing at all about your letter and expressed no interest in learning of its contents. I reminded Ela Gandhi that she too would have known nothing about your letter had I not taken the trouble to print, bind and hand deliver it and now follow up with a meeting to update her on the correspondence since your letter to the board of 30 November 2010.

I outlined the way in which I believed you had been illegally discriminated against by the CEO and board Chair who held very opposed views to yours on the AIDS issue. Ela Gandhi said she firmly believed in the beneficial qualities of the drugs known as ARVs although she had never read any of your books or studies of AZT and nevirapine.

When I referred to the fact that KZN had been deprived of senior litigators in contrast to all other high court areas, Ela Gandhi assured me that KZN did in fact have senior litigators in post. She knew this from her attendance at the last meeting in Oct/Nov 2010 of the Legal Services Committee at which the good performance of the senior litigators had been commented on, in particular the one at Durban. I responded that you had been informed in the CEO's letter of 18 October that the KZN posts had been frozen because of lack of funding.

Ela Gandhi said there was no proof that you had been a victim of unlawful discrimination. She said many people are out of work and make unsuccessful job applications. She likened your application to that of Ashok Kaloo who had previously been rejected for the Pietermaritzburg senior litigator post after failing the second confirmatory interview in Johannesburg. I responded that the crucial distinction was that you had never been given the second confirmatory interview nor were you ever rejected on the basis of your skills, experience and personal qualities. You were informed after 9 months of waiting that the post had been frozen due to lack of sufficient funding.

I detailed the persistent steps you had taken to resolve the problem by written appeals to ever higher levels of authority within LASA, culminating in an appeal to the board Chair and the board in which you said that you would very much like to deflate the rapidly ballooning problem by way of a conciliatory meeting. Ela Gandhi said that this attempt to solve the problem by a conciliatory meeting amounted to attempted blackmail because you had made serious allegations of financial mismanagement in your letter of 30 November. Her belief was that you would offer to refrain from any

further exposure of the contraventions of various Acts as outlined in the heading page of your letter, in return for confirmation of your appointment which you claimed to have been unlawfully blocked. I responded that you had not offered nor would you ever contemplate such an agreement. The purpose of a conciliatory meeting would be to obtain justice as defined in our constitution without the necessity of the dispute becoming public through protracted legal action in the full glare of the media. The onus was on the board to meet to discuss how to respond to the contraventions of Acts and failure of corporate governance which had accompanied the cover up of your unlawful discrimination. Exercising its oversight function, the board is responsible and accountable to parliament and the public of South Africa and clearly would be neglecting its role if it did not address and rectify the breakdown in internal control and executive management that had allowed the problem to develop to such a serious stage. This would be necessary regardless of whether the dispute was resolved by a face to face meeting or by correspondence.

Ela Gandhi also said that the contraventions of Acts specified in your letter of 30 November were grounds for LASA to sue you for defamation. I responded that the truth of the statements made in your letter could be confirmed by reference to the records you had requested, but LASA had failed to comply with its legal obligations under PAIA. Referring specifically to the false totals contained in the table of executive management remuneration in the 2009/10 annual report, I left Ela Gandhi a copy of the annual report table, which she had not seen before although the false totals were detailed in your letter. She explained that the annual financial statements were thoroughly audited and examined by the specialist board members and asked me why you had not reported the false totals to the external auditors. I explained yet again the persistent efforts you had made to get your letter distributed to all board members but the board secretary had failed to even acknowledge your two letters requesting her to notify all board directors and canvass them on their support for a special meeting. The external auditors attend all meetings of the audit and risk committee together with the Chief Financial Officer and the internal audit executive and have unrestricted access to the Chair of the Committee and the Chair of the board. The external auditors would automatically be informed of any financial irregularities if the board secretary and board Chair had performed their job responsibilities as defined in the annual report.

Christopher Rawlins

## Anthony Brink

---

**From:** Mlambo Dunstan [DMLambo@justice.gov.za]  
**Sent:** 24 January 2011 11:12 PM  
**To:** arbrink@iafrica.com  
**Cc:** vidhuv@legal-aid.co.za; BeeMariS@legal-aid.co.za  
**Subject:** Legal Aid SA

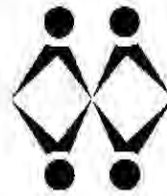
*Mr Brink*

*I refer to your previous email communication to me and to the numerous emails you have sent to the Executive Management of Legal Aid SA. I further refer to the email you sent to me and to some Members of the Board of Directors of Legal Aid SA as well as some whose tenure as Members of the Board has come to an end. It has been brought to my attention that a friend of yours had, in the past week, also called some Board Members and then paid a visit to one of them during which your matter was brought up.*

*Your conduct is unbecoming to say the least and borders on harassment. I have on a previous occasion informed you that I could find nothing untoward in how you have been treated by Legal Aid SA. I reiterate this view. I further take this opportunity to advise you that the Board of Directors of Legal SA is not the appropriate forum to raise your matter. Your approach to the Board is therefore misdirected. Your matter was handled at Executive Management level, being the level at which such matters are handled, and should you have any issues in that regard you are free to institute whatever legal action you may deem appropriate to obtain whatever redress you fathom is due to you. For this reason I call on you to desist from communicating with Board Members in this regard. I have, in turn, requested Board Members to ignore all communications from you and/or on your behalf.*

*I trust that you find this in order.*

*D Mlambo  
Chairperson- Legal Aid SA and  
Judge President  
Labour Courts  
[dmlambo@justice.gov.za](mailto:dmlambo@justice.gov.za)  
Tel +27113595735/6  
Fax 0866447932*



**By Email**

**28 January 2011**

**Adv A Brink**

**25 Baker Road**

**Prestbury**

**Pietermaritzburg, 3201**

**Email: arbrink@iafrica.com**

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**[www.legal-aid.co.za](http://www.legal-aid.co.za)**

Dear Adv. Anthony Brink,

**REQUEST FOR INFORMATION IN TERMS OF PROMOTION OF ACCESS  
TO INFORMATION ACT 2 OF 2000**

1. I acknowledge your letter of 15 December 2010 in which you request access to information in Legal Aid SA's possession in terms of the Promotion of Access to Information Act, Act 2 of 2000 ("PAIA"). I have also considered your recent letters dated 30 November 2010 sent to the Chairperson of the Board of Legal Aid SA, Judge President Dunstan Mlambo ("Mlambo JP") and to the Board of Directors ("Board") dated 24 January 2011.
2. Legal Aid SA promotes and complies with the constitutional precepts of accountability; openness; transparency and respect for human and related rights including your right to access information in its possession. This recognition should set the tone for the answer that follows herein below.

3. In your letter to Mlambo JP, you made serious and malicious accusations which can in effect be separated into two groups. Firstly, you accuse Mr Brian Nair ("Nair"), the Legal Aid SA's National Operations Executive ("NOE"), and me of unlawfully misrepresenting information (mainly financial management issues) to Parliament's Portfolio Committee on Justice and Constitutional Development and of concocting unlawful excuses and reasons, all with malicious intent to freezing a post of Senior Litigator, Pietermaritzburg ("PMB") for which you were singly selected and recommended for appointment subject to your final interview with Mlambo JP.
4. Secondly, you accuse Mr Nair and I or even the Legal Aid SA of singling you out for differential treatment which is, according to you, unlawful and unconstitutional, because of your race and of your conscience and belief. As a result of the foregoing conclusions, you grounded your application for access to information on section 46 of PAIA in seeking access to information from the Legal Aid SA. It is common cause that section 46 provides that:

*"Despite other provisions of this Chapter, the information officer of a public body must grant a request for access to record of the body contemplated in section 34 (1)... if –*

*The disclosure of the record would reveal evidence of –  
a substantial contravention of, failure to comply with, the  
law; or*

*...*

*the public interest in the disclosure of the record clearly  
outweighs the harm contemplated in the provision in  
question."*

5. At the outset, I wish to record my strongest rejection of your accusations which you levelled against me as the Chief Executive Officer of Legal Aid SA; members of the Executives (both individually and collectively) including but not limited to Mr Nair; Ms Amanda Clark ("Ms Clark") and the Board members including its chairperson, Mlambo JP; and its secretary Ms B Schoeman. Your views are unfounded; wrong and outright defamatory. My and my organisations' rights are strictly reserved to deal therewith at a later stage and/or an appropriate forum.
6. As I will show herein below, the premise you have chosen in seeking access to information you seek herein is baseless. This wrong assumption, which I will disprove herein below, led you to reject my answers to your request for access to our records. You continued with these malicious accusations to the Parliamentary Portfolio Committee on Justice and Constitutional Development; to the Ministry of Justice and Constitutional Development; to the Board; and to other institutions of your choice.
7. As I will demonstrate to you herein below, your assumptions in taking this route are far from the truth and are misinformed. I must however advise you, that the explanation furnished by me to you on 18 October 2010 remains valid and will be added to and clarified where possible as indicated herein below.
8. Despite the above accusations and assumptions, which I completely reject, I provide you with further information and reasons that led to the freezing of the Senior Litigator posts in Durban, Pietermaritzburg and Mthatha, in addition to the reasons furnished to you on 18 October 2010.

9. I provide you with the following documents to dispel the incorrect assumptions with which you ground your right to access information from the Legal Aid SA. In doing so, I wish to advise that the documents provided to you are provided on the basis that they are and should ***remain private and confidential***. You are therefore requested not to distribute them any further.

<u>NATURE OF DOCUMENT</u>		<u>AIM OF THE DOCUMENT</u>
V1.	The Legal Aid SA Approval Framework as approved by the Board on 23 May 2009	To demonstrate to you that the COO and CEO in consultation with other national Executives incl. NOE, HRE, ROEs, JCEs and the Board took part in deciding on various cost-cutting mechanisms including freezing of posts. The Board agreed with the Executives. See the extract herein below. The freezing of posts is contemplated in clause 8.1.2 thereof without same being Strategic Planning as you contend. This clause should be read together with Note 31 which clarifies that the NOE is the responsible executive for positions related to functions reporting to him and that the concurrence of the COO is not required for these posts. The COO has a similar authority for posts related to functions reporting to him.

V2.	The Legal Aid SA policy on inter alia, Recruitment of new employees, approved by the Board on 29 November 2008	To demonstrate (i) that in selecting employees, Legal Aid SA is guided by the Constitution Act of 1996 and relevant legislation; and (ii) Legal Aid SA Executives are not precluded from formulating processes for recruitment.
V3.	Letter of 18 March 2010 by CEO to DG DoJ & CD	To demonstrate that the Legal Aid SA has always had financial difficulties as a result of failure by DoJ to advance funding in terms of OSD 2 <sup>nd</sup> phase as promised; and the consequences of such failure on Legal Aid SA mandate.
V4.	Letter of 13 April 2010 by CEO to DG DoJ & CD	To demonstrate that there was a need for further funding as a result of the failure to deliver on the promised funding; and the effect that such failure will have on service delivery.
V5.	Email from Brian Nair (NOE) dated 15 July 2010 to Executives	To demonstrate the need to budget for the shortfall; to show that not only the Senior Litigators' posts were identified for possible freezing; and to show other costs-cutting mechanisms resorted to stay in budget.
V6.	Email from Jerry Makokoane (COO) and attached Memo to Executives; ROEs and JCEs of Legal Aid SA	To demonstrate that; a process of cost-cutting processes were proceeding even after you received your regret letter; that even Cabinet required Legal Aid SA to engage in cost-cutting processes; an impending

	date 30 Sept 2010	shortfall in Legal Aid SA's budget; and the types of cost cutting measures proposed by cabinet. See the 1 <sup>st</sup> option proposed.
V7.	An edited/ blacked out recommendation of the 1 <sup>st</sup> round Panel recommending inter alia you "For Next Round Interviews" dated 6 November 2009	To demonstrate that the process for Senior Litigator was two-pronged; that there were 2 candidates recommended for next round of interviews; that you were not selected and recommended for appointment subject to Mlambo JP's satisfaction as you claim but subject to a second round interview process for which the interview panel included Mlambo JP and other National Office Executives; and that the 2 <sup>nd</sup> round was never approved by NOE thus was never proceeded with.
V8.	Extract of audio recording of my presentation to Portfolio Committee on Justice on 12 October 2010 (after your regret letter)	To demonstrate that even in Parliament, I mentioned challenges that may face Legal Aid SA should OSD funding not be fixed; that if funding does not come through "we would have to freeze posts" and further that "because that entails a change in baseline because if we don't have that we are still doing to go back to that problem"; that there is a further budget cut in 2012.

V9.	Confidential letter of regret dated 23 August 2010 sent to you by KZN ROE Mr Vela Mdaka.	To demonstrate that you were informed that the Legal Aid SA will not be proceeding with the filling of the posts of Senior Litigator's KZN's Durban and PMB.
V10.	Extract of Legal Aid SA's Board minutes of 31 July 2010 where a resolution on cost-cutting proposal were approved by the board.	To demonstrate that the issue of cost-cutting measures served on the Board of Directors for its resolution thereon and that it has approved these cost-cutting measures.
V11.	The Advertisement for the position of Senior Litigator, KZN (Durban and PMB)	To demonstrate that processes outlined in the Policy on Recruitment were followed by the relevant regional office in seeking to recruit candidates for the above posts.
V12.	Chain email dated 14; 22; and 30 April 2010 from Clark to you and other regional and national managers dealing, in general, with the Senior Litigators' post.	To demonstrate that you were informed that process was still on and you were asked to liaise with KZN regional execs in re the relevant post.

10. I trust that the above information addresses the complaint you have against the Legal Aid SA regarding the Senior Litigator posts. From your reading of the request for information specified in your **Annexure**

**To Form A: Section D: Records Required** (as per your letter dated 26 August 2010 and repeated in your letter dated 15 December 2010) , I am able to advise as follows:

**AS TO PART 'A' THEREOF (AND PART B WHERE NECESSARY)**

11. As to your requests 1 and 2: I wish to refer you to the Legal Aid SA's Policy Document read with the Approval Framework.
12. As regard your request number 3 and 4: Mr Nair relied on the Approval Framework especially at 8.2.2(c) where, you will note, he has to approve the appointment of senior staff. However, he was not the person in charge of or managing the process of recruiting a Senior Litigator. This process is managed by the relevant Regional Human Resources Manager if it is a regional post; and a HRE if it is a senior national appointment. Mr Nair is the line executive/manager responsible for the appointment of Senior Litigators.
13. Seeing that the posts of Senior Litigator's post was a senior post, second round interviews were to proceed to the national level with national executives and was to be coordinated and managed by the HRE. The relevant regional HR officer was responsible, at all times, together with the KZN ROE Mr Mdaka who managed and compiled the recommendation of the panel after the first round of interviews as attached in the above table.
14. I reject your allegations in your request number 5 and 6: I dispute your argumentative conclusion premised, of course on misguided facts and

false information. Since these allegations are unfounded no such document exists.

15. As to request 7: I refer you to the Approval Framework annexed hereto.
16. As to requests 8 and 9 : I refuse to grant you access to this information on the basis of section 44(1) and (2) as the information sought herein relate to the deliberative process of the Legal Aid SA with third parties. Such information was required by it before; during and/or after engaging, in interviews and candidates reference check. (Refer in this regard to the Legal Aid SA's Policy on Recruitment Checks.
17. As to request 10: No time limit was set to finalise the recruitment process.
18. As to requests 3 and 4 (both in Part A and B of the request document): there are no such communications that I am aware of. I am willing to provide you with an email from Ms Clark dated 30 April 2010 which you already have in your possession and which you have referred to in your letter to Mlambo JP on or about 30 November 2010. This was blind copied to the ROE of KZN Mr Mdaka and Brijal.
19. For your requests 11; 12; 13 (PART A); 13 (PART B); 14 (PART A); 14 (PART B); 15 (PART B): please refer to the correspondence on costs-cutting measures, read with the Legal Aid SA's Approval Framework.
20. As for your request 15: The disparity on the advertised salary between Mthatha and Durban/Pietermaritzburg Senior Litigator position, is as a result of cost of living expense which was effected on 23 October 2009. You would have noted that the difference between the two advertisements is a period of over nine months.

21. As for your request 16: I am not aware of any of the Executives discussing you and/or your candidacy for the above-mentioned post save the edited and blacked out recommendation for the next round of interviews. This is attached hereto as part of the bundle in the table above.
22. As to the regional panel members' individual assessment notes; scores; deliberations; submissions and assessment reports on you, I, having considered your request, refuse to grant you access thereto as these documents and information relating thereto were compiled from the Legal Aid SA's panel's deliberative process of decision-making in the assessment and interview of candidates, including you, for vacant posts in the Legal Aid SA. I am entitled to refuse to grant you this information in terms of section 44(1) and (2) of PAIA.
23. I have decided, notwithstanding the above position, and after I have exercised my discretion, to grant you access to an edited/blacked out version of the final recommendation of the panel to show you what its decision was.

**AS TO PART B "OTHER RECORDS"**

24. As for your requests 1; 2; 28; 29; 30; 31; and 32: Except for annexures "V7" and "V9" (attached), I have exercised my discretion against granting you access thereto. I refuse to grant you access thereto in terms of section 44(1) and (2) of PAIA. My reason therefore is that this information was generated and compiled as a result of the Legal Aid SA's panel's deliberative process of decision-making in the assessment and interview of candidates, including you, for the vacant posts in the Legal Aid SA.

25. As to requests 3; and 4: Please refer to above.
26. As for requests 5; 6; 7; 8; 9; and 10: I am able to inform you that there is no recorded explanation for what you refer to as 'the delay'. I reject that there were any delays in dealing with any post. As far as I can tell, there were no time frames within which these recruitment drives were to be conducted and completed. I however wish to state that the Legal Aid SA was, at the same time as it conducted the recruitment drives referred to herein above and as you would have noted from the above documents, in a parallel process of securing funding. It had in conducting these recruitment processes parallel with fund raising drive, acted under the impression that the DoJ & CD would honour its promise to extend OSD funding to it. Accordingly and naturally, the drive to secure funding took priority as you would have noted from the correspondence above that all those Executives that were engaged in the recruitment of the Senior Litigator posts were also engaged in costs-cutting discussions/processes including identifying the areas that could be sacrificed to keep Legal Aid SA in budget. Ms Clark's mail to you was to be and must be understood in this light.
27. Because Ms Clark would not have been involved in the Senior Litigator's recruitment process as the second round of interviews was not proceeded with (see her email of 14; 22 and 30 April 2010 which you already have in your possession), Baboo Brijal would have been provided with the same updates as included herein above regarding the costs-cutting mechanisms. Obviously by November 2010, after the Memorandum from the COO, it was evident that there would be no funding coming from the DoJ. In fact a shortfall was expected up to 2012. Brijal was to update you should anything change regarding the continuation or otherwise of the recruitment drive not anything more.

28. As for requests 11; and 12: Ms Clark, as a HRE, was involved with the cost-cutting processes and was not at liberty to inform you of the reasons why the posts were not being finalised. All she did and said to you is informed by the costs-cutting measures that appear in the above documents. She was privy thereto and she too, just like all of us, had to wait and see if the Department of Justice and Constitutional Development would allocate us budget to proceed with finalising the recruitment processes. It is on this basis that you should understand Ms Clark's communications to you regarding this process.
29. As to requests 13, 14 and 15: The decision to create or abolish a post is derived from the Approval Framework which is annexed herewith. All communication relating thereto is also attached. If for any reason, the e-mail or any form of communication is not attached, it would have been verbal, the authority of which derives from the aforementioned Approval Framework.
30. As to your requests 16; 19; 20; 21; 22; 23; 24; 26; and 27: I have exercised my discretion against granting you access to this information in terms of sections 43(1) as it relates to confidential correspondence with third parties.
31. I further refuse to grant you access on the same information and documents on the basis of section 44(1) and (2) as the information sought herein relate to the deliberative process of the Legal Aid SA with third parties. Such information was required by it before; during and/or after engaging, in interviews and candidates reference check. (Refer in this regard to the Legal Aid SA's Policy on Recruitment Checks). I also refuse to provide access to this record as it relates to research or information gathering by third parties on behalf of Legal Aid SA as contemplated in section 43(1) and (2). It seems apparent to me that you already have document(s) that you seek in this regard.

32. As for your requests 17 and 18: There is no such discussion other than the documents provided to you.
33. As for your request 25: As this information would relate to the internal deliberations; opinions and views intended for Legal Aid SA to take certain decisions as contemplated in section 44(1) and (2), I have exercised my discretion against granting you access thereto. I therefore refuse to grant you access to this information or document.
34. As for your requests 33; and 34: Your attention is referred to the costs-cutting measures correspondence in which Nair was instrumental in identifying posts that should be cut; frozen etc. This was part of the Executive's mandate around that time. See especially the email and memo from COO to all Executives; ROEs; JCEs and 'All Staff' herein above wherein Cabinet also propagated the same mechanisms as Legal Aid SA.
35. As for request 35: To the best of knowledge there are no other electronic records relating to you.

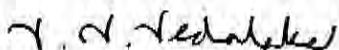
#### **IN CONCLUSION**

36. As you will note from the perusal of these documents, your request in terms of overriding provisions of section 46 of PAIA were in lieu of your misguided accusations against me; Nair; Mlambo JP; Clark and now the Board that either one or more of us were engaged in substantial contravention of the law. This I have rejected, out of hand, and I put you to the proof thereof.

37. In light of the above information given to you, it must further be apparent that your allegations of discrimination against you as an individual are baseless and misguided. Save for the documents and information delivered to you, I refuse to grant you access to the documents I have referred to.
38. Mlambo JP had an occasion to peruse and consider your long letter of 30 November 2010 wherein you seem relentless in your complaint and accusations against me; Nair and the Legal Aid SA and has essentially, after reviewing our processes regarding the cost-cutting measures including but not limited to the Senior Litigator posts, found no evidence to substantiate your claims. Of course you do not believe him and you ridicule his findings in your subsequent correspondence and your threatened court actions. I have, on my part, also tried, notwithstanding this answer from Mlambo JP, to answer your requests and avail certain documents to you, the contents of which, I wish to repeat, are private and confidential.
39. As indicated hereinabove, I have also had an occasion of reading your recent letter dated 24 January 2011 to Mlambo JP. I, and the Legal Aid SA under my watch, have never sought to make any decisions regarding the Senior Litigator posts on any ground other than the budget constraints which you have rejected.
40. You accuse us and persist with your baseless accusations of financial improprieties and misrepresentations to the Portfolio Committees etc. I challenge you to present your investigative results of Legal Aid SA's financial mismanagement; wasteful and fruitless expenditure to the Auditor General.

41. In conclusion, I note your threats of court actions cross examining me; officials of Legal Aid SA; now the Board members; and their secretary. Your threats of *mandamus* against the Legal Aid SA; of using independent judges; of probing our executives' affidavits; of your draft notice of motion and an accompanying founding affidavit, are unnecessary. Please refrain from your disparaging attacks on people's dignity on baseless assumptions.
42. Be advised that the Legal Aid SA will defend itself against any of the threats that you have made against its officials and Board members.
43. The Legal Aid SA's Board of Directors; its Executives and all of its staff country-wide are committed to complying with the laws and statutes of the country most importantly the Constitution of the country and its values of accountability and transparency. It is in that spirit, and despite your insulting and condescending tone of language to us, that I have responded fully to your requests for access to information regarding your non-appointment to the position of Senior Litigator, PMB.
44. We have exhausted our explanations to you and trust that this final letter to you shall put this matter to rest. Please be advised that no further correspondence on this matter will be responded to. Your cheque will be returned to you with the original of this letter.

**Yours faithfully,**



**Vidhu Vedalankar**

**CEO: Legal Aid South Africa**

V I



Your voice. For justice.

**LEGAL AID SOUTH AFRICA : APPROVAL FRAMEWORK**

**CHANGES INDICATED IN RED FONT**  
**THE COLUMN ON THE EXTREME RIGHT INDICATES CHANGES IN ROWS IN THIS VERSION**

**Key to Levels**

- A: Final approval
- B: Must agree
- C: Must be consulted (before)
- D: Must be informed (after)
- E: Originates

**Key**

- CEO = Chief Executive Officer
- COO = Chief Operations Officer
- NOE = National Operations Executive
- CFO = Chief Financial Officer
- EXEC = The executive responsible for the fine function in question (Exec includes ROE and Board Secretary but excludes JCE)
- CSE = Corporate Services Executive
- ROE = Regional Operations Executives
- HRE = Human Resources Executive
- LDE = Legal Development Executive
- ISE = Information Systems Executive
- CE = Communications Executive
- BS = Board Secretary
- CLM = Corporate Legal Manager
- ISM = Impact Services Manager
- JCE = Justice Centre Executive

**Key to Other**

- AC Audit Committee
- RC Remuneration Committee
- LSC Legal Services Committee
- LSTC Legal Services Technical Committee
- Board Board of Directors (refer Note 29 & 30)
- B/Exco Board Executive Committee
- Man/Exco Management Executive Committee
- BAC Bid Adjudication Committee

In the event of any conflict between this approval framework and any other Legal Aid South Africa policy the Approval Framework will prevail.

	RESPONSIBILITY SUBJECT	NOTES	Board	Man/	CEO	COO/	CFO	EXEC	OTHER	Changes
			(29 & 30)	Exco		NOE (31)				31-7-10-10
<b>1</b>	<b>STRATEGY AND PLANNING</b>									
1.1	Strategic Plan		A	C	E				C/ All Committees	
1.2	Business Plan		C	A	B	E			C/All Committees	

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	
7	<b>AUDITORS</b>									
7.1	Appointment and dismissal at LAB of agent of AG	4	D	D	D				D/AC	
7.2	Reports (non-routine audits)		D		E				D/AC	
7.3	Non-auditing consultancy fees	18	D		B		A	E	A/BAC	
7.4	Auditing fees		A	C	B	C	C		D/AC	
7.5	Interim and Final Audit Plans		A	C	B	C	C		C/AC	
8	<b>HR MATTERS</b>	5								
8.1	<b>Personnel Structure</b>									
8.1.1	Approval and periodic revision of grading policy		A	C	C	C		E(HRE)	C/RC	
8.1.2	(a) Establishment of new positions, regrading existing positions and abolition of posts at executive senior managerial & within budget (levels 14-16)		A		B	C		E C(HRE)	C/RC	
	(b) Levels (11-13) & OSD - CM - 1 ; OSD - LP - 9 & 10 and MR - 5				A	B		E C(HRE)		
8.1.3	Establishment of other new positions, regrading existing positions and abolition of posts within existing structure & within budget (levels 1-10) and OSD - SU - 1 & 2 and OSD - LP 1 - 8				B	A		E C(HRE)		
8.2	<b>Appointments</b>	17 & 21								
8.2.1	(a) CEO (Level 16)		A/E						C/RC	
	(b) COO or NOE (Level 18.6)		A		B/E				C/RC	
8.2.2	(a) Executive (other than the CEO, COO & NOE),		C B/Exec		A/E	B/E			D/RC	X
	(b) Senior Management and Senior Professional staff (levels 11-13, OSD - CM - 1 and OSD - LP - 9&10, OSD - MR - 5)				B	B		E A	D/RC HRE (17)	
	(c) OSD - SU - 1 & 2 and OSD - LP-8					B		A/E (NOE) A	HRE (17)	
	(d) Other permanent staff (below level 11 and OSD - LP - 1 to 7)							incl JCE		

RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/Exec	CEO	COO/NOE (31)	CFO	EXEC	OTHER	CHARTER
									27Feb10

31	Delegation to the COO and NOE shall be in accordance with the functions each is responsible for ie all delegated authority to the COO will be for those functions and executives reporting to him/her and all delegated authority to the NOE shall be for those functions and executives reporting to him/her; It is noted that this delegation is not interchangeable ie The COO shall not have authority to approve matters relating to functions that are the responsibility of the NOE and vice versa.	
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V2.

## **1. RECRUITMENT**

### **1.1 Purpose and Objectives**

- 1.1.1 Recruitment is a process of attracting and appointing the best possible candidates for employment into suitable positions within the Legal Aid Board with the purpose of enhancing high performance in the business. As a principle, the services rendered by the Legal Aid Board, especially taking into account the provision of access to justice for the poor and indigent should be taken into consideration.
- 1.1.2 This policy and procedure aims at ensuring that appropriate recruitment procedures are followed, in line with all relevant statutory legislation and business practices, so that the Legal Aid Board's operational needs and requirements are met adequately. The recruitment process must be fair, objective, transparent, and non-discriminatory.
- 1.1.3 This policy and procedure provides the Legal Aid Board with clear guidelines to be followed when a vacancy exists.

### **1.2 Recruitment Procedure**

#### **1.2.1 General**

- 1.2.1.1 A request for the filling of a position (vacant or new) should be initiated on the Staff Requisition form. The Regional Operations Executive will approve the filling of vacancies for the relevant Justice Centres and the Departmental Executive responsible will approve the filling of vacancies at National Office.
- 1.2.1.2 New positions and position profiles will be only be created after it has been motivated and approved as per the LAB approval framework and signed off by Chief Operations Officer.

1.2.1.3 The newly created position will then be filled by the Human Resources Department in consultation with the Executive who will be responsible for preparing a detailed position profile outlining the key performance areas that attach to that position.

1.2.1.4 Any upgraded or new position will thereafter be graded and the grading will be considered by the Job Evaluation and Grading Committee and approved in accordance with the approval framework.

1.2.1.5 Vacant posts should be advertised in as wide a range of media as possible, including, but not limited to, the Legal Aid Board intranet, newspapers and other print media. However, when at the discretion of management, an appropriate pool of candidates are available within the organisation, posts may be advertised on an internal basis only. Care must be taken in the formulation of the advertisement to ensure that the following information is clearly contained in the advertisement:

- (a) The designation of the post;
- (b) The minimum qualifications for the post
- (c) The minimum experience required
- (d) The key performance areas that attach to the post,
- (e) The manner in which interested persons may apply for the post,
- (f) Contact details of the relevant person in the Legal Aid Board from whom application forms and/or further particulars can be obtained,
- (g) The number of references required
- (h) Addresses and fax numbers to which returned applications must be returned, and
- (i) The closing date for all applications which must be at least 10 working days after the publication date of the advertisement or from the date of circulation of the internal notice - shorter periods may be considered for urgent recruitment.
- (j) An indication that the LAB reserves the right not to make an appointment and that applicants not contacted within 2 months may consider their applications unsuccessful.

1.2.1.6 Vacant positions are to be advertised internally by means of intranet.

- 1.2.1.7 Either prior to or concurrent with the external and internal advertisement, an invitation for the internal referral of suitably qualified and culturally compatible candidates must be extended to LAB employees and Board members. This invitation must meet the requirements contained in (a)-(j) above.
- 1.2.1.8 In the case of an external advertisement in the local print media, once the draft in line with the provisions of (a)-(j) above has been completed, the Recruitment Officer/Administration Manager/ Regional Human Resources Manager will advise the advertising agency to draw up the final advertisement, and submit quotations for the publication thereof in the media as specified. In the case of advertisement in national print media, Recruitment Officer / Administration Manager / Regional Human Resources Manager shall refer the draft advert to the Human Resources Administration Supervisor for centralised placement and publication of the advert.
- 1.2.1.9 After the prescribed requisition procedures have been followed, the advertising agency must be instructed to place the advertisement.

## **1.2. 2. Selection Committee / Panel**

- 1.2.2.1 The Human Resources Department, in consultation with the relevant line manager, will use the relevant criteria and the relevant key performance areas to shortlist candidates whose CVs and applications meet the minimum and all other inherent requirements of the job, and interview questions will then be prepared in consultation with the manager who would manage the incumbent to the vacant post. The Human Resources Department will also be responsible for ensuring that due consideration is taken of the Legal Aid Board's employment equity policy and affirmative action policies in the short listing and formulation of interview questions. The Human Resources Department will also ensure that employees, amongst the applicants, who have been identified to participate in the succession planning development programme are included on the shortlist.

- 1.2.2.2 It is the responsibility of the Human Resources Department and the relevant line manager to jointly ensure that a diverse and knowledgeable selection committee/ panel is appointed. As far as is reasonably practicable, the selection committee or panel should be suitably representative and diverse, provided, however, that the selection committee or panel should include at least one official who has been fully trained in recruitment and selection process and procedures of the organisation and whose function is to ensure that the interviewing process and the deliberations of the committee take place in a fair manner. A trained official must be included in the selection committee or panel irrespective of the level of the position.
- 1.2.2.4 Where only one (1) candidate meets the minimum requirements, the Human Resources Department should endeavour to source further CVs from employment agencies listed on the preferred suppliers database of Legal Aid Board or advertise externally via the media to ensure that the greatest number of potential candidates are informed and interviewed in the best interests of organisation.
- 1.2.2.5 Irrespective of the level of the position, the manager who would manage the incumbent filling the vacant position must also be on the selection committee or panel, since this manager would know the exact requirements of the job, the expectations attached to the position to be filled and the key performance areas that would attach to the incumbent filling the vacant post.
- 1.2.2.6 The selection committee shall consist of at least three (3) members who are employees of a grading equal to or higher than the grading of the post to be filled. For non-SMS posts, a union representative is to be invited as an observer. The union representative is additional to the minimum of three members.
- NB. A document on the role of the trade union representative during an interview may be obtained from Human Resources Department.

- 1.2.2.7 For positions at level eleven (11) and above, the relevant department within the Legal Aid Board should be represented by the Executive or his/her nominee. For Professional Assistants, irrespective of level, the JCE should always form part of the panel.
- 1.2.2.8 Managers/employees of a lower grading than the grading of the post to be filled may record or provide advisory services during the selection process but shall not form part of the selection committee. Any issues relating to processes or interview itself, to be raised by a non-selection committee member should be addressed to the ROE concerned or the Human Resources Executive.
- 1.2.2.9 In the process of interviewing, the selection committee or panel must avoid irrelevant questions or questions that could be potentially discriminatory, including, but not limited to an employee's family status, religion, political or other beliefs, social status, family responsibilities, race, gender or sexual orientation. The interviewing process and subsequent deliberations of the committee or panel should focus on assessing whether the person being interviewed is suitable for the position or not.
- 1.2.2.10 Employees nominated to serve on a selection committee or panel should be informed, and, where necessary, trained in respect of the consequences of discrimination in the recruitment and selection process and ways to avoid hidden or latent discrimination in the recruitment processes.
- 1.2.2.11 Short listed candidates should be informed timeously before interviews take place.
- 1.2.2.12 Before interviewing applicants, all members of the selection committee or panel should be informed of the Legal Aid Board's employment equity and affirmative action policies and how these policies impact on the vacancy for which they are interviewing; interview panel members are obliged to keep the interview information confidential.

### **1.2.3 Selection Criteria**

- 1.2.3.1 The Human Resources Department will prepare criteria against which all applications for a specific post are to be evaluated consistent with and based on the inherent requirements of the post as listed in the advertisement.
- 1.2.3.2 Care must be taken to avoid the making of recruitment decisions on discriminatory grounds.
- 1.2.3.3 An internal candidate who qualifies for the post in terms of the advertised requirements will not automatically be appointed to the position but will be selected through the same process as an external candidate.
- 1.2.3.4 After the selection committee has identified the most suitable candidate for appointment in a post, procedures will be followed to appoint the individual into a position or a temporary one.
- 1.2.3.5 The selection committee may require certain short listed candidates undergo for psychometric assessment to supplement the interview results.
- 1.2.3.6 Before the final appointment is made, and only where the advertisement indicated that references were required, the referees as submitted by the applicant should be contacted and objectively verifiable information should be obtained from the referees. Objectively verifiable information includes the candidate's length of service, the capacity in which the referee knows the candidate and the position the candidate occupied (if appropriate).
- 1.2.3.7 Before any offer is made to any candidate, the candidate's personal particulars including but not limited to, qualifications, security checks, and credit checks must be verified in compliance with the LAB Recruitment Check Procedure.

NB: Motivation has to be signed off by all the members of the panel and the line executive before being forwarded to the HRE/ COO/CEO/ delegated for approval, appointment recommendations will be approve in line with the approval framework

## **1.3 Recruitment Check Procedure**

### **1.3.1 Purpose**

The purpose of the LAB-RC for the Legal- Aid Board is to :

- 1.3.1.1 ensure that the LAB will only consider the best suited candidates for positions in the organisation;
- 1.3.1.2 safe guard and limit the LAB's exposure to possible fraud; and
- 1.3.1.3 provide guidelines in terms of rehabilitation.

For the purpose of this procedure, reference to the existing Avalanche and MIE tests will be replaced by LAB-RC ( Legal Aid Board recruitment check).

### **1.3.2 Authorisation**

#### **1.3.2.1 Regional Appointments**

The responsibility of authorising this test will vest in the ROE, who in turn can delegate it to the Regional Human Resources Manager. When authorising this test the ROE or his/her nominated representative should consider the parameters of this procedure.

#### **1.3.2.2 Central Office Appointments**

The responsibility of authorising this test will vest in the relevant executive. When authorising this test the Executive should consider the parameters of this procedure.

### **1.3.3 Consent to Recruitment Check**

The candidate must consent in writing to the recruitment check and should the candidate refuse to grant such consent, they may not be employed.

V3



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18 March 2010

The Director-General  
Department of Justice and Constitutional Development  
Private Bag X81  
PRETORIA  
0001

Dear Ms Msomi

**LEGAL AID SA 2010/11 BUDGET & EFFECT OF OSD FUNDING**

1. Government introduced an Occupational Specific Dispensation (OSD) for legal professionals effective from July 2007. The Minister of Justice and Constitutional Development has since extended the OSD to Legal Aid South Africa.
2. The OSD implementation was intended to be implemented in two phases with funding provided by the Department of Justice and Constitutional Development (DoJ & CD). Legal Aid SA has implemented OSD phase 1 in full after the DG of DoJ & CD made a written commitment to provide for the OSD funding and thus effect MTEF budget baseline adjustments for Legal Aid SA. Contrary to a commitment made, OSD phase 1 is being funded from DoJ & CD budget savings and Legal Aid SA's MTEF allocations continue to show a budget shortfall.
3. In January 2010 a joint meeting of DoJ, NPA and Legal Aid SA delegations met to resolve the outstanding funding shortfall on OSD phase 1 and implementation of OSD phase 2. Subsequent to the meeting the 25 January DoJ ManExco considered the agreed position by the joint meeting. The DDG Corporate Services of DoJ, Mr Vuso Shabalala, later confirmed that the DoJ Exco had endorsed the adjustments as agreed in the joint meeting of January.

4. The funding shortfall is as follows:

OSD area	2009/10	2010/11 and MTEF
OSD phase 1		R23,8 million
OSD phase 2	R42 Million (including back payments from July 2007)	R30 million
<b>TOTAL</b>		<b>R53.8 million</b>


5. Legal Aid SA has since received a letter from National Treasury confirming approval to transfer an amount of R42 Million from DoJ& CD budget 2009/10 to Legal Aid SA. This amount is not yet received by Legal Aid SA. The DoJ&CD or National Treasury did not advise any further on the 2010/11 budget & MTEF baseline adjustments.
6. On Wednesday, 10 March 2010, in response to Legal Aid SA's request a copy of the OSD letter of DoJ to National Treasury (sent to NT in February 2010) was received. Contrary to confirmed reports by DoJ&CD, the Department did not recommend a budget baseline adjustment for MTEF 2010/13 for Legal Aid SA.
7. This situation will result in a budget deficit for Legal Aid SA in its 2010/11 MTEF cycle.
8. It should be noted that if Legal Aid SA pays the OSD Phase 2 funds in the 2009/10 financial year, it will be committing to payment of OSD Phase 2 salary adjustments for subsequent years. However if the DoJ&CD does not commit to an adjusted baseline Legal Aid SA will in effect be budgeting for a deficit. In terms of the Section 53(3) of the PFMA – "A public entity which must submit a budget in terms of subsection (1), may not budget for a deficit and may not accumulate surpluses unless the prior written approval of the National Treasury has been obtained."
9. Legal Aid SA is therefore unable to begin paying the OSD Phase 2 salary adjustments for 2009/10 and previous financial years until the future funding for it has been secured.
10. Of the total R53,8million shortfall for 2010/11, R23,8million shortfall is for OSD Phase I.
11. It is noted that despite the DoJ&CD committing to funding for OSD Phase I, in 2009/10 and now in 2010/11 Legal Aid SA faces a shortfall because an adjustment to the MTEF baseline has not been effected. Legal Aid SA cannot further

exacerbate this by paying the first installment of OSD Phase 2 to staff and adding to the budget deficit.

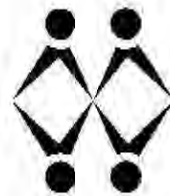
12. Your office is requested to confirm allocations of OSD shortfall funding to the amount of R53,8million in the 2010/11 budget allocation, and that such amounts will be added to the MTEF budget baseline going forward.
13. You are advised that in case DoJ & CD is unable to respond and confirm the budget and MTEF allocations in writing,
  - 13.1. Legal Aid SA will not be able to pay OSD phase 2 by end March 2010 as intended;
  - 13.2. When we receive the R42 million, we shall retain it (OSD Phase 2 for 2009/10 and back pay) pending National Treasury approval as a rollover to 2010/11;
  - 13.3. We will only effect the OSD phase 2 adjustment and payments once the DoJ&CD and National Treasury have, in writing, approved the adjustment to budget & MTEF 2010/11 going forward.

Your urgent response to this matter will be appreciated.

Regards



Ms Vidhu Vedalankar  
Chief Executive Officer



**Legal Aid**  
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13 April 2010

The Director General  
Department of Justice and Constitutional Development  
Private Bag X81  
**PRETORIA**  
0001

Fax: 086 644 6406

Dear Ms Msomi

**RE: LEGAL AID SOUTH AFRICA BUDGET 2010 & EFFECT OF OSD FUNDING**

My letter dated 18 March 2010 has reference. I have to date not received an acknowledgement or response to my letter.

As raised in my letter of 18 March 2010, in terms of Section 3(3) of the PFMA, Legal Aid South Africa as a public entity may not budget for a deficit unless the prior written approval of the National Treasury has been obtained. In my letter I indicated the deficit for OSD Phase I for 2010/11 to be R23,8million. For ease of reference I attach a copy of a letter from the DG:DoJ&CD dated 05.02.2009 in which, in the last paragraph, he committed 'to adjust the baseline of the LAB in the Adjustment Budget with R69,6million subject to periodic reporting of the LAB on projected personnel expenditure...'. Despite this commitment to adjusting the baseline we have only seen an adjustment to our baseline by R50million. The R69,6million for 2009/10 amounts to R73million for 2010/11. The adjustment of the baseline by R50million leaves us with a shortfall of R23million for 2010/11. This is unfortunate because we have already budgeted for 2010/11 on the basis of the DG's commitment. Please note that funding these amounts from your savings, as and when they become available, is contrary to the intent of the Medium Term Expenditure Framework and leaves us in a very precarious position. Please will you indicate how you intend to abide by this commitment?

If you are unable to abide by this commitment we will be forced to effect the necessary adjustments to our 2010/11 Budget so as to accommodate the R23 million budget shortfall of OSD phase 1. The primary impact of that will unfortunately have to be on service delivery at courts including increased

delays and backlogs as a result of us reducing the number of practitioners that we can make available at courts.

As per my letter dated, 18 March 2010 the funding for OSD Phase II also remains outstanding. As indicated we are unable to implement OSD Phase II unless we have a commitment to a change in our budget baseline by the amounts indicated in the letter. Discontent amongst staff on the non finalisation of OSD Phase II remains a challenge.

May I request your urgent response to the issues raised above as well as to my letter of 18 March 2010?

With Kind Regards

*V. N. Vedalankar*

---

Ms Vidhu Vedalankar  
Chief Executive Officer  
LEGAL AID SOUTH AFRICA

V5

**From:** Brian Nair  
**Sent:** 15 July 2010 04:54 PM  
**To:** Jerry Makokoane  
**Cc:** Amanda Clark; Rebecca Hlabatau; Vidhu Vedalankar  
**Subject:** Budget cuts - Reduction in Criminal Court Coverage - July 2010.xlsx

Hi Jerry

Please find my first cut of 56 practitioner posts at JCs. I have not looked for paralegal and admin positions at JCs as yet. This amounts to a potential savings of R16m which is much lower than what is required.

In terms of this cut, I have ensured that DC will not be lower than 80% coverage whilst RCs will not be lower than 90% coverage. If we need to find more savings from practitioner positions, then we will need to agree to lower coverage levels for District and Regional courts.

Kindly note that I have not consulted ROEs on these cuts. I will need to engage them once we are sure that these cuts will be necessary.

Thanks

Brian

V6

**From:** Jerry Makokoane  
**Sent:** Thursday, September 30, 2010 3:07 PM  
**To:** Andile M. Mbatyoti; Rebecca Hlabatau; Amanda Clark; Thembile Mtati; Mpho Phasha  
**Cc:** Solly Sekgota; Oscar Maripane  
**Subject:** Consideration of cost cutting measures in Legal Aid SA  
**Importance:** High

Day All

The attached memo from my office refers.

Please ensure that all staff in your department are given an opportunity to consider this issue. Further, a staff meeting should be held where suggestions from your staff can be discussed and finalised.

In order to facilitate the consolidation of information from Departments, a web page has been developed to record your input on the line items in our budget which could be considered for cutting. Please access this web page from our National Operations reporting site under Ad Hoc reports. This web page is called *Budget Savings*.

Kindly note that ROEs and JCEs have been send a separate communication. You only have to fill information for your function. If you want to also use the Functional committee it is also ok.

Kindly note the deadline for the provision of your reports on this matter ie 15<sup>th</sup> October 2010.

Thanks

Regards

Jerry Makokoane  
Chief Operations Officer





**Your voice. For justice.**

To:

National Executives  
ROEs  
JCEs  
All Staff

**Consideration for effecting cost-cutting measures in Legal Aid SA**

1. With the current economic recession showing a slow recovery while pressure of service delivery by state institutions remain a point of focus, Cabinet has on the 18<sup>th</sup> August 2010 indicated that it is to finalise proposals for cost-cutting measures across the state departments. These cost-cutting measures are intended to reduce financial wastage and redundancies, and thus assist in availing funds to priority areas such as salary costs.
2. Legal Aid SA is as a result not expecting new or additional funding from the National Treasury during the next MTEF period. We currently face a deficit of more than R23.8mil in our Budget 2010/11 due to a cut in funds from the DoJ. The wage settlement for COLI will add further to the deficit since it is at a higher level than the grant provided by National Treasury. This will carry through into our 2011/12 budget. We have a further cut of about R34mil in the 2012/13 government grant allocation. This means that we are compelled to introduce some cost-cutting measures and efficiency measures as required by government. The cost-cutting and efficiency measure proposed by the Cabinet are the following:
  1. freezing of all vacant posts;
  2. a moratorium on purchasing of furniture;
  3. rationalization of overseas trips;
  4. cancelling performance bonuses for the 2010/11 financial year;
  5. using government facilities for meetings (instead of Hotels);
  6. no team building exercises and Christmas parties;
  7. reduction of cell phone expenditures;
  8. limiting business class travel to Members of the Executive Council (MEC's) and Head Of Departments (HOD's)

3. As you already know, more than 68% of our budget is committed to salaries and related benefits, a further 7% goes to contractual services such as Office Lease, municipal service, Insurance fees, cleaning and security services, etc. The anticipated cost-cutting measures are bound to affect service delivery and internal business operations of Legal Aid SA.
4. In preparation of this eventuality, each cost center is herewith advised to provide inputs on the nature and extent of budget cuts the Legal Aid SA is to consider, effective from quarter 3 of 2010/11 financial year through the next MTEF period.
5. All inputs to be canvassed through staff meetings. The inputs must therefore be a product of the staff meeting recommendations.
6. The required inputs are to be stated in each budget line area hereunder:

*(Your statements of Suggested Actions are to be: Short, Realistic, and Actionable)*

Name of Cost Center: (Department / Regional Office / Justice Centre)	
Budget line	Suggested action
Salaries and related benefits	e.g. freezing of all vacant posts
Other Direct Expenditure Judicare	
Operating Budget -Congress and Seminars -Education & Training -Refreshments -Staff bursaries -Telephone & Fax -Tools & Equipments -Travel & Subsistence -Workshops	e.g. reduction of telephone expenditures
Capital Budget -Computer Hardware (PCs & laptops) -Furniture & Equipments -Motor Vehicles	e.g. a moratorium on purchasing of furniture

7. In considering inputs, Management Exco will be sensitive to all relevant aspects which could regress progress made in our business operations.

Kindly let me have your inputs by 15 October 2010.

Chief Operations Officer

V7



TO	NQE
FROM	ROE (KZN)
DATE	06 <sup>th</sup> NOVEMBER 2009

**SENIOR LITIGATOR INTERVIEWS  
RECOMMENDATION FOR NEXT ROUND INTERVIEWS**

**1. PURPOSE**

To recommend the following candidates for the next round of interviews:-

- > Mr Anthony Brink
- > Mr Bongani Mngadi

**2. BACKGROUND**

The above-mentioned position was advertised internally and externally a few times to give employees within the organisation and external candidates an opportunity to apply.

Candidates must possess the following:

- Admitted Attorney / Advocate.
- B Proc or LLB degree, with right of Appearance in the High Court.
- A LLM will be an advantage.
- At least 12 years post qualification legal experience of which 10 years must be high court experience. Must be performing at least 80% active court litigation.
- Valid code 08 drivers licence.
- Excellent leadership & people development skills with a track record in training.
- Experience in budget preparation & management thereof.
- Advanced computer skills (MS Word, Excel, Outlook, PowerPoint & Ad infinitum).
- Strong communication, problem solving & interpersonal skills.
- Innovative, creative & analytical thinking skills. Strong research skills.
- Ability to interpret & apply policies.

Envisaged for this position is a senior Attorney or Advocate, with a good standing in the legal fraternity, proven track record in criminal and civil litigation, a motivated, self-driven & mature individual who is a team player.

From the applications received 4 candidates were short listed for interviews for this position. Candidates were invited to an interview held on the 05-11-2009.

1

A collection of handwritten signatures and initials, including a large stylized signature on the right and several smaller initials or signatures on the left.

The selection panel consisted of the following members:

- Mr Vela Mdaka - ROE (KZN)
- Mr Baboo Brijlal - Reg. HR Manager (KZN Region)
- Mr Kishore Mehta - JCE (Durban JC)
- Mr Bertus Appel - JCE (PmBurg JC)
- Mr Julian Butler - HCU Manager (PmBurg JC)
- Mr Vis Nair - JCE (Pinetown JC)

3. THE INTERVIEWS PROCEEDED AS FOLLOWS:

The selection panel conducted the interviews by using the standard interview assessment form and guidelines. The results of the interview are shown in the table below:-

NAME OF CANDIDATE	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	AVERAGE & PERCENTAGE
Mr Mzochithwayo Ngcamu	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
Mr Anthony Brink	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
Mr Johannes van Wyk	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
Mr Bongani Mngodi	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

Notes:-

All scoring out of a maximum score of 50 (5 questions X 10 points each).

4. SUMMARY OF CANDIDATES

[Redacted text block]

2

P B R A

Wm



Mr Anthony Brink

Mr Brink has a BA & LLB degrees. He is an admitted Advocate (April 1983). Candidate is currently employed at a public interest NGO (last 5 years) with limited litigation primarily involved in advocacy work. Previously candidate worked as Prosecutor (3 years), Civil Magistrate (4 years) & Private Practice (8 years). Candidate has 28 years experience in the High Court (2 years short of the minimum requirements as per advert). Candidate has also trained pupil advocates. Candidate had 2 matters in the SCA (1 argued & 1 settled) and 1 matter (*pro amica*) for the Constitutional Court (drafted papers). Candidate demonstrated his capability to undertake high level research. He also sufficiently demonstrated his ability to conduct training. Candidate has a good grasp of law. Candidate is a prolific writer/author with many commendations cited on his CV. After having considered the candidate's overall presentation to the panel, candidate is recommended for next round of interviews.

[REDACTED]

[REDACTED]

[Handwritten signatures and initials]

[REDACTED]

**5. EMPLOYMENT EQUITY STATUS**

The Durban JC staff complement, including this appointment, will be as follows: -

RACE	MALES	FEMALES	TOTAL
1. African	23	10	33
2. Whites	2	3	5
3. Indians	10	17	27
4. Coloureds	1	2	3
<b>TOTAL</b>	<b>36</b>	<b>32</b>	<b>68</b>

Equity Stats as at 06.11.2009.

The Pieterburg JC staff complement, including this appointment, will be as follows: -

RACE	MALES	FEMALES	TOTAL
1. African	19	11	30
2. Whites	6	3	9
3. Indians	12	12	24
4. Coloureds	2	1	3
<b>TOTAL</b>	<b>39</b>	<b>27</b>	<b>66</b>

Equity Stats as at 06.11.2009.

**6. RECOMMENDATION**

The panel recommends the following candidates for the next round of interviews:-

- > Mr Anthony Brink - External Candidate
- > Mr Bongani Mngadi - Internal Candidate

4

Handwritten signatures and initials are present below the recommendation section, including a large signature on the right and several smaller ones below it.



We certify that the Employment Equity targets for the JCs have been taken into account and that this recommendation meets the Employment Equity targets.

*[Signature]*  
 Baboo Brijlal  
 Reg. HR Manager (KZN Region)

*[Signature]*  
 Vis Nair  
 JCE (Pinetown) 23/11/2009

*[Signature]*  
 Kishore Mehta  
 JCE (Durban JC) 17/11/09

*[Signature]*  
 Veritas Apper  
 JCE (PmBurg JC) 23/11/09

*[Signature]*  
 Julian Bole  
 HRU Manager (PmBurg JC)  
 23/11/2009

*[Signature]*  
 Yela Ndaka  
 ROE (KZN Region)

**NEXT ROUND INTERVIEW APPROVAL**

NAME	RECOMMENDATION: ACCEPTED	RECOMMENDATION: NOT ACCEPTED	DATE
BRIAN NAIR NOE			

V8

**Transcript of audio recording of CEO Vidhu Vedalankar's address to the Portfolio Committee for Justice and Constitutional Development on 12 October 2010 during LASA's briefing on its Annual and First Quarter Reports** (audio recording: <http://www.pmg.org.za/node/23447> ; transcript made by Adv Brink)

**Acting Committee Chairperson John Jeffery:** ... I think maybe highlight more the trends, the issues rather than an examination of the data. ...

**CEO Vedalankar:** OK Chair so the Quarterly report is also the I'm not sure because we've never done quarterly reports before so that is why what we did is we thought it would be useful to give you the high-level summary we give to our Board [inaudible] which is essentially the corporate dashboard and the corporate dashboard then that's what they track quarter on quarter to see if we are on track or not and that's what we thought would be the easiest and then also to then summarise. And I'm just going to indicate in terms of the overall performance that we are on track on all components of our Business Plan and we are confident that we will deliver this Business Plan in this financial year also. So we don't have any problem areas that we would like to report on. We do have challenges in terms of some of the funding issues like OSD but at the moment we are in the process of fixing it. In fact the Minister has been involved in that which relates to OSD Phase 1 and Phase 2 funding. And our Chairperson met with the Minister and he undertook to assist to resolve this issue through the medium-term sorry the mid-term adjustment budget.

**Committee Chairperson Jeffery:** [Occupational Specific] Dispensation, that's the salary increase for professionally qualified people.

**CEO Vedalankar:** And so that so that the Minister was in was and also because we indicated that if that didn't come through it meant that we would have to freeze posts. In this period of recession we don't have increases but there is also we have a budget cut that's coming in 2012, R34 million. So we were a bit worried because actually we run a very tight ship and if we didn't get the OSD money that we were meant to it would mean that we would have to freeze some posts but the Minister didn't want that and said that we needed to continue with the business. And so he did get involved and he had assisted. We just need to ensure that it's now, so it was in the mid-term adjustment, we need to ensure it's also in the end-tack [?] allocations because then that entails a change in the baseline because if we don't have that we still are going to go back to that problem. So overall we are on track in terms of Slide 1 you'll see. And then in terms of client and community I'm going to hand over to the head of our national operations Brian. And then after Brian speaks Jerry will take over and he'll talk to the finance and non-legal issues. Thank you Chair.

V9



Legal Aid  
South Africa

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**CONFIDENTIAL**

23 August 2010

Mr Anthony Brink  
25 Baker Road  
Pietermaritzburg  
3200

Dear Mr Brink

APPLICATION FOR EMPLOYMENT: SENIOR LITIGATOR [DURBAN & PMBURG] (REF. 2009/06/25)

Thank you for your application and for attending the interview for the above advertised position.

Please be advised that Legal Aid South Africa will not be proceeding with the filling of this post. We apologise for the delay in informing candidates of the outcome of the interview process.

I would like to take this opportunity to wish you well for the future and thank you for your interest in the Legal Aid South Africa.

Yours sincerely

**LEGAL AID SOUTH AFRICA**

VELA MDAKA  
REGIONAL OPERATIONS EXECUTIVE  
KZN REGION

**Your voice. For justice.**

V10

	ACTIONS/DECISIONS	Responsible Person	Due date
1.	<b>WELCOME AND APOLOGIES</b>		
1.1	The Chairperson declared the meeting open and welcomed all present.		
1.2	The following apologies were noted <ul style="list-style-type: none"> <li>• Ms S Monaledi</li> <li>• Mr V Jarana</li> </ul>		
2.	<b>REGISTER OF INTERESTS</b> The Register of Interests was circulated and duly noted by all members present.		
3.	<b>MINUTES</b>		
3.1	<b>Minutes of the previous meeting</b> The minutes of the previous meeting held on 29 May 2010 were adopted.		
3.2	<b>Matters Arising Schedule</b> The Matters Arising Schedule was noted.		
4.	<b>MATTERS FOR APPROVAL</b>		
	<b><u>ALL COMMITTEES</u></b>		
4.1	<b>Draft Annual Report 2009/10 including Annual Financial Statements</b> The Board approved the Draft Annual Report 2009/10 subject to the following amendments: <ul style="list-style-type: none"> <li>• p16 that the designation of the person be placed next to their names in the same format as the name;</li> <li>• That the qualification (CA(SA)) be added to Ms Luthuli's credentials;</li> <li>• p78 under Mr Ramdas' name; 'City of Johannesburg;</li> <li>• P 76 that Judge Mlambo and Mr Makume's details be updated to reflect their new positions;</li> </ul> The Board commended management on a comprehensive Annual Report that made good reading.	BS	31.08.10
4.2	<b>MTEF 2011/14 CONSOLIDATED</b> The Board approved the recommendations as contained in clause 8 of the document: <ul style="list-style-type: none"> <li>8.1 The Board approve the MTEF for the period ending 2011/12-2013/14.</li> <li>8.2 The Board approve the mitigating measures in response to the OSD shortfall as proposed in paragraph 4 of Annexure I.</li> </ul>	CFO	30.09.10
		CEO	01.11.10



## ANNEXURE I

### REPORT TO BOARD

16 July 2010

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#### Impact of OSD funding shortfall on budget 2010/11

##### 1. Background

1.1. The 2010/11 budget includes the outstanding OSD funding of R53.8million. This amount constitutes:

OSD Phase	Amount	Status
OSD Phase 1	R23.8 million	Implemented
OSD Phase 2	R30million	Not yet implemented
OSD Phase 2 back payment	R42million	Not yet implemented

1.2. On the 14 July 2010 Legal Aid SA COO met with both DoJ DDG, Mr Vuso Shabalala, as well as Adv Pieter du Rand, Legal Aid SA board member in order to clarify the position of DoJ regarding the outstanding OSD funding of R53.8 million for the 2010/11 budget period, as well as its effect to the MTEF baseline.

1.3. DoJ has indicated that they do not have funds to cover for the R53.8 million OSD shortfall. The Executive Authority has however in a meeting with the Legal Aid SA Board Chairperson expressed his wish to have Legal Aid SA service delivery maintained and that DoJ should make funds available to cover the OSD shortfall through the mid-year budget adjustments in September/October 2010.

## **2. 2010/11 Budget period**

2.1. In the event DoJ is unable to secure funds to cover the OSD Phase 1 shortfall, Legal Aid SA will have a deficit of R23.8 million in the 2010/11 Budget. Salaries for 2010/11 are budgeted at 97% with recruitment currently being at about 94%.

2.2. In order to mitigate the probable deficit, the following measures are proposed:

- a) Court coverage is currently approximately 90% at District Courts and 100% at Regional Courts. For the remaining of the 2010/11 budget period, District Courts will be progressively reduced to no lower than 80% coverage whilst Regional Courts will be progressively reduced to no lower than 90% coverage. About R16 million will be saved from this measure, though its effect will be a reduction in the number of days that we are able to cover District Courts and Regional Courts. This has a direct negative impact on service delivery. Any further reduction on filled legal practitioner positions will result in a further percentage reduction in court coverage
- b) The recruitment process will be reviewed, centralizing the decision on filling of posts at Executive level, with due regard to the need to prioritise critical positions;
- c) Any savings derived during the financial year be reserved to cover part of the anticipated OSD shortfall.

2.3. In the event DoJ is unable to secure the OSD Phase 2 funding, the result will be that,

- a) a potential labour unrest within Legal Aid SA will increase;
- b) Legal Aid SA legal practitioners will be paid less than their counterparts in DoJ (who have already implemented OSD Phase 2), and those in NPA (in the event NPA finalise payments of OSD Phase 2).

### **3. MTEF 2011/12 onwards**

Should DoJ not secure OSD funding in full, Legal Aid SA will have to revise its MTEF 2011/12 onwards. With the current macro increase on budget allocation received from National Treasury, Legal Aid SA salaries will continue to impact negatively on the Operational and Capital budget unless posts are either frozen or abolished. This will have a significant negative impact on service delivery and good progress Legal Aid SA has already achieved in providing legal representation to many indigent persons in the country.

### **4. Recommendation**

To provide for the anticipated OSD shortfall funding of R23.8 million, it is recommended that:

- I. Savings from the 2010/11 financial year be used to fund the OSD shortfall;
- II. District Court coverage be approximately no lower than 80% coverage, while Regional Court coverage is reduced to no lower than 90% coverage, for the remaining part of the 2010/11 budget period. This will derive a saving of about R16million to cover the shortfall.

8/11



Your voice. For Justice.

Legal Aid South Africa is an autonomous statutory body with the primary objective of rendering or making available legal aid to poor persons. The National Footprint of Legal Aid South Africa covers more than 50 Justice Centres spread throughout the country.

### Senior Litigator

Ref: 2009/06/25/azn

Salary: R603 002 per annum (all-inclusive OSD package - min of scale)

Applications are invited from interested persons, who meet the minimum requirements, to fill the above-mentioned position at the following Justice Centres: Durban and Pietermaritzburg. Applicants must be admitted Attorneys or Advocates. The incumbent will be appointed on a permanent basis.

Position purpose: To render legal services, primarily litigation services, in complex criminal and civil matters linking to the higher courts (High Courts, Appeal Courts and Constitutional Court) in the country, and provide specialist support to Justice Centres on these matters.

Key outputs: • Take responsibility for and expertly/proficiently attend to legal matters in various legal forums/courts requiring expert litigation skills such as Impact litigation and/or warranting the services of a Senior Litigator • Attend to referrals from National Office, Regional Office and Justice Centres regarding cases as in above and provide support to Justice Centres in specialised, complex or Impact litigation matters • Provide written legal opinion for the LAB as requested • Build and manage a caseload, as agreed by the ROE, that makes optimum usage of the expertise and skills of the Senior Litigator position • Assist with in-house legal training sessions as identified/agreed by the ROE or LDE • Develop the litigation expertise within the LAB by providing individual mentoring and coaching to legal staff as identified by ROE, involving other LAB practitioners to assist in legal matters and other means.

Competencies (skills, knowledge and attributes) required: • Admitted Attorney/Advocate • B Proc or LLB degree, with Right of Appearance in the High Court • An LL.M will be an advantage • At least 12 years' post-qualification legal experience, of which 10 years must be High Court experience. Must be performing at least 60% active court litigation • Valid Code-08 driver's licence • Excellent leadership and people development skills with a track record in training • Experience in budget preparation and management thereof • Advanced computer skills (MS Word, Excel, Outlook, PowerPoint and Ad Infnitum) • Strong communication, problem solving and interpersonal skills • Innovative, creative and analytical thinking skills • Strong research skills • Ability to interpret and apply policies.

Envisaged for this position is a senior Attorney or Advocate, with a good standing in the legal fraternity and a proven track record in criminal and civil litigation. He/she is a motivated, self-driven and mature individual who is a team player.

A detailed curriculum vitae, highlighting required skills as advertised, must be submitted by close of business on 18 September 2009, quoting the above reference number and Justice Centre of choice to: Ms Thandeka Hadebe, KZN/MP Regional Office, fax: (031) 702 1960 or e-mail: thandekaH@legal-aid.co.za (Please indicate clearly in your e-mail subject line the following: Application for Advertised Post: Senior Litigator.)

Should you not hear from us within one month of the closing date, please accept that your application was unsuccessful. Please indicate clearly which office you are applying for.

Preference will be given in terms of our affirmative action approach to suitable candidates who meet the minimum requirements.

For more vacancies visit [www.legal-aid.co.za](http://www.legal-aid.co.za)



www.legal-aid.co.za

V12



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**From:** Amanda Clark  
**Sent:** Wednesday, September 08, 2010 11:00 AM  
**To:** Thembile Mtati  
**Subject:** FW: SENIOR LITIGATOR INTERVIEWS

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**From:** Amanda Clark  
**Sent:** 30 April 2010 04:24 PM  
**To:** Anthony Brink  
**Subject:** RE: SENIOR LITIGATOR INTERVIEWS

Hi Anthony

The process is where it is. It is your decision as to whether you wish to wait to allow us to complete the process or whether you wish to withdraw. Our process has nothing to do with your personal choices with regard to visits to Italy or the World Cup or your partner whom you refer to a "sweetie".

At this stage it is not even clear which applicants will be considered in the second round or if indeed we will proceed with a second round.

Applying for a job is done at the applicants own risk. Being called to an interview is not a guarantee of being appointed to the position.

I think you should allow us to complete our process at the pace we have decided. It is also not proper to obtain inside information from your brother and then to stand on whatever you have been told by him.

If we require further information or follow-up from yourself, our organisation will contact you.

Amanda Clark  
Human Resources Executive



Tel: 011 877 2026  
Fax: 011 877 2222  
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**From:** Anthony Brink [mailto:arbrink@iafrica.com]  
**Sent:** 22 April 2010 02:58 PM

2

**To:** Amanda Clark  
**Subject:** RE: SENIOR LITIGATOR INTERVIEWS

Hello again Amanda!

As suggested, I gave Baboo a ring, hoping that a week after our chat he might have some indication for me about the state of play.

He was as friendly and helpful as could be, but he was basically as much in the dark as I am.

He mentioned that there's a 'final interview by the chairman, a Judge of Appeal', still in store for the candidates selected for the Durban and Pietermaritzburg posts – although I was onto that already, because I'd heard from my brother that the Pietermaritzburg post I'd applied for was being advertised for the second time, after the first applicant selected had been disapproved by Judge Mlambo.

Baboo informed me that further movement of the matter was in the hands of the national executive, and not his regional office.

Presuming that in the six months passed since the interviews of the short-listed candidates, the selection panel has made and reported its recommendations for the Durban and Pietermaritzburg posts to the LA operational executive, could you establish for me whether the administrative machinery in HQ involved in fixing a date with the judge for the final interviews is indeed turning – and not stalled at the clerical level?

I sure would be grateful.

In the ordinary course, so many months passed without a peep in feedback following a job interview would tell one 'Forget it, you're out.' But my sense of the interview, for which I'd prepared intensively, was that it went off really well.

Here's why I ask.

My angst rising.

Responding to the question at the interview, 'When would you be able to start?', I replied '1<sup>st</sup> of January', explaining that I need to dart over to Italy briefly with my Italian sweetie, who has a pressing practical/personal errand. I've delayed our trip so as not to miss the final interview, never anticipating that I'd be jammed, unable to tell her yea or nay six months later. And with the approach of the World Cup you can imagine the pressure mounting, knowing that the airways will soon be choked by millions of football fans, stranding us either here or there.

Well, just so you know!

All the best

Anthony Brink

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**From:** Amanda Clark [mailto:AmandaCl@legal-aid.co.za]  
**Sent:** 14 April 2010 10:39 AM  
**To:** arbrink@iafrica.com  
**Cc:** Baboo Brijlal  
**Subject:** SENIOR LITIGATOR INTERVIEWS

Hi Antony

Our telecom this morning refers. I have looked into this matter and can confirm the it is still in progress and has not been concluded. I will endeavour to expedite the process in which I am not directly involved at this stage.

In future, you may liaise with Baboo Brijlal at our Pinetown Office (Tel: 011-7178455) for updates.

Thanks for your keen interest. We hope to conclude the matter soon.

**Amanda Clark**  
**Human Resources Executive**



Tel: 011 877 2026

Fax: 011 877 2222

[www.legal-aid.co.za](http://www.legal-aid.co.za)

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Thank You.



Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

J 464

**BRANCH: COURT SERVICES**

Private Bag X81, PRETORIA, 0001- Momentum Centre, 329 Pretorius Street, PRETORIA  
Tel (012) 315 1418, Fax 012 315 888

Ref: 3/26/2/4  
Enq: Adv P A du Rand  
E-mail: [padurand@justice.gov.za](mailto:padurand@justice.gov.za)

19 January 2011

Ms V Vedelankar  
The Chief Executive Officer  
Legal Aid SA  
Private Bag X76  
BRAAMFONTEIN  
2017

Tel: 011 877 2000  
Fax: 011 877 2222

Dear Ms Vedelankar

**APPOINTMENT OF MR M NOTYESI AND MS M J RAMAGAGA AS NEW MEMBERS OF THE BOARD OF LEGAL AID SA IN TERMS OF SECTION 4(1)(B) OF THE LEGAL AID ACT, 1969**

It gives me great pleasure to inform you that the Minister has, in terms of section 4(1)(b) of the Legal Aid Act, 1969 (Act No. 22 of 1969), appointed Mr M Ntyesi and Ms M J Ramagaga as new members of the Board of Legal Aid SA for a period of three years, from 11 January 2011 to 10 January 2014.

It will be appreciated if you could convey my congratulations to the newly appointed members. A letter to Mr Justice Mlambo, as well as appointment letters for the new members, is attached hereto for your further attention, please.

Yours sincerely

ADV P A DU RAND  
CHIEF DIRECTOR: COURT SERVICES  
On behalf of the Department of Justice and Constitutional Development

(Please note the Minister has indicated he has forwarded the name of Justice Maduna to Cabinet for approval in a section 4(1)(g) of the Act)

**BRANCH: COURT SERVICES POLICY DEVELOPMENT**

Private Bag X81, PRETORIA, 0001- Momentum Centre, 329 Pretorius Street, PRETORIA  
Tel (012) 315 1418, Fax 012 315 888

Ref: 3/26/2/4  
Enq: Adv P A du Rand  
E-mail: [padurand@justice.gov.za](mailto:padurand@justice.gov.za)

27 September 2010

Ms V Vedelankar  
The Chief Executive Officer  
Legal Aid SA  
Private Bag X76  
BRAAMFONTEIN  
2017

Tel: 011 877 2000  
Fax: 011 877 2222

Dear Ms Vedelankar

**APPOINTMENT OF BOARD MEMBERS OF LEGAL AID SA**

It affords me pleasure to inform you that the Minister of Justice and Constitutional Development has appointed the following new members to the Board, for the period of 1 September 2010 to 31 August 2013:

- (1) Adv K Pillay in terms of section 4(1)(b) of the Act
- (2) Adv L Gcabashe, as an alternate member in terms of section 4(2)(e) of the Act
- (3) Mr J B Gresse, as an alternate member of the Board in terms of section 4(2)(e) of the Act
- (4) Ms R Subban in terms of section 4(1)(e) of the Act
- (5) The Honourable Mr Justice D Mlambo's appointment as the Chairperson in terms of section 4(1)(a) of the Act, has been extended for the period of 1 October 2010 to 31 December 2011. (The period of 1 October 2011 to 31 December 2011 will serve as the handing-over period).

2

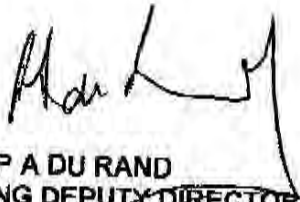
I also have pleasure in informing you that the President has, in consultation with Cabinet, approved the appointments, for the period of 15 September 2010 to 14 September 2013, of:

(6) Ms E Gandhi in terms of section 4(1)(g) of the Act, and

(7) Ms A Rhoda in terms of section 4(1)(g) of the Act.

Appointment letters are attached hereto for all the newly appointed members.

Yours sincerely



**ADV P A DU RAND**  
**ACTING DEPUTY DIRECTOR-GENERAL: COURT SERVICES**  
On behalf of the Department of Justice and Constitutional Development

25 Baker Road  
Prestbury  
Pietermaritzburg 3201  
17 February 2011

Attorneys Chantal Kisoona and Moipone Bokaba  
PAIA Unit  
South African Human Rights Commission  
29 Princess of Wales Terrace  
Houghton  
Johannesburg

And to:

The Honourable Mr Jeffrey Radebe MP,  
Minister of Justice and Constitutional Development;  
The Honourable Mr Andries Nel MP,  
Deputy Minister of Justice and Constitutional Development;  
The Honourable Mr Luwellyn Landers MP, Chairperson of the Portfolio  
Committee on Justice and Constitutional Development, and all members,  
National Assembly  
Parliament Street  
Cape Town

And to:

The Board of Directors; the Management Executive Committee; and the  
KwaZulu-Natal Regional Professional Selection Panel,  
Legal Aid South Africa  
29 De Beer Street  
Braamfontein  
Johannesburg

And to:

Attorney Leslie Gwele,  
Justice Centre Executive  
Mthatha Justice Centre  
Mthatha

And to:

Advocate Paul Hoffman SC,  
Director, Institute for Accountability for Southern Africa  
Cape Town

And to:

Attorney Alison Tilley,  
Director, Open Democracy Advice Centre  
Cape Town

And to:

Advocate Adrian Rall SC,  
Chairperson, Pietermaritzburg Bar Committee,  
KwaZulu-Natal Society of Advocates  
Advocates Chambers  
Pietermaritzburg

Dear Attorneys Kisoona and Bokaba

ADV ANTHONY BRINK/LEGAL AID SOUTH AFRICA  
UNLAWFUL REFUSAL OF PAIA REQUESTS  
A PLEA FOR MEDIATION BY THE SAHRC  
IN RE:  
ILLEGAL DISCRIMINATION COMPLAINT  
PIETERMARITZBURG SENIOR LITIGATOR POST

1. I refer to LASA CEO and information officer Vidhu Vedalankar's letter to me of 28 January 2011, which she copied to you. (Document Bundle, pages 101–108)
2. Before responding to it, let me recapitulate for the benefit of our new readers the history of Vedalankar's persistent refusal to comply with the Promotion of Access to Information Act 2 of 2000 ('the Act' or 'PAIA') and my unsuccessful attempts since the middle of last year to exercise my constitutional right of access to LASA's records.
3. I duly filed my first request for records on 30 August 2010, the date of delivery by registered post. (Bundle, pages 49–69)
4. Vedalankar ignored it. (Bundle, page 113, paragraph 18)
5. Just as Communications Executive Mpho Pasha, to whom I'd been referred and instructed to approach in writing, had ignored my request for a copy of LASA's mandatory PAIA manual, which at the time LASA hadn't made available in contravention of section 14 of the Act. (Bundle, pages 49–50)
6. I petitioned your special assistance, and you obliged by negotiating an undertaking to deal with my records request. (Bundle, page 113, paragraph 19)
7. On 18 October 2010 Vedalankar rejected my request in its entirety. (Bundle, pages 101–8)

8. Although no formal internal appeal lies under the Act against the refusal of a records request by LASA, I appealed to Chairperson Judge Dunstan Mlambo and the Board of Directors on 30 November 2010 to exercise their oversight power and intervene, so as to avert unnecessary litigation to enforce my right of access to the records I'd requested and thereafter to vindicate my other more fundamental constitutional rights violated by LASA.
9. Citing relevant provisions of the Act and several reported cases on its application, I showed that Vedalankar had based her refusal on wholly spurious legal and factual grounds, and that her refusal was accordingly unlawful. (Bundle, pages 113-19, paragraphs 17–43; page 161, paragraphs 241–246)
10. Since I couldn't find all their email addresses by internet searching, I asked Board Secretary Bee-Mari Schoeman to inform all Board members of Vedalankar's unlawful refusal of my records request and about my main illegal discrimination complaint detailed in my 59-page appeal to Judge Mlambo and the Board. She didn't respond, and likewise ignored my reminder. (Bundle, pages 168–73 and 188–9)
11. In her October letter – as information officer – refusing my request for records, Vedalankar essayed – as CEO – into alleging an 'explanation' of why she had aborted my recruitment as Senior Litigator, Pietermaritzburg, after my successful interview by the KwaZulu-Natal professional selection board on 12 November 2009. (Bundle, pages 103–4, paragraphs 6 and 7)
12. Two weeks after my letter to Judge Mlambo and the Board, I tested the veracity of Vedalankar's core claims in her letter – suspecting (correctly, it's now clear) that they were lies – by way of a second, supplementary records request on 15 December 2010. (Bundle, pages 174–85)
13. On 30 December, without having consulted his fellow Board members, Judge Mlambo perfunctorily brushed me off. He didn't address my complaint that in clear breach of my rights under section 32 of the Constitution, 1996, and in

contravention of the Act, Vedalankar had unlawfully refused my first request for records. (Bundle, page 186; see also page 201, paragraphs 27–8)

14. According to its PDF properties, Vedalankar may herself have written Judge Mlambo's letter: the author record reveals 'VidhuV'. (Bundle, page 187 and page 201, paragraph 29)
15. No other Board member to whom I'd emailed my letter saw fit to intervene and address the grave illegalities I'd brought to their attention either; not even Adv Pieter du Rand, Director of Court Services in the Department of Justice and the Department's representative on LASA's Board. My follow-up letter to him also went unanswered, after his formal acknowledgement of receipt of both communications. (Bundle, pages 190–1)
16. Since I'd not been able to reach her by email, a friend in Durban briefed Board member Ela Gandhi in December 2010 with a bound hardcopy of my letter to the Board and my Document Bundle of all prior correspondence and relevant documents; and at a meeting with her in January 2011 conveyed their gist.
17. During their meeting, Board member Professor Yusuf Vawda telephoned to discuss my letter with her. The meeting ended with Gandhi accusing me of blackmail and defamation. (Bundle, pages 207–8)
18. When I protested to Judge Mlambo and the Board about this, and about the appallingly irregular way that my complaints were being handled by the Board, Judge Mlambo responded with a display of the same hostile animus, misstating the facts, levelling accusations of serious impropriety against me of his own, and announcing that he'd requested Board members to disregard any further communications from me. (Bundle, pages 197–208 and 209)
19. Judge Mlambo's disinclination to intervene to set right the grave wrongs of which I complained, including the obvious speciousness of Vedalankar's excuses for not complying with the Act (now implicitly admitted in her January letter), may possibly be explained by the politics he's in, radically and diametrically

opposed to mine. (Bundle, pages 11–17; 75–77; 80–82; and 88–92; and <http://j.mp/ifzg6S>; search on ‘Mlambo’)

20. And which notoriously fervent, quasi-religious, ideologically polar, emotive, righteous, moralistic, vengeful, intolerant, and exclusive politics he shares with Vedalankar. (Bundle, page 11, paragraph 5; and page 65, request 16)
21. Tacitly endorsing Vedalankar’s illegal conduct, and having evidently chosen to close ranks, no other Board member responded to my protest. (Besides Judge Mlambo, I’d reached Directors du Rand, Maree, Konar, Mosidi, Memka, Mgadza, Naidoo and Gandhi.)
22. On 28 January 2011, in an aggressive-defensive rambling repetitive and incoherent letter, Vedalankar responded to some of my second record requests in December 2010, leaving many of them unanswered, and took the occasion to revisit her response in October to my first request in August.
23. In the heading of her letter she erroneously refers to my requests as a ‘REQUEST FOR INFORMATION IN TERMS OF PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000’. In fact my requests were for documentary records as the Act contemplates (notwithstanding its title) and not for information per se. Vedalankar’s persistent confusion about this goes some way to explaining the gauche and inept way in which she responded to both my records requests.
24. In paragraph 1 Vedalankar refers only to my second records request of 15 December 2010, and not my first of 26 August which she’d unlawfully refused. Later in her letter at the top of page 8 she refers to this first request, which she erroneously claims I ‘repeated’ on 15 December 2010; in fact the second is a supplementary request for further documents besides those identified in my first request – with a couple of overlaps in regard to Vedalankar’s reiteration of National Operations Executive Brian Nair’s (now plainly untruthful) allegations in their letters to me of 18 October and 3 August 2010 respectively. (Bundle, pages 101–7 and 19)

25. Vedalankar records that she has ‘also considered’ my letters to Chairperson Judge Mlambo and the Board of Directors of 30 November 2010 and 24 January 2011 – neither of which were addressed or copied to her by me, and both of which appear to have been forwarded to her by Judge Mlambo rather than to his fellow Board members. (Bundle, page 210, paragraph 1; and page 223, paragraph 39)
26. Considered against her persistent refusal to comply with the Act recorded in both her letters of 18 October 2010 and 28 January 2011, and her violation of my most basic civil liberties guaranteed by the Constitution giving rise to my main illegal discrimination case, Vedalankar’s lofty opening declamation in paragraph 2 is hypocritical fluff. There’s more of it in her closing paragraph 43. (Bundle, pages 210 and 224)
27. As with her previous October letter, Vedalankar again confuses her distinct functions as CEO and as information officer. Instead of applying her mind to my records requests objectively, professionally, and dispassionately as information officer, Vedalankar blasts off in paragraphs 3 and 4 in her capacity as CEO with a fusillade of error-strewn accusations against me – reckoning attack to be the best form of defence to my charges that she has gravely misconducted herself, both in contempt of the Bill of Rights and in contravention of those statutes giving effect to them, and in gross breach of her obligations to conduct herself ethically as a public servant. And that if she flings enough mud at me, at least some of it will stick.
28. Paragraph 4 begins by deliberately mischaracterizing my discrimination complaint as primarily racial. As all my correspondence indicates, implicitly and expressly, I believe the facts of the matter support the inference on a preponderance of probabilities that Vedalankar’s illegal discrimination against me has been political. Racial discrimination as the motivation for her abortion of my recruitment has always been a minor possibility – for which I’ve some evidence to lead when my main discrimination complaint is tried.

29. In paragraph 4 Vedalankar records her approach to my records requests – and, as before, she fundamentally misdirects herself on several scores.
30. She claims I ‘grounded [my] application for access to information on section 46 of PAIA’. This is sheer nonsense. On the contrary, as I pointed out in my first letter to Judge Mlambo and the Board, ‘the provisos in section 46 cited and discussed in paragraph 3 of Vedalankar’s letter [of 18 October 2010] are perfectly irrelevant. But even if it were...’. (Bundle, pages 118–9, paragraphs 39–43)
31. (Section 46 provides for ‘Mandatory disclosure in public interest’ of records that may otherwise be refused if ‘(a) the disclosure of the record would reveal evidence of – (1) a substantial contravention of, or failure to comply with, the law; or ... (b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.’)
32. I’ve repeatedly highlighted that a PAIA requestor’s reasons for seeking access to the records of a public body are immaterial: Firstly in my letter covering my first records request (Bundle, page 51, paragraph commencing ‘Although the reason for my request is immaterial in terms of section 11(3) of PAIA...’); secondly in my first letter to Judge Mlambo and the Board (Bundle, page 116–7, paragraph 32); and thirdly in my draft affidavit founding my anticipated High Court application for an order compelling Vedalankar to comply with the Act: ‘the merits or otherwise of my discrimination complaint and my surmises and purposes animating my requests for records are immaterial to my constitutional right of access to them.’ (All documents in this matter, including my draft application papers, are accessible at the secure, private online archive I’ve established for easy, up-to-date access to all documents to be relied upon in my developing case: [www.tig.org.za/LASA](http://www.tig.org.za/LASA); username: lasa; password: LASA2010. In paragraph 41 of her letter, Vedalankar records that she’s noted my draft papers.)

33. My motivating reasons, and Vedalankar's notion of what they are, are all quite irrelevant: Section 11(3) of the Act explicitly stipulates that 'A requester's right of access contemplated in subsection (1) is, subject to this Act, not affected by – (a) any reasons the requester gives for requesting access; or (b) the information officer's belief as to what the requester's reasons are for requesting access.'
34. After all these lessons, these repeated lessons, in how PAIA applies to LASA, Vedalankar dully persists in pegging my entitlement to the records I've requested on her dissembled opinion of the merits of my case against her as the first accused in my core complaint that she has illegally discriminated against me. This legal ignorance shows up again in her paragraph 37.
35. One really would have thought that as a layperson without any legal training running a R1.2 billion a year public legal body, Vedalankar would have sought the advice of one of the hundreds of lawyers it employs instead of trying to interpret and apply the Act on her own, unassisted, and in a panic, and in doing so making a complete hash of it and wasting everybody's time. Knowing my claim to appointment is headed for court, and unnecessarily proliferating the mounting paper record.
36. In paragraph 5 Vedalankar wantonly accuses me of defamation, repeating Board member Ela Gandhi's charge in this regard, and menaces me with legal action, falsely implying that my statements of fact and my conclusions set out in my correspondence were made mala fide, with animus injuriandi, and are unlawful; and in this manner she endeavours to intimidate me into abandoning my 'relentless'\* prosecution of my lawful claim to appointment to the post for which I was duly selected and recommended. (\*Bundle, page 223, paragraph 38) And which she blocked 'verbal[ly]\*, furtively, without due consultation, without authority, without approval, totally off the record, and unlawfully. (\*Bundle, page 221, paragraph 29)
37. In paragraph 6 Vedalankar continues to claim 'the premise [I] have chosen in seeking access to information' is 'baseless' and a 'wrong assumption' – again, as

if her feigned opinion on the merits of my discrimination complaint against her have any relevance to my entitlement to access the (incriminating) records she controls.

38. Vedalankar falsely describes my forthright identification of the plainly bogus reasons she advanced for refusing my first records request and for illegally aborting my recruitment as ‘malicious’, which is to say wrong and pointedly intended to harm her and her fellow Management Executive Committee members’ reputations; and she makes this claim well-knowing that it’s false and that my complaints are both truthful and bona fide and supported by the absence of any documentary record supporting her fake version of events – contradicted by the very records she produces to establish it.
39. Vedalankar promises to disprove my discrimination complaint – and in setting about it supports it instead.
40. Vedalankar deceptively misrepresents my reasons for not accepting her rejection of my first records request as springing from my allegedly ‘wrong’ and ‘baseless’ conclusion that she has illegally discriminated against me in violation of my constitutional rights. In truth, as is clear from my first letter to Chairperson Judge Mlambo and the Board, I didn’t accept her reasons because they were both legally and factually spurious, as I demonstrated at some length. (Bundle, pages 113–119, paragraphs 17–43) And which Vedalankar implicitly accepts, because in her second letter to me in January 2011 she tacitly abandoned, for the most part, her former reasons for the junk they are, and refused all my records requests again with a fresh bunch of legal rubbish.
41. Vedalankar grouses that I’d reported her unlawful misconduct to ‘the Portfolio Committee on Justice and Constitutional Development and to the Ministry’. Actually, I hadn’t. As anticipated in my letter to COO Makokoane back in September 2010, my stated intention from the start has been to appeal incrementally to higher levels of authority, accountability, and responsibility for the resolution of my complaint that Vedalankar has illegally discriminated

against me, and I'll be continuing with this 'route' until such time as my complaint is addressed and resolved. (Bundle, page 38, paragraph 76; and page 212, paragraph 7) My appeals to Vedalankar and to Makokoane have failed. My appeals to the Chairman and Board of Directors have failed. Hence the next level of my petition for justice in my case: South Africa's political representatives with oversight over both LASA's Management Executive Committee and Board of Directors. And hence my decision to copy them in, for their information concerning Vedalankar's flagrantly illegal misconduct on multiple scores and the Board's tacit connivance in it and, I'm hoping, their intervention to resolve it.

42. I'm also contemplating filing a formal major human rights violation complaint with the South African Human Rights Commission, copied to United Nations High Commissioner for Human Rights Navi Pillay, concerning how LASA CEO Vedalankar has violated my most basic civil liberties guaranteed by the Bill of Rights, and how she's been supported in this by members of the Management Executive Committee, by Chairperson Judge Dunstan Mlambo, and by all those members of the Board I've been able to contact to date. (Apparently on orders, Board Secretary Schoeman has blocked my attempts to reach all members of the Board.)

43. And if none of these non-litigious expedients remove the illegal hold on my appointment, I'll claim my rights in court.

44. In which regard the facts are now clearer than ever:

45. At the end of 2009 I was recommended for appointment as Senior Litigator, Pietermaritzburg, by a delegated professional selection board of senior advocates and attorneys. And for nine months, that was the last I heard of it. As I'd correctly surmised early on, Vedalankar, politically opposed to me, had dropped my successful application into the bottom drawer to die. (Bundle, page 8, paragraph 8; and page 129, paragraph 91)

46. LASA's records produced by Vedalankar for her own purposes, not mine, confirm that the process of recruiting me came to a halt immediately after I was selected and recommended for appointment. (Bundle, pages 224–8)
47. For a full three months after my successful interview, and long before any budgetary issues had arisen (Budget Vote 23 was only announced on 17 February 2010), my selection was neither formally accepted nor rejected on the record by the responsible line executive Nair – not even after a recruitment check had been run on me. (Bundle, page 218, paragraph 16)
48. Vedalankar alleges, falsely as I'll show, that 'I, and the Legal Aid SA (*sic*) under my watch, have never sought to make any decisions regarding the Senior Litigator posts on any ground other than the budget constraints', and she implies that nothing came up in my recruitment check to disqualify me on any openly defensible, lawful ground. (Bundle, page 223, paragraph 39) Only, the single 'mitigating' measures proposed by Nair, Vedalankar and the rest of the Management Executive Committee in July 2010 to overcome LASA's minor 'budget constraints', and approved by the Board on 31 July 2010, had nothing to do with Senior Litigator posts whatsoever.
49. On the contrary, in paragraph 2.2.b) of their 'REPORT TO BOARD', Vedalankar and the Management Executive Committee expressly excluded any question of abolishing 'critical positions' – such as Senior Litigator posts. After raising the possible need for even further reduction of 'coverage' of 'District and Regional Courts' in the preceding paragraph, they note: 'The recruitment process will be reviewed, centralizing the decision on filling of posts at Executive level, with due regard to the need to prioritise critical positions.' (Bundle, page 253)
50. In sum: following my successful interview, on the record, after which I was unanimously selected and recommended for appointment to the advertised senior professional post for which I'd applied, on the record, no further steps to finalize my appointment were taken on the record, other than to run a

recruitment check on me (the records of which, discussed below, Vedalankar would rather I didn't see). In other words, following my selection and then recruitment check, which Vedalankar implies was all-clear, nothing further was done on the record to process and finalize my appointment.

51. Budget issues arising in 2010, and addressed and resolved mid-year by the Management Executive Committee and the Board, did not, according to the records Vedalankar produces, concern vacant critical Senior Litigator posts.
52. In the situation, I've a clearly-established legitimate expectation of being appointed to the post for which I was selected and recommended, and no bar exists to this other than the illegal political prejudice I've run into.
53. In her letter Vedalankar falsely portrays my precise, early delineation of my successive, increasingly higher petitions in defence of my inalienable rights under our democratic Constitution as untoward 'threats'. (Bundle, page 224, paragraphs 41 and 42)
54. The reality Vedalankar needs to face is that for as long as she persists in disrespecting my constitutional rights, tacitly supported in this by the Board of Directors, any injury and degradation suffered to LASA's current sterling public image as an exemplary model of probity, integrity and good governance will be self-inflicted, thanks to LASA's deliberate and conscious failure to observe and uphold the law and take corrective measures necessary to forestall my final appeal to court, having exhausted all available non-litigious remedies.
55. Should LASA personnel be found guilty in a public court of law of having violated my fundamental human rights in the democratic era in South Africa, they will indeed suffer a loss of 'dignity' as a result of the public shame that will certainly ensue.
56. I'm not making 'disparaging attacks' on 'baseless assumptions'; I'm seeking justice through the application of laws such as PAIA, which support the indications already apparent that my recruitment was aborted on account of

illegal discrimination. And that Vedalankar has persistently lied about this to cover up the enormity of what she's done.

57. As for 'other institutions of [my] choice' that I've approached, these comprise the South African Human Rights Commission, but to date only its special PAIA Unit to get Vedalankar to apply herself to dealing with my records requests as the Act requires of her, after she insouciantly ignored my first request in a dumbfounding display of contempt for my constitutional right to LASA records. I've also approached the Open Democracy Advice Centre (no reply yet); and the Institute for Accountability for Southern Africa, which has indicated interest in joining my suit as an amicus curiae should the matter proceed to the appeal courts. (Bundle, pages 192–3, 194–5, and 196)
58. Having regard to Judge Mlambo's indication in his January email to me that LASA's current Board membership is not reflected in its August 2010 annual report, as I'd naturally presumed, enquiries were made on my behalf to Board Director Adv Pieter du Rand; and on 4 February 2011 I received a list of all new members. (Bundle, pages 209 and 259–61) I've found email addresses for all, and will brief them in this matter and appeal for their intervention at the next Board meeting – to be held I believe at the end of this month (February).
59. In paragraph 7 Vedalankar compounds the injury she has caused me by falsely accusing me of being untruthful. It's quite true, though, that I've been 'misinformed' – by LASA managers Brijlal, Clark, Nair, and signally by Vedalankar herself.
60. Crucially, Vedalankar persists with her lying claim in her letter of 18 October 2010 that my post was 'frozen' – as opposed to my recruitment for it – and that it was 'frozen' for budgetary reasons.
61. The records she produces give the lie to these claims absolutely.
62. It bears mentioning here that my correspondence in this matter shows that I've strained (against advice received) to keep Vedalankar's head clear of the descending guillotine, albeit that I surmised even as I wrote to her in July 2010

that she's the principal perpetrator of the illegal discrimination I've suffered.  
(Bundle, pages 11–6, paragraph 5.1–14)

63. I've repeatedly offered a conciliatory, harmless exit from the scandalous mess she's created – one of my motives being to contain and limit the damage that her illegal conduct has already caused LASA.
64. I'm not vindictive, and I understand the prejudice against me. We are sharply opposed in the most politicised policy controversy in the democratic era (now all but completely politically suppressed). And what she purrs over as LASA's greatest victory for human rights in South Africa ('under my watch'), the nevirapine case that LASA funded, I consider on the back of a ~100 000-word critique I published to be 'the most atrocious failure of our legal system since the start of the democratic era' with 'appalling consequences' – which I tried with all my power to prevent, working pro bono closely with the ANC at the highest level, culminating in an application to intervene in the Constitutional Court to inform it that the single clinical study on which the Treatment Action Campaign based its entire case had just been rejected by the American Food and Drug Administration as a worthless shambles, thereby knocking out the entire factual foundation of the TAC's case against the government. (Bundle, pages 11–16; and page 90, paragraph commencing 'I'd hardly arrived...')
65. But in her paragraph 7, Vedalankar unequivocally and determinedly commits herself to persisting with her lies and wagers her professional head on them: 'the explanation furnished by me to you on 18 October 2010 remains valid'. (Bundle, page 212)
66. In paragraph 8 Vedalankar states that 'Despite' my 'views [that] are unfounded; wrong and outright defamatory' (paragraph 5); my 'malicious accusations', my 'wrong assumption' and my wrong 'premise' (paragraph 6); and my 'incorrect assumptions which ground [my] right to access information from the Legal Aid SA (*sic*)' (paragraph 9) – all of which 'accusations and assumptions', she implies, disqualify me from access to the records I've requested – 'I provide you with

further information and reasons that led to the freezing of the Senior Litigator Posts in Durban, Pietermaritzburg and Mthatha, in addition to the reasons furnished to you on 18 October 2010.’ (Bundle, page 212)

67. Only, I didn’t ask for ‘further information and reasons’; I made two formal applications under PAIA for copies of specified records, or confirmation on affidavit that they don’t exist. (I explicitly told her in my letter covering my records request in August that the Act required her to put up an affidavit in respect of any records I’d requested that didn’t exist. She paid no attention.) And as before, Vedalankar unlawfully rejects both requests entirely, save for where the records that she puts up in hopeless defence of her hopeless position happen to coincide more or less with those I’ve requested.
68. Vedalankar’s paragraph 9 contains a table comprising two columns headed ‘NATURE OF DOCUMENT’ and ‘AIM OF THE DOCUMENT’, describing twelve records marked V1–V12, ‘provided to [me] ... to dispel [my] incorrect assumptions which ground [my] right to access information from the Legal Aid SA (*sic*)’ – in other words, to support her claim that my post was ‘frozen’, and ‘frozen’ for budgetary, not political (or, as a minor possibility, racial) reasons.
69. She claims the records she produces to support her false claims ‘***remain private and confidential***. You are therefore requested not to distribute them any further.’ (Emphasis in the original, with further emphasis in her repetition of her ‘private and confidential’ assertion in paragraph 38.) I’m unable to accede to this improper request. Under PAIA, the records are public records accessible by anyone, merely for the asking. When my case reaches open court, I’ll certainly be showing them to the trial judge and to any journalist interested in reporting for the information of the South African public Vedalankar’s and the Board’s scandalous contempt for the Bill of Rights, for the statutes enacted to give effects to it, and for proper, open, accountable corporate governance.
70. Vedalankar’s retrograde attitude to sharing LASA’s public records revealed here shows her old-order bureaucratic animosity to the spirit of the Act

recorded in its marvellously progressive preamble, which I quoted to her for her edification in my letter covering my first records request in August 2010. It evidently made no impression. (Bundle, page 51– 52)

71. V1, LASA's 'APPROVAL FRAMEWORK', I have already; Vedalankar attached it to her first letter in October 2010. (Bundle, pages 105–7 and 225–7) Under the 'AIM OF THE DOCUMENT' she claims it serves to 'demonstrate to [me] that the COO and CEO in consultation with other national Executives incl. NOE, HRE, ROEs, JCEs and the Board took part in deciding on various cost-cutting mechanisms including freezing of posts' in 2010. It doesn't.

72. Firstly, the 'APPROVAL FRAMEWORK' was 'approved by the Board on 23 May 2009', the previous year. Secondly, it specifies levels of authority required for executive decisions. It does not 'demonstrate' that any 'cost-cutting mechanisms' were decided in 2010 or at any other time.

73. Whether indeed (a) 'The freezing of posts is contemplated in clause 8.1.2' (in fact this is not contemplated, only the 'Establishment of new positions, regrading [of] existing positions and abolition of posts'), and whether (b) the 'freezing' of Senior Litigator posts involves 'Strategic Planning as [I] contend' (of course it does, the decision to appoint Senior Litigators in response to a call for this by Parliament was 'strategic'), is anyway academic, for on Vedalankar's own showing (records V5 and V10) the Pietermaritzburg, Durban and Mthatha Senior Litigator posts were never 'frozen' – 56 junior criminal defence practitioner posts serving the district and regional courts were abolished and none other. (Bundle, pages 240 and 251–4)

74. And whether indeed 'the concurrence of the COO is not required for these posts' is an academic question for the same reason.

75. Certainly, however, even if clause 8.1.2 of the 'APPROVAL FRAMEWORK' were applicable as Vedalankar claims it is, the clause requires that the Human Resources Executive be consulted for any such decision. And she wasn't. (Bundle, page 127, paragraphs 78–80)

76. Clause 8.1.2 of the ‘APPROVAL FRAMEWORK’ was never complied with in this regard, hence Vedalankar’s inability to produce a record of such consultation with HRE Clark, as I requested. (Bundle, page 181, request 5; and page 221, paragraph 29)
77. And equally certainly, even if clause 8.1.2 of the ‘APPROVAL FRAMEWORK’ were applicable, it requires Vedalankar’s agreement as CEO with any proposal by NOE Nair for the ‘abolition of posts’ (or ‘freezing’ of posts, if this were indeed implicitly contemplated by the ‘APPROVAL FRAMEWORK’).
78. Vedalankar never agreed with any such proposal, because in truth Nair never proposed that the Senior Litigator posts in question be ‘frozen’. The posts Nair proposed to be abolished were 56 public defender posts in the lower criminal courts; we have this in his own hand. (Bundle, page 240) Which proposal, agreed by the Management Executive Committee as a whole, the Board of Directors approved two weeks later. (Bundle, pages 251–4)
79. This explains why Vedalankar is unable to produce any record of a proposal by Nair that Senior Litigator posts be ‘frozen’; and it explains why she is equally unable to produce a record of her agreement with such a proposal. There wasn’t any proposal to ‘freeze’ Senior Litigator posts by Nair for Vedalankar to agree with. This is why no records of such proposal and such agreement exist.
80. When in due course Nair is cross-examined (under oath), he’ll undoubtedly confirm that Vedalankar herself, and not he, originated the instruction, off the record, that my recruitment be blocked. (Bundle, page 19) And that for this reason he didn’t note ‘RECOMMENDATION ACCEPTED’ on KZN Regional Operations Executive Vela Mdaka’s report of the interviews and identification of the selected and recommended candidates. (Bundle, pages 244–8. The interviews were on 12 November 2009, so both of Mdaka’s dates on the report are wrong.)

81. Of the ‘various cost-cutting mechanisms including freezing of posts ... that the COO and CEO in consultation with other national Executives incl. NOE, HRE, ROEs, JCEs and the Board took part in deciding on’, the single ‘cost-cutting mechanism.. ... decid[ed] on’ by all these managers was to reduce the number of district and regional court junior criminal defence lawyer posts, so as to effect a saving of R16 million in LASA’s salary bill.
82. And which have resolved LASA’s problems: I have it that LASA will begin paying OSD salary increases to professional staff this month (February).
83. The ‘freezing of Senior Litigator posts was never even proposed, let alone discussed and agreed and approved as a ‘cost-cutting mechanism..’.
84. V2, LASA’s ‘RECRUITMENT’ protocol (described by Vedalankar as a ‘Policy Document’) appears to be incomplete: it ends abruptly at page 9 and I require the rest of the document. (Bundle, pages 228–34)
85. Certainly this protocol stipulates an admirable norm for LASA to observe ‘in selecting employees’, namely that ‘Legal Aid South Africa is guided by the Constitution Act of 1996 (*sic*: the Constitution, 1996) and relevant legislation’. For instance, section 1.1.2 requires that ‘The recruitment process must be fair, objective, transparent, and non-discriminatory.’ Section 1.2.2.9 instructs ‘the selection committee or panel’ to ‘avoid questions that could be potentially discriminatory, including, but not limited to an employee’s ... political or other beliefs ... The interviewing process and subsequent deliberations of the committee or panel should focus on assessing whether the person being interviewed is suitable for the position or not.’
86. And indeed, as I mentioned in my first letter to Vedalankar in July 2010, my impression was and remains that my interview was conducted impeccably properly, with no indication of political or other bias against me. (Bundle, pages 2–4, paragraphs 5–15)
87. It was Vedalankar who contravened the ‘RECRUITMENT’ protocol by illegally discriminating against me and moving to kill my recruitment after I’d

been duly selected and recommended for appointment. (Bundle, page 103, paragraph 6.7)

88. Furthermore, section 1.2.2.10 of the ‘RECRUITMENT’ protocol provides that those ‘appointed to a selection committee or panel should be informed, and, where necessary, trained in respect of the consequences of discrimination in the recruitment and selection process and ways to avoid hidden or latent discrimination in the recruitment process’.
89. This is to say, LASA itself recognises that illegal ‘discrimination’ may be ‘hidden’ and that ‘the consequences of discrimination in the recruitment and selection process’ may be extremely serious for LASA.
90. After all, illegal discrimination, being illegal and having extremely serious consequences in post-apartheid South Africa, is hardly openly confessed. It’s invariably masked or cloaked with lying excuses precisely because it’s so grossly unconstitutional and so seriously illegal in the post-apartheid order. Vedalankar understands this perfectly.
91. The gravity of the matter is reflected yet again in the caveat in section 1.2.3.2 to be especially vigilant: ‘Care must be taken to avoid the making of recruitment decisions on discriminatory grounds.’
92. This is because as our own Navi Pillay, now United Nations High Commissioner for Human Rights, has pointed out: ‘More than pure aspirations, human rights are real rights that can be tested in courts of law.’  
(<http://j.mp/fg42xH>)
93. Since there has never been any question that ‘Legal Aid SA Executives are not precluded from formulating processes for recruitment’, Vedalankar’s statement here is utterly pointless other than to obfuscate the issues.
94. V3, Vedalankar’s letter to the Director General of Justice and Constitutional Development indeed indicates that as at 18 March 2010 LASA was financially stressed by Government’s delay in transferring its allocated R42 m. in OSD phase 2 funding for ‘paying salary adjustments’ of its legal professional staff.

(Bundle, pages 235–7) The ‘consequences of such failure on Legal Aid SA mandate (*sic*)’ are stated in Vedalankar’s letter thus: ‘Legal Aid SA is therefore unable to begin paying OSD Phase 2 salary adjustments for 2009/10 and previous financial years until the future funding for it has been secured.’ The only ‘consequence..’ of the delay stated in the letter was that LASA couldn’t treat its lawyers to pay increases until the government transferred the committed OSD funding allocation.

95. V4 is Vedalankar’s second letter to the DG on 13 April 2010 on the same subject; and in it she first raises the possibility that unless the outstanding funds are transferred, ‘reducing the number of practitioners that we can make available at courts’ may be necessary, with a ‘primary impact ... on service delivery at courts including increased delays and backlogs’. (Bundle, pages 238–9)
96. The posts Vedalankar implicitly ‘identif[ied]’ in her letter for possible ‘reducing’ were junior ‘practitioner’ posts servicing the lower criminal ‘courts’ where ‘delays and backlogs’ are the order of the day.
97. There’s no suggestion in her letter that critical Senior Litigator posts had also been ‘identif[ied]’ for possible ‘freezing’.
98. And we know for sure they weren’t, because even as Vedalankar was writing this letter in April 2010, LASA was simultaneously advertising to hire a Senior Litigator for Mthatha in the same month, and in about July proceeded to conduct interviews of shortlisted applicants – by which time Vedalankar had already frozen my recruitment for nearly eight months.
99. Why in contempt of his rights, in breach of his legitimate expectation of being appointed, Vedalankar also aborted the recruitment of the candidate selected and recommended for the Mthatha Senior Litigator post – also off the record, without consultation, without authority, without approval, and therefore also unlawfully – is explained in my first letter to Judge Mlambo and the Board of Directors. (Bundle, pages 148–9, paragraph 184) In a nut, in a Nixonian cascade of illegal power abuses, one illegal act was necessary to cover the other. To use

Vedalankar's own word (in another context), the recommended Mthatha candidate was 'sacrificed'. (Bundle, page 220, paragraph 26) Just as Bongani Mngadi, selected for the Durban Senior Litigator post, was too. As with the American Watergate scandal, Vedalankar's enormous illegal power abuses were then covered with persistent denials and lies. (Nobody remembers President Richard Nixon today for his considerable achievements, only for his single act of political corruption covered with persistent denials and lies that ended his career.)

100. In her October letter to me, Vedalankar stated that 'Since early this year, management has had to identify positions which could be frozen. In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would immediately be frozen.' (Bundle, page 103, paragraph 6.7)

101. Vedalankar's clear implication was that 'senior litigator posts that were vacant' were among the 'positions which could be frozen' and that they were among the 'positions ... management had to identify' for possible 'freezing' 'Since early this year'.

102. V4 shows Vedalankar's implication to have been false and contrived to deceive and mislead me. Senior Litigator posts were never 'identif[ied]' 'Since early this year' 'for possible freezing' among the 'costs-cutting mechanisms resorted to stay in budget'. (Last two phrases quoted from Vedalankar's commentary on record V5 in the 'AIM OF THE DOCUMENT' column). (Bundle, pages 238–9 and 214)

103. The truth of it is that 'senior litigator posts that were vacant' were never at any stage 'identified for possible freezing', neither 'Since early this year', nor at all:

104. V5 is Nair's email of 15 July 2010 to senior Management Executive Committee members; and indeed it shows his proposal, formally and properly mooted in terms of his powers and responsibilities defined in the Approval Framework, 'to budget for the shortfall'. (Bundle, page 240) Consistent with

Vedalankar's letter to the DG in April, Nair's proposal was to effect a 'first cut of 56 practitioner posts at JCs' (Justice Centres) to effect 'a potential savings of R16 m' – that is, to abolish 56 vacant junior practitioner posts (not, of course, to dismiss 56 junior lawyers).

105. Nair did not propose in his email to his fellow Management Executive Committee members that Senior Litigator posts be 'cut' or 'frozen'. He didn't even consider it. Rather, in the event that further staff cuts were necessary 'to budget for the shortfall', he suggested that further junior legal posts be abolished. And that abolishing some even lighter 'paralegal and admin positions at JCs' was another possibility beyond that, although he hadn't 'looked at' this 'as yet'.
106. It is therefore childishly dishonest for Vedalankar to claim, as she does, that Nair's email goes 'to show that not only the senior Litigator posts were identified for possible freezing'. It does no such thing; to the contrary, in the absence of any other record to this effect, Nair's email shows that 'the senior Litigator posts were [never] identified for possible freezing'.
107. Here at last is the truth in black and white.
108. The 'decision ... the NOE and CEO took', lawfully, openly, and on the record, was to 'cut ... 56 practitioner posts at JCs', and none other – not even much lower grade 'paralegal and admin positions', which Nair expressly contemplated as a further possibility if necessary, and certainly not a couple of very much higher grade critical Senior Litigator posts.
109. Two weeks later on 31 July 2010, the Board approved the Management Executive Committee's 'Recommendation' in paragraph 4 of its 'REPORT TO BOARD', precisely in line with Nair's proposal to reduce public defender 'coverage' in the district and regional courts to 80% and 90% respectively: 'The Board approve the mitigating measures in response to the OSD shortfall as proposed in paragraph 4 of Annexure 1.' (Bundle, page 251)

110. The Board designated Vedalankar as the ‘Responsible Person’ for implementation, with the ‘Due date’ set for 1 November 2010. Which means she knew exactly what single ‘costs-cutting mechanism..’ had been agreed by the Management Executive Committee and approved by the Board. And what hadn’t.
111. The Management Executive Committee never agreed the ‘freezing’ of Senior Litigator posts as a ‘mitigating measure’. And the Board never approved the ‘freezing’ of Senior Litigator posts as a ‘mitigating measure’ accordingly.
112. Nothing in the minutes of the Board’s July 2010 meeting indicate that it was informed that Vedalankar had just days before ‘frozen’ three critical Senior Litigator posts – on her lying version in her letters to me – informally, unilaterally, and off the record. This is because in truth she hadn’t. In her determination to shut me out as a political undesirable, she’d just suspended the recruitment process for the remaining couple of vacant Senior Litigator posts, and in doing so she acted without consultation, without authority, without approval, beyond her powers, and thus unlawfully.
113. Whether behind the scenes and off the record any member of the Board of Directors actively colluded and connived with Vedalankar, and agreed with and approved of her illegal discrimination against me and of her illegal decision, behind the scenes and off the record, to abort my recruitment will emerge during cross-examination when my illegal discrimination case is tried. In which event no one will be immune from subpoena, all of us being equal under the law.
114. V6, COO Makokoane’s internal email on 30 September 2010 headed ‘Consideration of cost cutting measures in Legal Aid SA’, in response to Cabinet’s call for such measure to be taken in all government departments, obviously has no bearing whatsoever on a decision allegedly taken three months earlier in July 2010 – but in truth and in fact, a decision taken in my case shortly after KZN ROE Mdaka sent up his ‘RECOMMENDATION FOR NEXT

ROUND OF INTERVIEWS’ report a few weeks after my successful interview.  
(Bundle, pages 224–8)

115. V7 is Mdaka’s just-mentioned report. Two posts had been advertised at the Pietermaritzburg and Durban Justice Centres respectively. I applied for the Pietermaritzburg post, and specifically confirmed this during my interview in reply to a question about which post I sought. The report confirms that I alone was selected for the post for which I’d applied, that I was ‘singly’ recommended, as Vedalankar puts it truthfully at last in her second letter, but in such a way as to imply, with seemingly compulsive mendacity, that my insistent claim from the start to have been ‘singly’ selected and recommended for the post I’d applied for is untrue. (Bundle, page 211, paragraph 3; and page 6, paragraphs 28–9) And the report shows that Bongani Mngadi (head of the High Court Unit at the Durban Justice Centre) had been ‘singly’ selected for the Durban post he’d applied for.
116. This record, V7, exposes Vedalankar’s lie in her letter of 18 October 2010 that I’d been ‘recommended together with other candidates, for the second round of interviews’. I wasn’t. I was the only candidate selected for Pietermaritzburg post, and Mngadi was the only candidate selected for the Durban one. There were no ‘other candidates’. (Bundle, page 104, paragraph 7.2; and pages 123–4, paragraphs 62–7)
117. Record V7 also exposes HRE Clark’s lie to me in her email of 30 April 2010, ‘At this stage it is not even clear which candidates will be considered in the second round’. (Bundle, page 6, paragraphs 28–31) In truth it was perfectly ‘clear which applicants will be considered in the second round’, because the successful applicants, Brink and Mngadi, were thrice identified as the only candidates recommended for ‘second round’ interviews for the Durban and Pietermaritzburg posts in paragraphs 1, 4, and 6 of Mdaka’s ‘RECOMMENDATION’ – unanimously supported by the entire professional selection board, and in my case in ringing terms.

118. It's significant that 'the 2nd round was never approved by the NOE and thus was never proceeded with', because as mentioned above no bona fide budgetary reason existed for not doing so at the time: Budget Vote 23, giving rise to LASA's budgetary pinch, was only published on 17 February 2010, a full three months after my interview. On Vedalankar's version the long delay is inexplicable.
119. I noted in my letter to Makokoane that I was writing to him 'on the basis of the information currently available to me and the inferences arising from it'. (Bundle, page 37, paragraph 70) It's now evident to me that Nair, who in his letter of 3 August 2010 stood up as the principal culprit, was merely the errand boy for his superiors. (Bundle, page 19) Yet in her 'AIM OF THE DOCUMENT' comment on her record V7, Vedalankar tries scuttling away from her leading role, passing the buck to Nair, and setting him up as the fall guy when the time comes to drop for what she's done. (Bundle, page 215)
120. As mentioned above, even after my recruitment had been 'frozen' within weeks of my interview, and Mngadi's with it— 'verbal[ly]', off the record, without due consultation, without authority, and without approval, and therefore unlawfully – LASA proceeded to advertise for a Senior Litigator for Mthatha in April 2010 and to interview candidates in July, so budgetary considerations obviously had nothing to do with it.
121. This is to say, my recruitment was clearly not aborted for any budgetary reason, but for another. A child can see this.
122. I explained in my first letter to Judge Mlambo and the Board that KZN regional HR manager Baboo Brijlal had misinformed me that my selection and recommendation was subject only to his (Judge Mlambo's) approval. (Bundle, page 124, paragraph 68) Nothing turns on this point.
123. Contrary to Vedalankar's claim under the 'AIM OF THE DOCUMENT', Mdaka's recommendation report has nothing to say about the composition of any second round interview panel.

124. V8 is the transcription I made of Vedalankar's oral report to the Portfolio Committee on Justice and Constitutional Development on 12 October 2010, which I annexed to my second records request. (Bundle, pages 184 and 249) Crucially, Vedalankar spoke to the Committee of having 'to freeze some posts' only as a contingent future possibility in the event that outstanding OSD funding didn't come through; she didn't say she had already 'frozen' three critical Senior Litigator posts just a couple of months earlier.
125. V9 is Mdaka's letter to me in August 2010, more than nine months after my successful interview, telling me 'we will not be proceeding with the filling of this post'. Vedalankar also annexed it to her October letter. Perhaps she thinks if I'm told three times I'll sit down and be quiet. (Bundle, pages 20, 108 and 250)
126. V10 is an excerpt of the minutes of the Board's 31 July 2010 meeting at which it approved the Management Executive Committee's agreement to abolish some junior 'legal practitioner positions' serving the 'District Courts and Regional Courts'. (Bundle, pages 251–4)
127. V11 is a scanned copy I made of the final advertisement for the Pietermaritzburg and Durban senior Litigator posts. (Bundle, pages 45 and 255)
128. V12 is my email exchange with Clark in April 2010. (Bundle, pages 256–8)
129. At her meeting with the Portfolio Committee, Vedalankar also reported that 'the Minister ... didn't want' posts frozen. The meeting with 'the Minister' (*sic*: the Deputy Minister?) evidently took place sometime before 16 July 2010, in which month Vedalankar alleges she 'froze' my post and two similar ones. (Bundle, page 252. This is the Management Executive Committee's 'REPORT TO BOARD' dated 16 July 2010. The reference to 'the Executive Authority' in paragraph 1.3 would appear to be to 'the Minister'.)
130. Vedalankar's lie that 'In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would be immediately frozen' is further exposed by the fact that Mngadi had already been informed by email 'in April/May' that the Durban Senior Litigator post wasn't going to be filled. His

post wasn't 'frozen' in July; his recruitment was aborted 'in April/May'. (Bundle, page 146, paragraph 179) (It didn't bother him, he told me; he'd assumed some 'internal restructuring' was on the go, and was anyway quite happy in his post running the HCU. He said he'd only applied for the Durban Senior Litigator post because he'd been urged to by his senior LASA colleagues.)

131. Vedalankar also told the Portfolio Committee in October that the outstanding OSD problem was currently being fixed with the Minister's assistance. Here's the material portion of Vedalankar's address (the whole is annexed to my second records request):

132. *CEO Vedalankar*: '...we are on track on all components of our Business Plan and we are confident that we will deliver this Business Plan in this financial year also. So we don't have any problem areas that we would like to report on. We do have challenges in terms of some of the funding issues like OSD but at the moment we are in the process of fixing it. In fact the Minister has been involved in that which relates to OSD Phase 1 and Phase 2 funding. And our Chairperson met with the Minister and he undertook to assist to resolve this issue through the medium-term sorry the mid-term adjustment budget.

*Committee Chairperson Jeffery*: [Occupational Specific] Dispensation, that's the salary increase for professionally qualified people.

*CEO Vedalankar*: And so that so that the Minister was in was and also because we indicated that if that didn't come through it meant that we would have to freeze posts. In this period of recession we don't have increases but there is also we have a budget cut that's coming in 2012, R34 million. So we were a bit worried because actually we run a very tight ship and if we didn't get the OSD money that we were meant to it would mean that we would have to freeze some posts but the Minister didn't want that and said that we needed to continue with the business. And so he did get involved and he had assisted.'

133. All this is at odds with Vedalankar's claim to have discontinued 'the business' of implementing LASA's strategic decision to equip Justice Centres at seats of

the High Court with Senior Litigators – thereby defying the express wishes of ‘the Minister’ in 2010 and of Parliament in 2007. (Bundle, page 120, paragraph 50) And furtively, off the record, without consultation, without authority, without approval, and unlawfully.

134. After scoring this decisive own goal in her first ten paragraphs, signalling game-over to all but the mentally retarded, Vedalankar finally turns to reanswering my first records request in August 2010, and she does so without a word about her unlawful rejection of the whole of it in October for wholly spurious reasons. Yet again she rejects almost my entire request, this time on new grounds, but again on equally spurious ones.

135. Paragraph 11 is no proper response to my request A1. The records Vedalankar refers to are different from the minutes I request, and it’s the relevant minutes of the Board Executive Committee meeting sometime in or immediately after May 2007 that I require. (In my August 2010 request I referred to ‘the Management Board’; the correct appellation is the Board Executive Committee.)

136. Paragraph 11 is no proper response to my request A2 either. Neither the ‘APPROVAL FRAMEWORK’ nor the ‘RECRUITMENT’ protocol (the part of it provided to me) have anything to say about the confirmation and appointment process following my selection and recommendation for appointment by the regional professional selection board. The part (it seems) of the ‘RECRUITMENT’ protocol supplied to me makes no provision for any second interview. If Vedalankar can’t produce any resolution supporting her allegations in paragraphs 6.2–4 of her October letter to me, section 23 of the Act requires her to confirm on affidavit that no such record exists.

137. I accept that Nair is ‘the line executive/manager responsible for the appointment of Senior Litigators’ and ‘Must agree’ their appointment (code ‘B’ of the ‘APPROVAL FRAMEWORK’) having regard to genuine operational requirements and the outcome of the ‘LAB-RC (Legal Aid Board recruitment

check)’. I don’t accept that he enjoys unfettered ‘final’ discretionary power to over-ride the professional selection board’s recommendation as his letter to me implied. (Bundle, page 19; and page 23, paragraphs 12–15.)

138. Paragraph 12 sufficiently meets my requests A3 and A4. Since the Pietermaritzburg Senior Litigator post is a ‘regional post’, the ‘person in charge of or managing the process of recruiting’ me after my selection and recommendation was/is ‘the relevant Regional Human Resources Manager’ Brijlal. After my successful interview I never heard from him again.
139. Paragraph 13: As indicated above, I require a record of a resolution supporting Vedalankar’s claim that ‘Seeing that the ... Senior Litigator’s post was a senior post, second round interviews were to proceed to national level with national executives’. If no such record exists, Vedalankar is required by section 13 of the Act to say so on affidavit.
140. And if no such record exists, there is no lawful warrant for requiring me to be interviewed again before appointment by a group of mostly non-lawyers after I’ve already been recommended by a selection panel made up of my professional peers, all senior advocates and attorneys.
141. Paragraph 14: Requests A5 and 6 were directed at exposing the falsity of Clark’s implications to me, and I note that Vedalankar agrees that these requests were indeed sprung from ‘misguided facts and false information’. Clark was the source of it. Section 13 of the Act requires Vedalankar to confirm on affidavit that ‘no such document exists’ in respect of both requests.
142. Paragraph 15 is no proper response to my request A7, in that the ‘APPROVAL FRAMEWORK’ doesn’t record the decision in question.
143. Paragraph 16 is no proper answer to my request A8, and the rigmarole in this paragraph has no application. Nonetheless, in the interests of expedition, I’m not pursuing this record.
144. Paragraph 16 is no proper answer to my request A9 either. It appears from Vedalankar’s response here that enquiries were made about me and information

was gathered about me purportedly in terms of the ‘Recruitment Checks’ provisions of the ‘RECRUITMENT’ protocol (V2). However, I don’t recall ever being asked to ‘consent in writing to the recruitment check’ as section 1.3.3 requires; but if I did, I require a copy. And if I didn’t, I require it confirmed on affidavit that no such record of my ‘consent in writing’ exists. (I’ll submit a third PAIA request for this and other records.)

145. If I didn’t ‘consent in writing to the recruitment check’, LASA had no lawful business gathering information and opinions about me from ‘third parties’ for its ‘deliberative process’ – not even from the referees I provided at the foot of my CV, because section 1.2.3.6 provides that ‘Before the final appointment is made, and only where the advertisement indicated that references were required, the referees as submitted by the applicant should be contacted and objectively verifiable information should be obtained from the referees.’ Which is to say on the eve of concluding an employment contract with LASA and not before. The advertisement for the Pietermaritzburg and Durban Senior Litigator post didn’t ‘indicate.. that references were required’. (Bundle, page 45) (That’s how seriously LASA respects the privacy rights of applicants applying for its advertised positions, at least on paper.)

146. In her letter of 18 October 2010, Vedalankar claimed the post for which I was selected and recommended had been frozen for budgetary reasons, and stated, ‘Should we decide to unfreeze these positions in the future, the positions will be duly advertised and you will be at liberty to submit your application for any of the positions.’ Which means – in her opinion – my successful application is now dead and buried, and not merely hibernating until better days. (Bundle, pages 103–4, paragraphs 6.7 and 7.5; discussed at pages 158–9, paragraph 234)

147. This absolutely excludes the possibility envisaged for by section 44(1)(b) of the Act that the ‘the disclosure of the record could possibly be expected to frustrate the deliberative process’ – namely the records ‘containing personal information about’ me to which I’m entitled to access in terms of the express

provisions of section 11(2) of the Act: ‘A request contemplated in subsection (1) includes a request for access to a record containing personal information about the requester.’

148. As section 11(2) entitles me, I require copies of all and any records containing personal information and opinions about me that LASA has gathered.

149. Paragraph 17: Ad request A10: If contrary to what Clark claimed to me – six months after my successful interview and no feedback from LASA whatsoever – no decision on the record was taken as to the ‘pace we have decided ... to complete our process’ to appoint me Senior Litigator at Pietermaritzburg, after my selection and recommendation, section 13 of the Act requires Vedalankar to confirm this on affidavit.

150. Paragraph 18 has Vedalankar incorrectly suggesting that my requests A3 and A4 are the same as B3 and B4. They are quite different – the former are clearly not for records of ‘communications’. As already indicated, I’m satisfied by Vedalankar’s responses to my requests A3 and A4. If no records exist of ‘written communications’ between the parties described over the period defined in these requests (perhaps because the communications took place off the record) Vedalankar is required to positively confirm this on affidavit under section 13 of the Act. The email exchange between Clark and me which Vedalankar gives me, and which she notes I have already, is completely irrelevant.

151. Why Clark communicated with Mdaka and Brijlal secretly, without my knowledge, behind by back, by ‘blind-cop[ying]’ them in her email to me, she can explain when she testifies – particularly in the light of her claim that ‘staff members’ such as herself ‘have integrity, as well as respect for human dignity and diversity, and are also accountable’. (Bundle, page 26, paragraphs 31–34)

152. Paragraph 19: It is no proper answer to my requests A11, A12, A13, and A14; and B13, B14, and B15 to ‘refer’ me to ‘the correspondence on costs-cutting measures, read with the Legal Aid SA’s Approval Framework’. These records do not reflect either of the alleged two decisions specified in my requests A11 and

- A12. The records to which Vedalankar refers me don't even mention Senior Litigators, let alone any decision-making to first 'put on hold' our recruitment and then 'freeze' the vacant posts for which we were selected and recommended. If no records exist of these two alleged decisions, section 13 of the Act requires Vedalankar to confirm this on affidavit.
153. Neither the 'correspondence' nor the 'Approval Framework' is the record identified in my request A13. The record surely exists, and I persist in my request for access to it.
154. My request A14 is perfectly met by Vedalankar's explanation in her paragraph 20, and I'm not pursuing this record accordingly.
155. My request A15 is unanswered, but it's a collateral issue of insufficient relevance, so I'm not pursuing it.
156. My request B13, B14, and B15 are not properly answered by referring me to the 'correspondence' and 'Approval Framework', for the reasons just stated. If none of the records identified in these requests exist, section 13 of the Act requires Vedalankar to confirm this on affidavit.
157. Paragraph 20 goes to my request A14 (not A15 as Vedalankar states) and as just recorded, the issue is settled.
158. Paragraph 21: If no records exist of any discussion of me or of the Pietermaritzburg Senior Litigator post by members of the Management Executive Committee after August 2009, section 13 of the Act requires Vedalankar to positively confirm this on affidavit.
159. Paragraph 22: I never asked for 'the regional panel members' individual assessment notes; scores; deliberations; submissions; and assessment reports' on me, because I don't need them, not having any use for them, so Vedalankar's retention of these records is fine by me.
160. Paragraph 23: I accept the 'final recommendation of the panel' in its edited form, as sufficiently meeting my requests B1 and B2 for my purposes, namely for trial. (Bundle, pages 244–8)

161. Vedalankar's generous claim to have 'exercised [her] discretion' to provide this record is legally misconceived, but it's academic in the specific context.
162. Paragraph 24: As mentioned above, V7, the 'final recommendation of the panel', satisfies my requests B1 and B2.
163. Ad requests B28, B29, B30, B31, and B32: None of these records have anything to do with any 'deliberative process' as alleged, and I require them, or Vedalankar's confirmation on affidavit that they don't exist.
164. Contrary to Vedalankar's misconception and resultant misdirection, the Act affords her no discretionary power in affording or refusing access to records of the sort I seek here.
165. Paragraph 25: Ad requests B3 and B4: if no records of such communications exist, section 13 of the Act requires this confirmed on affidavit.
166. Paragraph 26: Contrary to Vedalankar's 'reject[ion]' of the fact, of course there was 'a delay in dealing with [my] post' – Mdaka even apologized for it. (Bundle, page 20) For nearly nine months I was given no information about the outcome of my interview whatsoever, until my first letter to Vedalankar on 12 July 2010 was answered by Nair alleging on 3 August that that my post had first been 'put on hold', followed by a decision not to fill it. Only, no records exist to support these false allegations.
167. Paragraph 26 contains more transparent prevarication. Vedalankar alleges that 'the drive to secure funding took priority' over the huge simultaneous 'recruitment drives' described in my first letter to Judge Mlambo and the Board, involving massive increases both in newly created posts and in staff engaged, including legal professional staff. (Bundle, pages 130–1, paragraphs 96–102) As if, as Vedalankar implies, these enormous 'recruitment drives' were impeded by 'the drive to secure funding' at the time my recruitment had clearly been 'put on hold' for many months – quite clearly they weren't. As if, as Vedalankar implies, 'the drive to secure funding' affected the 'recruitment drives' for Senior Litigators; on the contrary, LASA proceeded to advertise for and interview

candidates for Mthatha. As if, as Vedalankar implies, ‘Senior Litigator posts’ were mentioned in ‘costs cutting discussions/processes including identifying the areas that could be sacrificed to keep Legal Aid SA in budget’; the records Vedalankar puts up show conclusively that they never were.

168. Paragraph 27: If Brijlal was indeed kept informed with updates, he didn’t pass them on to me. He never contacted me at all. In any event, the only ‘cost-cutting mechanism..’ mooted and approved was a reduction in the number of junior criminal defence lawyer posts serving the district and regional courts. If Brijlal was informed about this, and presumably he was, he didn’t convey it to me because it was completely irrelevant to my situation and interests as the successful applicant interviewed and recommended for appointment to a vacant Senior Litigator post. As mentioned, LASA’s minor, temporary stress for funds, easily resolved by slightly reducing public defender coverage in the lower criminal courts, didn’t prevent it from advertising and interviewing for a Senior Litigator for Mthatha about six months and eight months respectively after my recruitment had been ‘put on hold’. Any professionally run corporation, on the level, would ordinarily communicate with interviewees for a senior professional post and not leave them hanging for months on end, deliberately kept in the dark. Unless the intention was to discourage a successful candidate into withdrawing – as Clark had the temerity to urge me to do. (Bundle, page 6, paragraph 25) Nor would a professionally run corporation, on the level, communicate with one candidate (Mngadi) and not the other (me) – especially considering that I was evidently aching for some information, as indicated by my persistent enquiries after a wait of several stone silent months. (Bundle, pages 4–5, paragraphs 17–23)

169. Paragraph 28: My telephone conversation with Clark on 14 April 2010, and her email a couple of hours later contained no suggestion that the Senior Litigator post for which I’d been selected and recommended was in line for possible abolition. (Bundle, page 5, paragraph 20) Not even her email two weeks

later on 30 April, full of snarling malice and palpable disingenuity. (Bundle, pages 5–8, paragraphs 24–40)

170. Again, if there was any question over whether ‘the Department of Justice and Constitutional Development would allocate us budget to proceed with finalizing the recruitment processes’, it didn’t prevent LASA advertising to recruit a Senior Litigator for Mthatha six months after my recruitment had been ‘put on hold’. And then proceeding to interview candidates, and select and recommend one about two months later. This is because in truth vacant Senior Litigator posts were never contemplated for abolition and were never abolished (or ‘frozen’, whatever that’s supposed to mean).

171. Paragraph 29: Section 13 of the Act requires Vedalankar to confirm on affidavit that the records identified in requests B13, B14, and B15 don’t exist.

172. Paragraph 30: First of all, as stated above, I require a copy of my ‘consent in writing to the recruitment check’, if indeed I signed such, in which document I consented to Regional Operations Executive Mdaka or his delegate, Regional Human Resources Manager Brijlal – and no one else – collecting information and opinions about me from third parties. (Bundle, page 234, section 1.3.2)

173. Secondly, section 43(1) of the Act doesn’t provide that ‘confidential correspondence with third parties’ (Vedalankar’s homebrewed faux legal phrase) is excluded from access by a records requester. The section provides (in the heading) for the ‘Mandatory protection of research information of third party and protection of research information of public body’. Vedalankar hasn’t made a case that any ‘research information’ is contained in the records I seek here – nor, even if they did contain ‘research information’, that ‘serious disadvantage’ would ensue from disclosing it.

174. In any event, I’m not the least interested in getting hold of anyone’s ‘research information’ – not unless I’m the hot subject of it.

175. Section 43(1) obviously has no application to request B16, and Vedalankar has no right to deny me access to the records of LASA’s ‘correspondence with

third parties' about me and the post I was selected and recommended for. I therefore persist with my request for it.

176. Nor does section 43(1) have any application to my requests B19, 20, 21, 22, 23, 24, 26, and 27, as Vedalankar wrongly alleges, and I persist with my requests for these records accordingly.

177. (If Vedalankar maybe meant to refer not to section 43(1) but to section 34(1), providing (in the heading) for 'Mandatory protection of privacy of third party who is natural person', she's made no case that providing me with the records I seek would 'involve the unreasonable disclosure of personal information about a third party'; and she's accordingly bound to grant me access to them. Any 'personal information' about any human 'third party' contained in them, such as addresses or telephone numbers, may be blacked out.)

178. Paragraph 31: Apropos of the last sentence, I do not possess nor have I seen the records identified in my requests B16, 19, 20, 21, 22, 23, 24, 26, and 27; and this is why I requested them. I've no idea why Vedalankar should suggest to the contrary. But this is the second time now that LASA's managers have impugned my integrity by falsely imputing underhand dealing to me; Clark pulled the same low move on me too. (Bundle, page 28, bulleted paragraph commencing 'displaces...')

179. Section 43(1) and (2) of the Act ('Mandatory protection of research information of third party, and protection of research information of public body') and/or section 44(1) and (2) ('Operations of public bodies') do not preclude me from access to these records.

180. In the interests of expedition, I'm withdrawing my requests B19–22.

181. I require the records mentioned in my request B16, which Vedalankar confirms LASA has, but which she's shy to show me, of its 'correspondence with third parties concerning Brink and/or his selection by the KwaZulu-Natal regional professional selection board for appointment to the Pietermaritzburg Senior Litigator post'. I want to see what's been said about me and by whom.

Section 11(2) of the Act explicitly entitles me see to the records of such communications; and Vedalankar has no right to hide them from me, grasping frantically at this and that inapplicable section of the Act in a fatuous justification for doing so.

182. My requests B23, 24, 26, and 27 manifestly have nothing whatsoever to do with ‘research information of third party [or] public body’ nor with ‘Operations of public bodies’, and I persist in requiring these records.

183. Paragraph 32: Section 13 of the Act requires Vedalankar to confirm on affidavit that the records identified in my requests B17 and B18 don’t exist. None of the ‘documents provided to [me]’ by Vedalankar correspond with these requests.

184. Paragraph 33: Ad my request B25: A simple instruction of this sort is manifestly not hit by section 44(1) and (2), because it does not reflect ‘deliberations; opinions and views intended for Legal Aid SA to take certain decisions’. Contrary to what she imagines, Vedalankar has no ‘discretion’ under the Act to refuse this record and I persist in requiring it.

185. Paragraph 34: Ad my requests B33: None of the ‘costs-cutting measures correspondence’ to which Vedalankar refers me, ‘in which Nair was instrumental in identifying posts that should be cut; frozen etc’, contains any reference to Senior Litigator posts whatsoever. The ‘costs-cutting measures correspondence’ therefore does not meet this request, and I persist in requiring this record. If no such record exists, section 13 of the Act requires Vedalankar to confirm it on affidavit.

186. Ad my request B34: Subsequent to making this request, I learned from the Mthatha Justice Centre that the recruitment of the candidate interviewed, selected and recommended for appointment to the Senior Litigator post there in about July 2010 (he ‘was ready to start’) had also been aborted – in the same month according to Vedalankar that she alleges she and Nair ‘took the decision that all senior litigator posts that were vacant would be frozen’.

187. Which means that contrary to Nair's false implication, the Mthatha post was never 'put on hold'; the successful recruitment for it was almost immediately aborted when my first letter to Vedalankar arrived that month and precipitated a crisis, bringing the long festering illegal boil to a head. (Bundle, pages 1–17; page 19; page 103, paragraph 6.7; and pages 148–9, paragraph 184)
188. Paragraph 35: Section 13 of the Act requires Vedalankar to positively confirm on affidavit that 'there are no other electronic records relating to [me]'.
189. Though she mentions it in her opening paragraph 1, Vedalankar has failed to decide most of my second, supplementary request for records of 15 December 2010. (For clarity of identification, I'll refer to these second record requests by way of a preceding '2' – so, '2.1', '2.2', etc.)
190. Even if unintentionally, the records V3 and V4 that Vedalankar has provided me satisfactorily meet my requests 2.1–3.
191. I understand from paragraph 29 that no record as identified in my request 2.4 exists, and Vedalankar is required to confirm this on affidavit.
192. I also understand from paragraph 29 that no record as identified in my request 2.5 exists, and if this is correct Vedalankar is required to confirm it on affidavit.
193. Though not exactly so, my requests 2.6, 2.7, and 2.8 are substantially met to my satisfaction by records V4 and V5, and they'll do.
194. In the interests of expedition, I'm not pursuing in this memorandum the issue raised by Vedalankar over my request 2.9, and I withdraw the request.
195. I further understand from paragraph 29 that no record exists of the resolution mentioned in my request 2.10, and if so section 13 of the Act requires that Vedalankar confirms this on affidavit – namely that no record exists whatsoever of any decision by the Management Executive Committee, the whole or part of it, taken 'In July 2010 ... that all senior litigator posts that were vacant would be immediately frozen.'

196. Which is to say that on Vedalankar's version, 'under [her] watch' LASA is being run like 'a glorified spaza shop', in the recent words of Cachalia JA, without records kept of its key processes. (Bundle, page 161, paragraph 243) Or like 'the family supermarket', as I put it in my letter to Makokoane a couple of months earlier. (Bundle, page 37, paragraph 67)
197. I understand from paragraph 34 that no record exists of any notification of the Board Executive Committee of the alleged decision that 'the NOE [Nair] and CEO [Vedalankar] took' as alleged by Vedalankar in her October letter to me 'that all senior litigator posts that were vacant would be immediately frozen'; and if so, section 13 of the Act requires that Vedalankar confirms this on affidavit.
198. I require the records identified in 2.12, 2.13, 2.14, 2.15, 2.16, and 2.17.
199. Paragraph 1.3 of the 'REPORT TO BOARD' annexed to record V10, 'Legal Aid South Africa Board Meeting Minutes: 31 July 2010' (see document footer fingerprint) sufficiently meets my request 2.18.
200. Paragraph 36: I've addressed this fallacy in my paragraph 32 above.
201. Paragraph 37: My illegal discrimination complaint is a matter for trial on viva voce evidence. The records Vedalankar has unlawfully denied me, in contempt of my constitutional rights to access them and of her obligations under the Act to supply them, will be the subject of an application to compel in the event that the PAIA Unit of the South African Human Rights Commission is unable to prevail on Vedalankar to obey the law.
202. Paragraph 38: The records of the alleged 'cost-cutting measures including but not limited to the Senior Litigator posts' recommended by the Management Executive Committee and approved by the Board Executive Committee reflect that these 'cost-cutting measures' were indeed 'limited to' abolishing 56 vacant junior criminal defence lawyer posts. The records reflect that 'Senior Litigator posts' were not 'includ[ed]' in the recommended and approved 'cost-cutting measures' at all. The brazenness of Vedalankar's persistent dishonesty in the

teeth of the brute facts, finally exposed, is staggering. If she thinks she can fly this past an experienced judge, she's obviously never been in court before.

203. Paragraph 39: No records of any 'decisions regarding the Senior Litigator posts' appear to exist subsequent to my, Mngadi's, and the successful Mthatha candidate's selection and recommendation for appointment to the advertised Senior Litigator posts for which we'd applied. Yet undoubtedly decisions were made, with operational and strategic ramifications – and big financial implications too, involving about R2 million a year. The reason Vedalankar took these decisions without consultation, without authority, without *formal* approval, unofficially, furtively, and completely off the record, will be investigated at trial. (Compare the 'cost-cutting' decision to abolish some junior practitioner posts: everything above-board, on the record, with due process punctiliously observed.)

204. Vedalankar's barefaced claim as CEO of a major public body such as LASA that her decision to 'freeze' three critical senior professional posts, contrary to avowed strategic policy in accordance with the express wishes of Parliament, and with nearly R2 m. in annual budget implications, could properly be taken 'verbal[ly]', off the record, with no trace in any business record, like in 'a glorified spaza shop', like in 'the family supermarket', simply brings tears to one's eyes. (Bundle, page 221, paragraph 29)

205. More especially since LASA's records contradict her claim to have 'frozen' Senior Litigator posts, and to have 'frozen' them for budgetary reasons, and they show that she's clearly lied about this.

206. The fact that LASA's latest annual report contains false financial information is incontestable. Simple arithmetic reveals the total of executive management's bonuses and incentives in Table 3 has been falsely under-reported by R1.07 m.; expenses and allowances by R1.65 m.; and other remuneration by R0.17 m.. This is noted in my first letter to Judge Mlambo and the Board of Directors. (Bundle, page 152, paragraphs 197–201)

207. Vedalankar's direct, active responsibility for incurring 'wasteful and fruitless expenditure' and squandering public revenue is also detailed in my first letter to Judge Mlambo and the Board. (Bundle, pages 158–9, paragraphs 234–5)
208. The wasted expenditure occasioned by Vedalankar's abortion of lengthy recruitment processes for the appointment of Senior Litigators – as required by Parliament and the Board – after suitable candidates had been selected and recommended by professional selection panels following years and years of persistent advertising in the law journals and national newspapers, is now being compounded by her further fruitless waste of professional time and money in defending the indefensible by spinning out pages and pages of worthless pretence at justifying her non-compliance with the Act and her concealment of public records from me, and, in good time, from the courts, so as to hide the evidence of her lawless, shockingly unconstitutional conduct.
209. Soon she'll be wasting hundreds of thousands of rands on hiring attorneys and advocates to oppose me in my application to compel her compliance with the Act and then wasting hundreds of thousands of rands more in opposing in my claim to appointment to the position for which I was selected and recommended.
210. No amount of huffing and puffing; no torrent of hot words; no petulant displays of feigned bruised innocence; no dare or 'challenge' to me, like children playing chicken in the road, to report LASA to the Auditor General; no legal fist shaking; and no amount of waffling by Vedalankar can get her over and around the fact that she has wasted a lot of public money already and is set on wasting a lot more.
211. Paragraph 41: Vedalankar will in due course be required to explain her recrimination that the trouble I was put to in preparing draft application papers for an order compelling her to comply with her obligations under the Act was 'unnecessary', given that (a) she'd rejected my entire records requests on grounds she now implicitly admits were complete trash, and (b) now substitutes

her admittedly junk reasons with other legal garbage, in a hollow show of legality, even as she rejects my request for records for the second time in her desperation to conceal the evidence against her that the Act requires her to deliver to me. Or the fact, in some cases, that no records exist, thus showing that I've consistently been lied to.

212. Paragraph 42: I advise Vedalankar in turn that I will defend myself against the denial and infringement of my constitutional rights by LASA executive managers and Board members with all legal means available to me in the Constitutional democratic era.

213. Paragraph 43: Vedalankar's true attitude to 'the laws and statutes of the country most importantly the Constitution of the country and its values of accountability and transparency' is shown by her conduct in flagrantly transgressing the Constitution and the laws passed under it; by her/LASA's failure to communicate with me for nine months after my successful interview, and then, only when I pressed for progress in my appointment, telling me deliberately opaquely that 'for various reasons' my post had been 'frozen' (it wasn't); by her complete lack of 'accountability and transparency' in refusing a simple request for records when she implies she's nothing to hide, justifying her concealment of records with wave after wave of manifestly spurious interpretations of the Act, so obviously cooked up by a legally untutored layperson thrashing around with her foot caught in her own gin trap.

214. Vedalankar's elaborate, time-consuming efforts to conceal records from me and thereby hinder the airing of my case before the Board, the Minister and Deputy Minister of Justice and Constitutional Development, the Portfolio Committee, and later this year in the courts, demonstrate precisely her scorn for 'the values of accountability and transparency'.

215. Paragraph 44: I didn't ask for 'explanations', I requested records in terms of the Act. Vedalankar's palpably false 'explanations' for aborting my recruitment – contradicted by the very records she produces to support them – and her refusal

to provide me virtually all the records I've lawfully requested, certainly doesn't 'put this matter to rest'.

216. The only records Vedalankar produced were those she put up to support her 'explanation' (per 'AIM OF THE DOCUMENT'), and not to comply with my records requests – which is to say the records she provides are not what I requested. Where my requests and the records she produced for her own purposes happen more or less to correspond, it's just my lucky coincidence. As it is, the records she produces and the statements she makes in her letter are already lethal to her false version of events.

217. Indeed, it's evident that Vedalankar's intention was to refuse my records requests in toto. Section 22 (1) of the Act preemptorily required her as information officer to exact a 'request fee' from me 'before further processing the request'. Which I duly paid by cheque. There's no provision in the Act for returning/refunding a 'request fee' in the event that a records request is refused (in which event, subsection (4) requires an information officer to 'repay the deposit to the requester', namely the 'deposit' on 'access fees' taken depending on the likely cost in time and material of complying with the request – not the 'request fee').

218. Vedalankar's unlawful refusal to accept my compulsory, non-refundable request fee speaks of her contemptuous attitude both to me and to the law.

219. As before in October 2010, Vedalankar has again in January 2011 refused my lawful requests for records and thus denied my constitutional right to access them.

220. Apart from persistently violating my most basic constitutional rights to liberty of conscience, belief, expression, and public participation, and not to be discriminated against for exercising them, and to my right of information as well, Vedalankar has also contemptuously flouted, with the Board's tacit approval, the 'Basic values and principles governing public administration' in the democratic era – per the heading of section 195 of Chapter 10 of the

Constitution, 1996 – namely the ‘democratic values and principles enshrined in the Constitution’, per subsection 1, ‘including the following principles:

- a. A high standard of professional ethics must be promoted and maintained.
- b. Efficient, economic and effective use of resources must be promoted.
- ...
- e. People’s needs must be responded to, and the public must be encouraged to participate in policy-making.
- f. Public administration must be accountable.
- g. Transparency must be fostered by providing the public with timely, accessible and accurate information. ...’

221. Which ‘above principles apply’ in terms of subsection 2(c) ‘to ... public enterprises’ like LASA as well.

222. As does the principle stated in section 197(3): ‘No employee of the public service may be favoured or prejudiced only because that person supports a particular political party or cause.’

223. Commenting on Vedalankar’s repeated pretensions to observe and promote the Constitution, an observer familiar with this case remarked, ‘Legal Aid is like one of those businesses that keep two sets of books.’ One for show, and another telling what’s really going on. And on the facts of my case, who’ll disagree?

224. The Department of Justice regards LASA as the jewel in its crown. On 12 January 2011 *Business Day* quoted Deputy Minister Andries Nel enthusing: ‘The world would be a better place if it were run by Legal Aid.’

225. My case is the proverbial rotten apple threatening the whole barrel. I hope very much, therefore, that the new members of the Board, of whom I wasn’t aware until receiving the new member list, and whom I was therefore unable to contact until now, will, unlike the indolent older members of the Board, resolve

to remove the rotten apple promptly at the next Board meeting in a couple of weeks, before it ruins the whole barrel. And that the Minister, the Deputy Minister, and the Portfolio Committee might offer some encouragement before the stench reaches the media, and thereafter the public.

226. And it's simply a matter of picking up from where things left off – according to LASA's own records – and directing that my appointment to the post for which I was duly selected and recommended be finalized. Before a court has to very publicly do so.

227. Before he was shot for leading the July 1944 plot against Hitler, Colonel Claus von Stauffenberg reminded us that 'Freedom requires action.' That was in Nazi Germany, and it beggars belief that in the democratic era in South Africa I should have to resort to legal action to claim my most basic constitutional rights – denied me because Vedalankar and the Board agree with the Democratic Alliance opposition party that for researching and criticising certain patented pharmaceutical merchandise I should be listed and anathematized as the No.1 most 'dangerous' person in our country, just like a 'Communist' listed by the apartheid government under the Suppression of Communism Act in the Government Gazette, denied my basic civil rights, and barred from practising my profession at a level suitable to my nearly three decades of life in the law: 'The DA calls on the media, the public, and professional organizations to ... exclude these individuals from positions of authority; deny their dissident views publicity ...'. (<http://j.mp/eJAsdz>)

228. Early last year I resolved to take the necessary 'action', as Stauffenberg enjoined us, to pursue and vindicate my fundamental constitutional liberties as a virtually full-time project, both for myself and, by way of historical legal precedent established, for all my fellow South Africans. And as I watch Vedalankar's lying version of events disintegrate in the light, my resolution only deepens. What's happened to me at LASA's hands must never happen again in our country.

229. In her letter, Vedalankar notes that I ‘seem relentless’ in ‘the route’ I’ve taken to pursue my constitutional rights. This is correct. My determination to achieve justice is absolute. Like Rosa Parks in Alabama in 1955, refusing a bus driver’s order to give up her seat to a white man, I’ve drawn a line. I will not be unconstitutionally discriminated against. My case has enormous importance for our new democracy. If it’s not possible for me to exercise my basic civil liberties to think freely, to act on my moral conscience, to communicate hard information I’ve discovered, and to participate in the public policy controversies of the day, all strictly within the law, without being punished like a political heretic during apartheid, our Constitution is nothing more than pretty paper.

230. There are going to be serious consequences for those at LASA who in contempt of the Constitution have violated my basic civil rights and who’ve persistently and brazenly told shameless, stupid, easily demonstrable lies to cover up what they have done, and there are going to be serious consequences for those who’ve connived in this.

231. Under the powers invested in you by section 83(3)(b)–(e), please assist Vedalankar with some special coaching in how PAIA works and mediate on my behalf to obtain the records to which I’m entitled and which I need from her for the prosecution of my main illegal discrimination case. If after your further intervention – it will be your third approach – Vedalankar remains recalcitrant and contemptuous of her legal obligations under the Act, please detail your failed mediation efforts in a memorandum under your letterhead for me to annex to the papers in my application to the South Gauteng High Court (Johannesburg) for an order to compel Vedalankar’s compliance. As mentioned earlier, I’ve put the developing draft papers I’ve drawn online.

232. I take it you’ve registered Vedalankar’s persistent refusal to comply with PAIA, and will be reporting her delinquency to the National Assembly in your report for the year 2010, as section 84 requires of you.

233. I'll shortly file a third request for records arising from the disclosures in Vedalankar's January letter, and since she tells me in her paragraph 44 that 'no further correspondence on this matter will be responded to', I'll probably need your help to exercise my right to them.

234. As required by the ethical rules of my profession, I've copied this letter and the Document Bundle it covers to Adv Adrian Rall SC, chairperson of the Pietermaritzburg Bar Committee, Society of Advocates of KwaZulu-Natal, to report myself for the investigation and determination of Ms Gandhi's and Judge Mlambo's charges against me – 'blackmail'; 'defamation' (Gandhi), and 'Your conduct is unbecoming to say the least and borders on harassment' (Judge Mlambo), as well as Vedalankar's similar charges in her January letter: 'serious and malicious accusations'; 'malicious intent'; 'outright defamatory'; 'malicious accusations' (again); 'baseless accusations of financial improprieties'; 'disparaging attacks on people's dignity on baseless assumptions'.

235. I thank you again for your efficient professional support in this matter. I appreciate it greatly.

Yours sincerely



ADV ANTHONY BRINK

arbrink@iafrica.com

033 344 2420

083 7794174

All relevant documents in this matter are privately accessible online at:

[www.tig.org.za/LASA](http://www.tig.org.za/LASA)

username: lasa

password: LASA2010

25 Baker Road  
Prestbury  
Pietermaritzburg  
25 February 2011

Dear Board Directors

LASA BOARD MEETING, SATURDAY 26 FEBRUARY 2011

Your meeting on Saturday presents an opportunity to address, resolve, and defuse what threatens to be the most damaging crisis in LASA's history. And so easily.

In November last year, I addressed a 59-page petition to Judge Mlambo and the Board of Directors, appealing for the Board's intervention in CEO Vidhu Vedalankar's illegal abortion of my recruitment as Senior Litigator, Pietermaritzburg, for political reasons, following my selection and recommendation for appointment by a professional selection panel in November 2009.

My petition began by detailing Vedalankar's unlawful refusal as information officer to comply with the Promotion of Access to Information Act ('PAIA'), thus exposing LASA to the shame of being listed as a non-compliant PAIA delinquent in the South African Human Rights Commission's next annual report to Parliament.

I also raised LASA's contravention of the Public Finance Management Act – (a) in incurring fruitless and wasteful expenditure in Vedalankar's illegal abortion of my appointment and the wasted cost of readvertising the post, despite having already found a suitable candidate; and (b) in publishing false financial information in LASA's current annual report (Management Executive Committee members' personal incomes are massively understated in total).

My requests to Board Secretary Schoeman to forward my letter to all Board members and to put it on the agenda of the next Board meeting was not carried out; and indeed

appear to have been countermanded, thus concealing from the Auditor General, represented at all Board Audit Sub-Committee meetings, these serious financial irregularities threatening to blot the unqualified audits that LASA has enjoyed for many years.

In her letter to me of 28 January 2011, in which Vedalankar implicitly abandoned her earlier wholly spurious reasons for not complying with PAIA and affording me access to the records I requested, replacing her clueless reasons with other equally fatuous ones, Vedalankar repeated her allegation that for financial reasons she'd 'frozen' the post for which I was selected and recommended; and she put up some records claimed to support this.

In truth, as all (besides recent) Board members are well aware, the single cost-cutting measure agreed by the Management Executive Committee on 16 July 2010 in its Report to the Board, and approved by the Board on the 31st, was the reduction of some junior criminal defence practitioner posts serving the district and regional courts.

The couple of remaining vacant critical Senior Litigator posts were never identified, never proposed, never agreed, and never approved for abolition as a cost-saving measure. On the contrary, the Report to the Board specifically distinguished vacant critical posts from the rest and prioritized them for recruitment.

This is incontrovertibly shown by (a) the Board meeting minutes; (b) the Management Executive Committee's Report to the Board; (c) NOE Nair's recommendations for cost-saving; and (d) Vedalankar's letter to the Director General on 16 April contemplating the abolition of some junior criminal defence practitioner posts, which was ultimately proposed, agreed and approved. All on the record, obviously.

Vedalankar's claims to me to have 'frozen' my post in July, and to have 'frozen' it for budgetary reasons, are lies. And being lies, they are naturally not supported by any records. Contrariwise, her lies are directly contradicted by the very records that she provided me for her own purposes (and not to comply with my PAIA requests) last month in January.

In my petition to the Board in November, I reported how in covering up her gravely illegal abortion of my appointment in late 2009/early 2010 and in contriving a bogus financial justification for it, Vedalankar also unlawfully aborted the appointments of two African lawyers duly selected and recommended for appointment to the Durban and Mthatha Senior Litigator posts, in April/May and July respectively – contemptuous of their rights, their legitimate expectations of being appointed, as well.

And all this in a grossly unlawful, furtive abuse of power; all completely off the record; with no regard for the peremptory requirements of the Approval Framework governing such operational decisions; contravening the Board's strategic policy to equip all seats of the High Court with Senior Litigators; disrespecting the express wishes of Parliament expressed in May 2007 in this regard; disrespecting the Minister's express wishes communicated to Judge Mlambo sometime in the first half of 2010; without informing the Board in the 16 July Report; and without informing the Portfolio Committee on 12 October.

The rapidly developing crisis LASA currently faces on account of Vedalankar's grossly illegal conduct, and the blind eye Judge Mlambo has turned to it in his brief, dismissive responses to my detailed petitions, is as follows:

Unless the extraordinary serious matters raised in my correspondence to the Board in November and again in January are addressed and resolved at Saturday's meeting of the Board, LASA's public reputation for exemplary probity in corporate governance and

financial management stands to be wrecked in a gargantuan public scandal when my complaints reach open court.

Here I refer to my preliminary application to the South Gauteng High Court (Johannesburg) for which I've drawn draft papers for an order compelling Vedalankar to comply with PAIA by producing the records I've lawfully requested, or where they don't exist by confirming this on oath. Moreover I refer to my claim for appointment to the post for which I was selected and recommended, but which Vedalankar illegally aborted for political reasons, behind the scenes and completely off the record, and which she later tried covering up with a patently untruthful budgetary justification, contradicted by the very records she produced in January. Callously sacrificing two African lawyers on the way.

In his email to me on 24 January, Judge Mlambo told me he'd requested all Board members 'to ignore all communications from' me, notwithstanding the Board's statutory responsibilities to oversee and ensure the proper management of LASA by the Management Executive Committee and its compliance with the laws of the country that I'd highlighted.

Having regard to the extraordinarily serious nature of the matters I've raised – *so easily fixed* – I would suggest that you rather 'ignore' judge Mlambo's grossly improper request to 'ignore' my petitions pointing up the breakdown of proper corporate governance and Vedalankar's evident contempt for the Constitution and the law of our country and the fundamental constitutional rights of its people.

In the situation, I respectfully call on you as a Director to exercise your responsibility to LASA, to Parliament, and to the people of South Africa, and to move for the discussion by the Board of the grave matters I've brought to your attention so that they can be openly ventilated, debated, and resolved. Before this shambles spills into the open to the

considerable embarrassment of the Minister and Deputy Minister of Justice and Constitutional Development.

All relevant documents in this matter are accessible online at a private secure archive: [www.tig.org.za/LASA](http://www.tig.org.za/LASA); username: lasa; password: LASA2010.

Thank you for your attention.

Yours sincerely

A handwritten signature in black ink, appearing to be 'ADV ANTHONY BRINK', enclosed in a light grey rectangular box.

ADV ANTHONY BRINK

CC:

The Minister of Justice and Constitutional Development, the Honourable Mr Jeffrey Radebe MP

The Deputy Minister of Justice and Constitutional Development, the Honourable Mr Andries Nel MP

Special Advisor to the Minister of Justice and Constitutional Development, Dr Jabulani Mzaliya

The Chairperson, Parliamentary Portfolio Committee on Justice and Constitutional Development, the Honourable Mr Lewellyn Landers MP

## **MEMORANDUM**

**TO: ATTORNEYS CHANTAL KISOON AND MOIPONE  
BOKABA, PAIA UNIT, THE SOUTH AFRICAN HUMAN  
RIGHTS COMMISSION**

**IN RE: ADV ANTHONY BRINK AND LEGAL AID SOUTH  
AFRICA**

**A CRITICAL ANALYSIS DEMONSTRATING THE LEGAL  
IRRELEVANCE OR INSUFFICIENCY OF THE VARIOUS  
CHANGING REASONS GIVEN BY LEGAL AID SOUTH  
AFRICA INFORMATION OFFICER AND CEO VIDHU  
VEDALANKAR FOR TWICE REFUSING ACCESS TO 69  
SPECIFIED RECORDS DULY REQUESTED UNDER  
SECTION 11 OF THE PROMOTION OF ACCESS TO  
INFORMATION ACT 2 OF 2000**

On 30 August 2010 a request for access to 51 specified records was submitted to Legal Aid South Africa's information officer, CEO Vidhu Vedalankar, by the records requester Adv Anthony Brink under the Promotion of Access to Information Act 2 of 2000 ('PAIA' or 'the Act').

LASA is a 'public body' in terms of the 'Definitions' in section 1 of the Act, in that it's an 'institution ... performing a public function in terms of any legislation', namely the Legal Aid Act 22 of 1969, and its CEO Vedalankar is its information officer ex officio in terms of the 'Definitions': "information officer" ... means the chief executive officer ... in the case of any other public body' such as LASA.

Section 11(1) of the Act stipulates that ‘A requester must be given access to a record of a public body if – (a) that requester complies with all the procedural requirements in this Act relating to a request for access to that record; and (b) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.’

The request conformed to the procedural requirements of PAIA, in that it comprised a Form A application with an annexure listing the records sought. LASA had not at that stage published a mandatory PAIA manual under section 14 of the Act indicating its request fee and access charges, so the records requester asked what they were in his covering letter and tendered to pay them (no response received).

The information officer responded by ignoring the records request. Only with the intervention of the PAIA Unit of the South African Human Rights Commission (‘SAHRC’) did LASA undertake to deal with the request, as the Act required.

On 18 October 2010 the information officer refused the records request in its entirety.

Numbered paragraph 1 of her letter commenced by alleging the law applicable to the decision of such requests:

The test to be applied to a request for information in terms of the PAIA, as laid down by the court in the case of *National Teachers Union v Superintendent General: Department of Education & Culture, KwaZulu-Natal and Another (D38/08) [2008] ZALC 18*, is as follows:

- a) *In dealing with a request in terms of the Act, the question is not whether the requester is entitled to information but about whether the information is relevant for the purpose of enabling the requester to exercise a right that maybe breached, rendered unenforceable or weakened by the non disclosure.*

(There is no paragraph ‘b’) and the phrase ‘*is as follows*’ is italicized in the original.)

The use of indented block paragraphs is a universal writing convention to distinguish quoted text from the writer's own prose. One understands, therefore, that the indented block quote is an excerpt from the judgment. This impression is further emphasized by the use of distinguishing italics in the indented paragraph. Indeed, the indented, italicized block paragraph is preceded by the explicit claim that the 'test to be applied ... as laid down by the court ... is as follows':

In truth, no such 'test to be applied' was 'laid down by the court' in the National Teachers Union case, and the information officer's statement in this regard was both false and deceptive. To the contrary, Pillay J pertinently noted in paragraph 32 of his judgment: 'Unlike access to information from another person, access to information from the state is manifestly not constrained by the requirement that information should be for the exercise or protection of any rights.' (The judgment is online at <http://j.mp/dxh3sZ>. All shortened internet URLs in this memorandum will henceforth be given simply as 'j.mp [.....]'.)

The information officer thereupon proceeded to apply this false test to the records request. Paragraph 2 commenced: 'In considering your request for information we were guided by this principle, together with Section 32 of the Constitution and the relevant provisions of the PAIA.'

Citing 'Section 32 of the Constitution' and what she considered to be 'the relevant provisions of the PAIA', the information officer then concluded by refusing the records request on wholly unrelated grounds, namely '(i) your request for information [sic: for records] goes beyond your individual circumstances and extends to information on third parties, (ii) the information on third parties does not fall within the section 46 category above'.

Of course, this reason given had nothing to do with her bogus 'test' or 'principle' that the records requester would only be entitled to the records requested if 'the information is relevant for the purpose of enabling the requester to exercise a right that maybe breached, rendered unenforceable or weakened by the non disclosure'.

And nowhere in PAIA does one find entitlement to records of a public body excluded by reason of being ‘beyond [the requestor’s] personal circumstances’.

The so-called ‘principle’ by which ‘we were guided’ bobs up at the very end of the letter refusing the records request, after a lengthy and irrelevant argumentative excursus into the underlying dispute. Final paragraph 8 notes that the request for records is ‘declined’ for the further reason given that ‘it is not relevant to you exercising any right you may have in law’ – only it’s a ‘test’, a ‘principle’ that has no bearing on a request for records from a public body, as PAIA makes clear, and the court in the National Teachers Union case plainly stated.

And as the Supreme Court of Appeal underscored in *Mittalsteel SA Ltd v Hlatshwayo* [2006] SCA 94 (RSA) (j.mp/bKUmCW):

The issue before us is ... whether the appellant at the relevant time and in creating the requested documents was a “public body” as that term is to be understood in PAIA. If it was then the respondent is entitled to the documents requested by it in terms of s 11 of PAIA. The section is headed “Right of access to records of public bodies”. Subsection 11(1) provides that a “requester *must* be given access to a record of a public body if” (emphasis added [in the judgment]) (a) the requester complies with all the procedural requirements of the Act and (b) access to the record is not refused in terms of any ground set out in the provisions of PAIA dealing with the records of public bodies. None of these provisions is applicable to the respondent’s request, and compliance with procedural requirements is not in issue.

As to the first reason stated for not complying with the Act – ‘(i) your request for information [sic: for records] goes beyond your individual circumstances and extends to information on third parties, (ii) the information on third parties does not fall within the section 46 category above’ – a glance at the list of records sought shows that the records requester wasn’t seeking ‘information on third parties’. A relatively small part of the request identified records of communications with certain third parties or sworn confirmation, as section 23 of PAIA requires, that

such records don't exist, showing that contrary to what had been alleged or suggested, in truth such communications never took place.

To protect their privacy – if privacy really was a genuine consideration – records of communications to and from third parties have only to 'be edited by blanking out the name of any third party whose privacy would otherwise be infringed by disclosure', as Brand JA put it in *Unitas Hospital v Van Wyk* [2006] SCA 32 (RSA). (j.mp/cHDY5D)

However, the fact that privacy issues were not a genuine concern, but rather a false covering pretext for not complying with the Act, is revealed by the fact that the information officer provided the records requester with all the names of the third parties concerned in a record she later put up for her own purposes in January 2011.

Since the information officer's provision of the records requested could not conceivably 'involve the unreasonable disclosure of personal information about a third party', as Section 34 (1) of PAIA puts it, the provisos in Section 46 cited and discussed in paragraph 3 of her letter are perfectly irrelevant.

But even if it were relevant, Section 46 would anyway require access to the records for the reasons that '(a) the disclosure of the record would reveal evidence of ... a substantial contravention, or failure to comply with, the law ... and (b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question'.

Though in terms of section 11(3) of the Act, the intention or premise animating a request for the records of a public body is strictly immaterial to the decision of the request, the then available and now conclusive new evidence to hand supports the case that the disclosure of the records would indeed reveal further documentary 'evidence of ... a substantial contravention of, or failure to comply with, the law' – namely the Constitution and the Acts enforcing it, prohibiting discrimination on unlawful grounds in the democratic era, including by reason of 'conscience and belief' and because, motivated by these, the records requester has 'campaign[ed] for ... a cause' and participated in the public policy debates of the day, as expressly 'encouraged' by Section 195(1)(e)

in Chapter 10 of the Constitution. And by reason of race, unless justified by the provisions of the Employment Equity Act 55 of 1998 and the reported cases elucidating its practical application. Also the Acts and regulations governing the operation and financial management of public bodies.

As for ‘the public interest’ – proviso (b) of Section 46 – the public have a clear interest in the disclosure of the records in the case, because they have a fundamental interest in having the certain assurance that they will not be subject to illegal discrimination of any form when applying for employment with a public entity responsible through Parliament to the people of South Africa. It’s clearly in the public interest that any breach of constitutional rights by publicly accountable institutions, especially those within the sphere of justice and constitutional development, be exposed. The hard won political gains of justice and human rights for all citizens of our country, including liberty of opinion and expression, are jeopardized if a major public entity whose very purpose is to secure justice for those citizens can subvert and undermine those principles of justice and human rights without being held accountable.

In sum, the information officer’s reasons for refusing the request are idle in law. Having duly complied ‘with all the procedural requirements of the Act’ (as the *Mittalsteel* judgment put it), the records requester was and remains accordingly entitled to the records requested.

On 15 December 2010 the records requester filed a second records request with LASA, and prompted by another letter from the SAHRC the information officer responded, with allowance for Christmas break, on 28 January 2011.

Although the first paragraph of her letter referred to ‘your letter of 15 December 2010 in which you request access to information in Legal Aid South Africa’s possession in terms of the Promotion of Access to Information Act’, the information officer entirely failed to deal with this second records request. Instead she revisited the records requester’s first records request in August which she’d already refused in October.

Her reason for neglecting to deal specifically with the second records request in December appears from paragraph 10 of her January letter, in

which she claims that the December records request ‘repeated’ the August 2010 one. This is incorrect, as a cursory comparison of the two Form A annexures in the August and December requests for records reveals.

There is some partial overlap between the two requests in August and December to the extent that NOE Nair’s allegations in his 3 August 2010 letter and the information officer’s allegations in her 18 October 2010 letter qua CEO have a similar thrust – except that where Nair was vague the information officer qua CEO is specific; and the records request in December was plainly directed at testing the veracity of her specific allegations.

Together with her January letter, the information officer put up twelve records, four of which the records requester already had: a third copy of a letter sent him in August, a copy of which the information officer had already sent him in October; part of the Approval Framework she had also already sent him in October; an email exchange with the records requester and the Human Resources Executive in April; and two documents the records requester had himself generated and sent to the information officer: a scanned copy of the newspaper advertisement for the Pietermaritzburg Senior Litigator post and a transcription of an oral presentation the information officer made to the Portfolio Committee on Justice and Constitutional Development in October 2010.

The information officer’s purpose in providing these records was not to comply with the records requests; it was to support her defensive allegations concerning the core dispute made in her October letter and repeated in her January letter. Concerning each of the twelve records the information officer noted in her ‘Aim of the Document’ column: ‘To demonstrate ...’ her contentions.

Nonetheless, four of the records provided by the information officer happened more or less to meet some of the requests for records in the August and December lists. Apart from these few records requests coincidentally met to the records requester’s satisfaction in this manner, the rest of the unanswered December request is deemed refused by section 27 of the Act.

The net result of the information officer's second go at the August request was the same. Again she refused it, this time on a variety of different grounds – tacitly abandoning her first set of spurious reasons for refusing it. And as just mentioned, she failed to specifically deal with the December records request.

This memorandum will demonstrate that like her October reasons, the information officer's new reasons given in January are equally vacant and indefensible under PAIA, and that the records that she has unlawfully refused are compellable by way of a High Court mandamus.

In the light of the information officer's allegations qua CEO in her October and January letters, and the evidence of the hard documentary information annexed to her January letter contradicting these allegations, the facts concerning the underlying cause of action in this matter have at last become clear, to the extent that it is now plain on the evidence of the available records that the records requester's appointment was unlawfully aborted off the record and behind the scenes and that a false justification was advanced to cover the true reason for it. In the interests of expedition, therefore, a number of records refused by the information officer, though clearly compellable under PAIA, will not be pursued.

In his letter covering his August request the records requester pointed up the information officer's obligations under section 23 of the Act to notify the records requester on affidavit where specified records requested do not exist. Notwithstanding this advice on the operation of the Act, the information officer failed to comply. A draft affidavit concerning non-existent records is accordingly annexed hereto for the information officer to sign under oath or affirmation, as section 23 requires.

In terms of section 74(2)(b) of the Act, no internal appeal lies against the refusal of a request for access to the records of a public body such as LASA. Under section 83(3)(c) of the Act, however, 'The Human Rights Commission may ... if reasonably possible, on request, assist any person wishing to exercise a right contemplated in this Act'.

The records requester seeks the assistance of the SAHRC's PAIA Unit in (a) impressing on the information officer the extraordinary

seriousness of her violation of the records requester's constitutionally guaranteed right to public documentary information, and (b) urging the information officer's compliance with the Act, to avert (i) mandatory interdict proceedings in the South Gauteng High Court (Johannesburg) for an order compelling the information officer's compliance with the Act (draft papers are ready) and (b) being reported under section 84 of the Act as a PAIA delinquent in the SAHRC's next annual report to Parliament. Both events set to bring LASA into grave disrepute.

The judgment in *The President of RSA v M & G Media* (570/10) [2010] ZASCA 177 delivered recently by the Supreme Court of Appeal points up the enormous gravity and implications of the information officer's apparent contempt for what are rightly described as the 'founding values ... of accountability, responsiveness and openness' in our new constitutional democracy (j.mp/fgVErS):

[1] Open and transparent government and a free flow of information concerning the affairs of the state is the lifeblood of democracy. That is why the Bill of Rights guarantees to everyone the right of access to 'any information that is held by the state',<sup>1</sup> of which Ngcobo J said the following in *Brümmer v Minister for Social Development*:<sup>2</sup> 'The importance of this right ... in a country which is founded on values of accountability, responsiveness and openness, cannot be gainsaid. To give effect to these founding values, the public must have access to information held by the State. Indeed one of the basic values and principles governing public administration is transparency. And the Constitution demands that transparency 'must be fostered by providing the public with timely, accessible and accurate information.'

Paragraphs 9–11 of the judgment emphasize this:

[9] The Constitution – and consequently the legislation that it has spawned – signals a decided rejection of past odious laws, policies and practices. In *Shabalala v Attorney-General of Transvaal*<sup>7</sup> Mahomed DP expressed that trenchantly in relation to the Interim Constitution (it applies as much to the present Constitution) when he called it a 'radical and decisive break from that part of the past which is unacceptable'. He went on to say: 'There is a stark and

dramatic contrast between the past in which South Africans were trapped and the future on which the Constitution is premised. The past was pervaded by inequality, authoritarianism and repression. The aspiration of the future is based on what is “justifiable in an open and democratic society based on freedom and equality”. It is premised on a legal culture of accountability and transparency. The relevant provisions of the Constitution must therefore be interpreted so as to give effect to the purposes sought to be advanced by their enactment’.

[10] Etienne Mureinik<sup>8</sup> captured the essence of the Bill of Rights<sup>9</sup> when he described it as a ‘bridge from a culture of authority ... to a culture of justification’ – what he called ‘a culture in which every exercise of power is expected to be justified.’ The Bill of Rights, he continued<sup>10</sup> ‘is a compendium of values empowering citizens affected by laws or decisions to demand justification. If it is ineffective in requiring governors to account to people governed by their decisions, the remainder of the Constitution is unlikely to be very successful. The point of the Bill of Rights is consequently to spearhead the effort to bring about a culture of justification. That idea offers both a standard against which to evaluate [the Bill of Rights] and a resource with which to resolve the interpretive questions that it raises’.

[11] The ‘culture of justification’ referred to by Mureinik permeates the Act. No more than a request for information that is held by a public body obliges the information officer to produce it unless he or she can justify withholding it. And if he or she refuses a request then ‘adequate reasons for the refusal’ must be stated (with a reference to the provisions of the Act that are relied upon to refuse the request).<sup>11</sup> And in court proceedings under s 78(2) proof that a record has been requested and declined is enough to oblige the public body to justify its refusal.<sup>12</sup>

Footnotes:

1. Section 32(1)(a): ‘Everyone has the right of access to any information that is held by the state...’.

Section 31(1)(b) confers a right of access to information held by other persons in certain circumstances but that is not relevant for present purposes.

2. 2009 (6) SA 323 (CC) para 62.
7. 1996 (1) SA 725 (CC) para 26.
8. Etienne Mureinik 'A Bridge to Where? Introducing the Interim Bill of Rights' 1994 (10) SALJ 31.
9. Once more with reference to the Interim Constitution.
10. Page 32.
11. Section 25(3)(a).
12. Section 81(3)(a): 'The burden of establishing that...the refusal of a request for access ... complies with the provisions of this Act rests on the party claiming that it so applies'.

A critical analysis and refutation of the information officer's new reasons given in January for refusing the August records request follows below, with an identification of the unanswered December requests for records still required. The analysis is divided into twenty parts.

## **FIRST RECORDS REQUEST, AUGUST 2010**

### **PART 1**

#### **Record:**

A: Relevant excerpts from the minutes of meetings of the Management Board [Executive Committee] of Legal Aid South Africa, and its resolutions, concerning:

2. – the procedural mechanism adopted for the recruitment of suitably qualified and experienced Senior Litigators, and specifically the selection, confirmation, and appointment process.

#### **Response:**

11. As to your requests 1 and 2: I wish to refer you to the Legal Aid SA's Policy Document read with the Approval Framework.

#### **Critical analysis and comment:**

Paragraph 11 is no adequate response to request A2. Neither the 'Approval Framework' nor the 'Recruitment' ('Policy Document') protocol (the part of it provided) say anything about any confirmation process following the regional professional selection board's selection

and recommendation of a candidate for appointment. The part (it seems) of the ‘Recruitment’ protocol supplied makes no provision for any second interview. If the information officer can’t produce any resolution supporting her allegations qua CEO in paragraphs 6.2–4 of her October letter, section 23 of the Act requires her to confirm on affidavit that no such record exists.

## **PART 2**

### **Records:**

A: Relevant excerpts from the minutes of meetings of the Management Board [Executive Committee] of Legal Aid South Africa, and its resolutions, concerning:

9. – the two issues: ‘At this stage it is not even clear which applicants will be considered in the second round or if indeed we will proceed with a second round’ (– per Clark in her email to Brink on 30 April 2010, quoted in paragraph 28 of Brink’s letter to Vedalankar).

### **Response:**

16. As to requests 8 and 9: I refuse to grant you access to this information on the basis of section 44(1) and (2) as the information sought herein relate to the deliberative process of the Legal Aid SA with third parties. Such information was required by it before; during and/or after engaging, in interviews and candidates reference check. (Refer in this regard to the Legal Aid SA’s Policy on Recruitment Checks.)

### **Critical analysis and comment:**

Paragraph 16 is no proper answer to request A9. It appears from the information officer’s response here that enquiries were made and information was gathered purportedly in terms of the ‘Recruitment Checks’ provisions of the ‘RECRUITMENT’ protocol (V2).

In her letter of 18 October 2010, the information officer qua CEO alleged that the Pietermaritzburg Senior Litigator post and two others had been frozen for budgetary reasons, and stated, ‘Should we decide to unfreeze these positions in the future, the positions will be duly

advertised and you will be at liberty to submit your application for any of the positions.’ Which means – in her opinion – the records requester’s successful application for the post is now dead and buried, and not merely hibernating until better days.

This absolutely excludes the possibility envisaged by section 44(1)(b) of the Act that the ‘the disclosure of the record could possibly be expected to frustrate the deliberative process’ – namely the records ‘containing personal information about’ the records requester to which he’s entitled to access in terms of the express provisions of section 11(2) of the Act: ‘A request contemplated in subsection (1) includes a request for access to a record containing personal information about the requester.’

In short, the records requester is entitled to copies of all and any records containing personal information and opinions about him that LASA has gathered.

If no minutes exist of any discussion of what applicants would be interviewed for a second time, and whether or not such second interviews would be held, the information officer is required by section 23 of the Act to state on affidavit that there is no record of any discussion ever having taken place of these two issues that Clark alleged to have arisen.

### **PART 3**

#### **Record:**

A: Relevant excerpts from the minutes of meetings of the Management Board [Executive Committee] of Legal Aid South Africa, and its resolutions, concerning:

10 – the particular ‘pace we have decided ... to complete our process’ to recruit and appoint a Senior Litigator for Pietermaritzburg – which remaining ‘process’ entailed arranging an interview of the selected candidate by Judge Mlambo (– per Clark in her email to Brink on 30 April 2010, nearly six months after the professional selection board had interviewed the shortlisted candidates and made its selection, quoted in paragraph 33 of Brink’s letter to Vedalankar; and per KwaZulu-Natal Regional HR Officer Baboo Brijlal’s (‘Brijlal’)

telephonic advice to Brink, quoted in paragraph 21 of Brink's letter to Vedalankar).

**Response:**

17. As to request 10: No time limit was set to finalise the recruitment process.

**Critical analysis and comment:**

Paragraph 17: Ad request A10: If contrary to what Clark claimed to the records requester – six months after his successful interview and no feedback from LASA whatsoever – no decision on the record was taken as to the 'pace we have decided ... to complete our process' to appoint him Senior Litigator at Pietermaritzburg, after his selection and recommendation, section 23 of the Act requires the information officer to confirm this on affidavit.

**PART 4**

**Records:**

A: Relevant excerpts from the minutes of meetings of the Management Board [Executive Committee] of Legal Aid South Africa, and its resolutions, concerning:

11. – the decision to 'put on hold ... the recruitment process to finalize the appointments for all vacant Senior Litigator posts' (– per Nair in his letter to Brink).
12. – the decision by the Management Board thereafter that 'we will not be proceeding with the filling of any of these posts due to various reasons' – and the excerpt of the minutes relating to this resolution will enumerate and detail all of these 'various reasons' for aborting the recruitment process in respect of the Pietermaritzburg Senior Litigator position, and of the other Senior Litigator posts referred to, after the Pietermaritzburg Senior Litigator post had promptly been nationally re-advertised following Judge Mlambo's disapproval of the first applicant selected; after shortlisted candidates had been interviewed; and after the professional selection board had assessed, selected and recommended a suitably qualified and experienced

senior legal professional for the Pietermaritzburg Senior litigator post (– per Nair in his letter to Brink).

**Response:**

19. For your requests 11; 12: 13 (PART A); 13 (PART B); 14 (PART A); 14 (PART B); 15 (PART B): please refer to the correspondence on costs cutting measures, read with the Legal Aid SA’s Approval Framework.

**Critical analysis and comment:**

It is no sufficient answer to requests A11 and A12 to ‘refer to the correspondence on costs-cutting measures, read with the Legal Aid SA’s Approval Framework’. These records do not reflect either of the alleged two decisions specified in requests A11 and A12. The records to which the information officer refers don’t even mention Senior Litigators, let alone any decision-making to first ‘put on hold’ their recruitment and then ‘freeze’ the vacant posts for which they were selected and recommended. If no records of these two alleged decisions exist, section 23 of the Act requires the information officer to confirm this on affidavit.

**PART 5**

**Record:**

A: Relevant excerpts from the minutes of meetings of the Management Board [Executive Committee] of Legal Aid South Africa, and its resolutions, concerning:

16 – any other matters discussed by the Management Board concerning Brink and/or the Pietermaritzburg Senior Litigator post, after the re-advertisement of the post in August 2009.

**Response**

21. As for your request 16: I am not aware of any of the Executives discussing you and/or your candidacy for the above-mentioned post save the edited and blacked out recommendation for the next

round of interviews. This is attached hereto as part of the bundle in the table above.

22. As to the regional panel members' individual assessment notes; scores; deliberations; submissions and assessment reports on you, I, having considered your request, refuse to grant you access thereto as these documents and information relating thereto were compiled from the Legal Aid SA's panel's deliberative process of decision-making in the assessment and interview of candidates, including you, for vacant posts in the Legal Aid SA. I am entitled to refuse to grant you this information in terms of section 44(1) and (2) of PAIA.

### **Critical analysis and comment:**

Ad paragraph 21: If no records exist of any discussion of the records requester or of the Pietermaritzburg Senior Litigator post by members of the management executive after August 2009, section 23 of the Act requires the information officer to confirm this on affidavit.

Ad paragraph 22: Not having been asked for access to 'the regional panel members' individual assessment notes; scores; deliberations; submissions; and assessment reports', the information officer's announcement of her decision to retain these records is irrelevant. (Had they been sought, the information officer would have been required to produce them under section 11(3) of the Act.)

## **PART 6**

### **B: Other records**

#### **Records:**

1. The minutes of the KwaZulu-Natal regional professional selection board's interview with ... Brink on 12 November 2009.

28. The instruction issued to Mdaka to send Brink a 'regret letter'.

32. The Management Board's, alternatively Nair's, alternatively, Mdaka's, alternatively any other officer's notifications of the Principals of the Pietermaritzburg and Durban Justice Centres (and of any other Justice

Centres affected) that the Management Board, alternatively Nair, would ‘not be proceeding with the filling any of these posts’ for Senior Litigators which had been nationally advertised for a second time, and for which suitably qualified and experienced senior legal professionals had been shortlisted, interviewed, assessed and selected by the KwaZulu-Natal (and any other) regional professional selection board(s) (–per Nair’s letter to Brink).

**Response:**

23. I have decided, notwithstanding the above position, and after I have exercised my discretion, to grant you access to an edited/blacked out version of the final recommendation of the panel to show you what its decision was.

24. As for your requests 1; 2; 28; 29; 30; 31; and 32: Except for annexures “V7” and “V9” (attached), I have exercised my discretion against granting you access thereto. I refuse to grant you access thereto in terms of section 44(1) and (2) of PAIA. My reason therefore is that this information was generated and compiled as a result of the Legal Aid SA’s panel’s deliberative process of decision-making in the assessment and interview of candidates, including you, for the vacant posts in the Legal Aid SA.

**Critical analysis and comment:**

Ad paragraph 23: The ‘final recommendation of the panel’ (V7) in its edited form sufficiently meets requests B1 and B2 for the records requester’s purposes. (Having supplied the record, the question becomes academic, but the Act affords the information officer no ‘discretion’ to withhold such personal information about the records requester following the conclusion of the selection process.)

Ad paragraph 24: Request B28 for “The instruction issued to Mdaka to send Brink a “regret letter”” is not satisfied by providing the records requester with a third copy of the letter itself (V9).

The request for a copy of the simple instruction is manifestly not hit by ‘section 44(1) and (2) of PAIA’, having nothing to do with ‘Legal Aid SA’s panel’s deliberative process of decision-making in the assessment

and interview of candidates, including you, for the vacant posts in the Legal Aid SA' as the information officer wrongly alleges.

For the same reason, request B32 for copies of the written 'notifications of the Principals of the Pietermaritzburg and Durban Justice Centres (and of any other Justice Centres affected) that the Management Board, alternatively Nair, would "not be proceeding with the filling any of these posts" for Senior Litigators' is plainly not hit by 'section 44(1) and (2) of PAIA' either.

## **PART 7**

### **Records:**

3. All written communications, including email, between Brijlal and Nair, and/or other members of the Management Board, concerning the Durban and Pietermaritzburg Senior Litigator posts, subsequent to the re-advertisement of these posts in August 2009.
4. All written communications, including email, between members of the KwaZulu-Natal regional professional selection board and Nair, and/or other members of the Management Board, concerning the Durban and Pietermaritzburg Senior Litigator posts, subsequent to the re-advertisement of the posts in August 2009.

### **Responses:**

18. As to requests 3 and 4 (both in Part A and B of the request document): there are no such communications that I am aware of. I am willing to provide you with an email from Ms Clark dated 30 April 2010 which you already have in your possession and which you have referred to in your letter to Mlambo JP on or about 30 November 2010. This was blind copied to the ROE of KZN Mr Mdaka and Brijal.

25. As to requests 3: and 4: Please refer to above. [paragraph 24 quoted in Part 6 above]

## **Critical analysis and comment:**

In her paragraph 18, the information officer incorrectly suggests that requests A3 and A4 are the same as B3 and B4. In fact they are quite different – the former are clearly not for records of ‘communications’. If, other than Clark’s email to the records requester blind-copied to Mdaka and Brijlal, no records exist of ‘written communications’ between the parties described over the period defined in these requests, the information officer is required to confirm this on affidavit under section 23 of the Act.

## **PART 8**

### **Record:**

13. All records, including but not limited to email, reports and notes, pertaining to the decision to ‘put on hold ... the recruitment process to finalize the appointments for all vacant Senior Litigator posts’ (– per Nair’s letter to Brink).
14. All records, including but not limited to email, reports and notes, pertaining to the decision to finally abort the ‘recruitment process’ and ‘not be proceeding with the filling of any of these posts’ (– per Nair’s letter to Brink).
15. All records, including but not limited to email, reports and notes, canvassing the ‘various reasons’ that the alleged decision to abort the ‘recruitment process’ was allegedly ‘due to’ (– per Nair’s letter to Brink).

### **Response:**

19. For your requests 11; 12: 13 (PART A); 13 (PART B); 14 (PART A); 14 (PART B); 15 (PART B): please refer to the correspondence on costs cutting measures, read with the Legal Aid SA’s Approval Framework.

29. As to requests 13, 14 and 15: The decision to create or abolish a post is derived from the Approval Framework which is annexed herewith. All communication relating thereto is also attached. If for any reason, the e-mail or any form of communication is not

attached, it would have been verbal, the authority of which derives from the aforementioned Approval Framework.

### Critical analysis and comment:

Ad paragraph 29: Section 23 of the Act requires the information officer to confirm on affidavit that no records exist to support Nair’s allegations quoted in requests B13, B14, and B15.

## PART 9

### Record:

16. All and any email or other written correspondence with third parties concerning Brink and/or his selection by the KwaZulu-Natal regional professional selection board for appointment to the Pietermaritzburg Senior Litigator post, including but not limited to email or other correspondence with members of the following email group to which Vedalankar and Nair belong ( – see <http://j.mp/9Iipxr>):

```
>
> *From:* Jik Yong Via [mailto:jik@shaw.ca]
> *Sent:* 04 December 2009 10:02 AM
> *To:* Joseph Aum; Mark Haywood; David Berry; Greg Gonzalez
> *Cc:* Victor Ramaprasad; N Srinivas; S Jha; Denise Hunt; Jonathan
> Berger; Billie Martin; Thomas Whelan; Ben D Goodwin; Chris Collins; Sam
> E. Farmer; Ato Michael Clayton; Dr W Dinet; S Tequila Muvshozi; J
> Bodine; S Srinivas; S Vasu; BHATHIA; Prayog Mathur; Khazi Butane; Hani
> Nyezi; S Sobhan; Joanne Carter; Anita Sharma; Anand Govind; Felicia
> Hesterford; Fatima Alkassbi; Nathan Giffen; Paula Ashraf;
> jinalankar@small.com; Anso Thom; Beatrix Hill; Genevieve; Gabe
> Nazindwa; Tshapo Molepo; Chabro Ramoyene; Jacopo Nolasco-Dini; Ingrid
> Amal; Brian O'Donnell; Robert Carr; Diederik Louman; Rebecca Schin;
> Sofia Bruscia; S Salinas; Cosimino; Cesar de Sogo; Brian Vaid; Na Vishu
> Vedalankar; David Love; M Helder; T. V. Myer; jinalankar@small.com; S
> Bekker; Silongile Dlamini; Edwin Cameron; F Sanders; jinalankar@small.com;
> jinalankar@small.com; M Nera; M Johannes; Lenox McKillop; Dr S Ostryck;
> Mervyn; jinalankar@small.com; jinalankar@small.com; Patrick Arnold; Odette Galadima;
> Brian Ross; Sean Neary; M DeLapre; V Egan; Sami Maki; Gody Mollapen;
> Gody Mollapen; Julian Bober; Kpool DeLapre; M Willems; F Sopopane; Hal
> Jurgens; jinalankar@small.com; Tevin Silkey; Johanna Meier;
> jinalankar@small.com; Nathan Giffen; jinalankar@small.com; Myriam Tabola;
> Eshor; F Bennett; S Srinivas; M Nair; M Rajaram; Anika Mervolter; Dr M
> You; Ched Gulo; Susan Findeleky; Daniel Tarrant; Nwaka Nwachodu; Maria
> Mervolter; Merv Mervolter; F Nair; jinalankar@small.com;
> InternationalTradeHub@rediffmail.com
> *Subject:* RE: TPC On The Latest Article
>
```

26. Excluding the ‘regret letter’ to Brink from KwaZulu-Natal Regional Operations Executive Vela Mdaka (‘Mdaka’) on 23 August 2010 and emailed to Brink by Brijlal by way of an email attachment on the same day, the ‘regret letters’ sent to all of the other shortlisted candidates interviewed by the KwaZulu-Natal regional professional selection board on 12 November 2009 – following the decision made not to ‘be

proceeding with the filling of any of these posts’, i.e. ‘all vacant Senior Litigator posts’ (– per Nair’s letter to Brink).

**Response:**

30. As to your requests 16; 19; 20; 21; 22; 23; 24; 26; and 27: I have exercised my discretion against granting you access to this information in terms of sections 43(1) as it relates to confidential correspondence with third parties.

31. I further refuse to grant you access on the same information and documents on the basis of section 44(1) and (2) as the information sought herein relate to the deliberative process of the Legal Aid SA with third parties. Such information was required by it before; during and/or after engaging, in interviews and candidates reference check. (Refer in this regard to the Legal Aid SA’s Policy on Recruitment Checks). I also refuse to provide access to this record as it relates to research or information gathering by third parties on behalf of Legal Aid SA as contemplated in section 43(1) and (2). It seems apparent to me that you already have document(s) that you seek in this regard.

**Critical analysis and comment:**

Section 43(1) of the Act doesn’t provide that ‘confidential correspondence with third parties’ (the information officer’s homebrewed faux legal phrase) is excluded from access by a records requester. The section provides (in the heading) for the ‘Mandatory protection of research information of third party and protection of research information of public body’.

The information officer hasn’t made a case that any ‘research information’ is contained in the correspondence records identified in request B16 – nor, even if it did contain ‘research information’, that ‘serious disadvantage’ would ensue from disclosing it.

Section 43(1) obviously has no application to request B16, and the information officer is not justified in denying the records requester access to the records of LASA’s ‘correspondence with third parties’ about him and the post he was duly selected and recommended for.

Section 11(2) of the Act explicitly entitles the records requester to access records of ‘correspondence with third parties concerning Brink and/or his selection by the KwaZulu-Natal regional professional selection board for appointment to the Pietermaritzburg Senior Litigator post’.

Request B26 manifestly has nothing whatsoever to do with ‘research information of third party [or] public body’ nor with ‘Operations of public bodies’. It is a request for copies of the ‘regret letters’ allegedly ‘sent to all of the other shortlisted candidates interviewed by the KwaZulu-Natal regional professional selection board on 12 November 2009’. Copies of these letters are required, and any confidential information (addresses, telephone numbers) may be blacked out. If no such letters were sent, and no copies of them exist in LASA’s records accordingly, the information officer is required by section 23 of the Act to confirm this on affidavit.

Section 43(1) and (2) of the Act (‘Mandatory protection of research information of third party, and protection of research information of public body’) and/or section 44(1) and (2) (‘Operations of public bodies’) do not preclude access to these records.

In stating her impression in her paragraph 31 that the records requester ‘already ha[s]’ the records mentioned in her paragraph 30, the information officer is mistaken.

## **PART 10**

### **Record:**

17. Vedalankar’s ‘referr[al]’ to Nair of Brink’s letter to her, ‘to provide a response’ to it on her behalf ( – per Nair’s letter to Brink).
18. Any further correspondence between Vedalankar and Nair by email or otherwise concerning Brink, and/or his letter to Vedalankar.

### **Response:**

32. As for your requests 17 and 18: There is no such discussion other than the documents provided to you.

### **Critical analysis and comment:**

None of the ‘documents provided’ by the information officer correspond with these requests. Section 23 of the Act requires the information officer to confirm on affidavit that the records identified in requests B17 and B18 don’t exist.

### **Part 11**

#### **Record:**

25. Nair’s ‘request’ issued to the ‘HR department’ in accordance with his stated intention to ‘request our HR department to send out regret letters to all persons who were interviewed during the first round of interviews’ on 12 November 2009 ( – per Nair’s letter to Brink).

#### **Response:**

33. As for your request 25: As this information would relate to the internal deliberations; opinions and views intended for Legal Aid SA to take certain decisions as contemplated in section 44(1) and (2), I have exercised my discretion against granting you access thereto. I therefore refuse to grant you access to this information or document.

### **Critical analysis and comment:**

A simple instruction of the sort identified in request B25 is manifestly not hit by section 44(1) and (2), because it does not reflect ‘deliberations; opinions and views intended for Legal Aid SA to take certain decisions’. The information officer has no ‘discretion’ under the Act to refuse this record and the records requester is entitled to it. If this record doesn’t exist, section 23 of the Act requires the information officer to confirm this on affidavit.

### **PART 12**

#### **Record:**

33. All and any records, including internal email, founding Nair’s statement: ‘I can now confirm that we will not be proceeding with the

filling of any of these posts’, i.e. ‘all vacant Senior Litigator posts’ (– per Nair’s letter to Brink).

**Response:**

As for your requests 33; and 34: Your attention is referred to the costs-cutting measures correspondence in which Nair was instrumental in identifying posts that should be cut; frozen etc. This was part of the Executive’s mandate around that time. See especially the email and memo from COO to all Executives: ROES; JCEs and ‘All Staff’ herein above wherein Cabinet also propagated the same mechanisms as Legal Aid SA.

**Critical analysis and comment:**

None of the ‘costs-cutting measures correspondence in which Nair was instrumental in identifying posts that should be cut; frozen etc’ makes any mention of any decision to ‘not be proceeding with the filling of any of these posts’, i.e. ‘all vacant Senior Litigator posts’. The ‘correspondence ... referred to’ is accordingly irrelevant. If no records exist concerning the alleged decision not to ‘be proceeding with the filling of any of these posts’, i.e. ‘all vacant Senior Litigator posts’, section 23 of the Act requires the information officer to confirm it on affidavit.

**PART 13**

**Record:**

35. All and any other electronic records, including internal email, in which the word ‘Brink’ features, where it clearly or possibly refers to the records requester Adv Anthony Brink (– conduct a search on the word ‘Brink’ of the computer server at LASA’s national office on which all computer files, documents, and email are archived).

**Response:**

35. As for request 35: To the best of knowledge there are no other electronic records relating to you.

### **Critical analysis and comment:**

Section 23 of the Act requires the information officer to confirm her allegation on affidavit, noting the steps she's taken to enquire and make sure.

### **SECOND PAIA RECORDS REQUEST, 15 DECEMBER 2010:**

Note: All text quoted below originates from paragraphs 6.6 and 6.7 of the CEO and information officer's letter to the records requester on 18 October 2010.

### **PART 14**

#### **Records:**

1. Records/relevant excerpt(s) from records reflecting the quantum of LASA's 'anticipated funding for the 2010/11 financial year'.
2. Records/relevant excerpt(s) from records reflecting the quantum of the lower 'funding' that 'materialise[d]'.
3. Records/relevant excerpt(s) from records reflecting the quantum of the 'funding ... shortfall ... cutting our baseline funding by a significant amount'.

#### **Response:**

None.

#### **Comment:**

Even if unintentionally, the records V3 and V4 provided by the information officer satisfactorily meet requests 2.1–3.

### **PART 15**

#### **Record:**

4. Minutes reflecting NOE Nair's 'motivat[ion of] a change in the organizational structure', namely 'a reduction to our staff

establishment in the 2010/11 financial year in order to meet this shortfall', alternatively the mere 'freezing of positions' without an actual 'reduction to our staff establishment to meet this shortfall'.

**Response:**

None.

**Comment:**

It's plain from paragraph 29 of the information officer's letter that no record exists to support her clear implication qua CEO in her October letter that Nair 'motivate[d] a change in the organizational structure' apropos of Senior Litigator posts, namely 'a reduction to our staff establishment in the 2010/11 financial year in order to meet this shortfall' by abolishing vacant Senior Litigator posts, alternatively by the 'freezing of positions'.

The only record that exists of a 'change in the organizational structure' that Nair 'motivate[d]' in 2010 was his proposal on 15 July that 56 vacant junior criminal defence practitioner posts be abolished, with more if necessary, and possibly some paralegal and administrative posts too, in 'reduction to our staff establishment in the 2010/11 financial year in order to meet this shortfall'.

The information officer's statements quoted in record request 2.4 were made in the context of her allegations that Senior Litigator posts had been frozen to meet LASA's budgetary 'shortfall' (paragraphs 6.6–7 of her October letter).

Section 23 requires the information officer to confirm on affidavit that no record exists of Nair having 'motivate[d]' for 'a reduction to our staff establishment in the 2010/11 financial year in order to meet this shortfall' by abolishing vacant Senior Litigator posts, alternatively by the 'freezing of [such] positions'.

**PART 16**

**Record:**

5. Minutes reflecting NOE Nair's consultation with HRE Clark and noting her views, in terms of section 8.1.2 (b) of the Approval Framework, concerning his intended 'decision that all vacant senior litigator posts that were vacant would be immediately frozen'.

**Response:**

None.

**Comment:**

It further appears from paragraph 29 of the information officer's January letter that no record as identified in request 2.5 exists, and if this is correct section 23 requires her to confirm this on affidavit.

**PART 17**

**Records:**

6. Minutes of 'management' meetings held 'Since early this year' recording its discussion that 'a reduction to our staff establishment' was 'required ... in order to meet this shortfall' in 'funding' that was lower than 'anticipated' by a 'significant' amount.
7. Minutes of 'management' meetings held 'Since early this year' recording the work 'management ... had' to perform 'to identify positions which could be frozen ... in order to meet this shortfall' in 'funding' that was lower than 'anticipated' by a 'significant' amount.
8. Minutes and/or notes kept/made 'Since early this year' in which the 'positions which could be frozen' were 'identif[ied]' by 'management'.

**Response:**

None.

**Comment:**

193. Though not exactly so, requests 2.6–8 are substantially met by records V4 and V5, and these records suffice.

## **PART 18**

### **Record:**

9. The resolution passed by ‘management’ in terms of section 8.1.2 (b) of the Approval Framework, following consultation with HRE Clark and with COO Makokoane’s agreement, in relation to the claim: ‘In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would immediately be frozen.’

### **Response:**

None.

### **Comment:**

It also appears from paragraph 29 that no record exists of the decision mentioned in request 2.10, and if so section 23 of the Act requires the information officer to confirm this on affidavit – namely that no record whatsoever exists of any decision by member of the management executive taken ‘In July 2010 ... that all senior litigator posts that were vacant would be immediately frozen.’

## **PART 19**

### **Record:**

10. Written notification of the Board Executive Committee of the ‘decision ... the NOE and CEO took ... In July 2010 ... that all senior litigator posts that were vacant would immediately be frozen’.

### **Response:**

None.

### **Comment:**

It appears from paragraph 34 of the information officer’s letter that no record exists of any notification of the Board of Directors of the alleged decision that ‘the NOE and CEO took’ as alleged by the information officer in her October letter ‘that all senior litigator posts that were

vacant would be immediately frozen'; and if so, section 23 of the Act requires the information officer to confirm this on affidavit.

## **PART 20**

### **Record:**

11. Email to Durban Justice Centre attorney Bongani Mngadi (he says 'in April/May') notifying him that the Durban Senior Litigator post for which he'd applied wasn't going to be filled.

### **Response:**

None.

### **Comment:**

According to Mngadi's information to the records requester on 12 November 2010, this record must exist and the records requester requires it.



ADV ANTHONY BRINK

3 March 2011

arbrink@iafrica.com

033 344 2420

083 779 4174

25 Baker Road  
Prestbury  
Pietermaritzburg 3201  
9 March 2011

Ms Vidhu Vedalankar  
Chief Executive Officer  
Legal Aid South Africa  
29 De Beer Street  
Braamfontein  
Johannesburg

Dear Ms Vedalankar

PROMOTION OF ACCESS TO INFORMATION ACT  
THIRD REQUEST FOR RECORDS  
SENIOR LITIGATOR POSITION, PIETERMARITZBURG

I enclose a third request for further records under the Promotion of Access to Information Act ('PAIA' or 'the Act'). As before, it comprises a Form A request with an annexure listing the records I want.

In your letter of 28 January 2011 you stated you'd returned my cheque for the mandatory R35 request fee. This fee is not refundable under the Act, so I didn't collect it, and it will have been returned to you by the Post Office. But if it's been discarded, please let me have LASA's bank account details and I'll make a direct deposit. And again, once it's been computed, please inform me of your access fee.

A week ago, on the 3rd, I copied you in on my memorandum to the PAIA Unit of the SAHRC, in which I identified the records I'm still seeking and which PAIA requires you to surrender. I also prepared a draft affidavit concerning non-existent records for you to sign, to comply with your hitherto unmet obligations under section 23 of the Act.

In addition to my third records request herewith, please address your attention to these unattended other matters, including my (remaining) unanswered records requests of 15 December 2010, which, as I pointed out, you'd neglected to deal with by mistake. Your full and proper compliance with PAIA is a matter of the first importance under section 32(1)(a) of the Constitution.

Apropos of the status of the records identified in my new record requests 14 and 15, the Sarah Palin Yahoo email scandal in the US is instructive. In September 2008 the Governor of Alaska and Vice Presidential candidate was found to have been using a private email account to discuss government business. An article in *iTwire* pointed up the issue involved: 'Personal emails are not part of the public record. That's the general state of play when it comes to politics in the good ol' USA. It is why there are official public email accounts which are designed for official business use and which become part of the official public record.'

(<http://bit.ly/hnyXO8>)

Your reciprocal communications with Judge Mlambo concerning my letter to him and the Board on 30 November 2010 while he was abroad in the US are public records, and I require them. Likewise the record of Judge Mlambo's request to the Board of Directors to ignore my correspondence to the Board concerning the breakdown of lawful governance at LASA; your and LASA's contraventions of the PFMA; and your failure, citing wholly bogus reasons, to comply with your constitutional obligations under PAIA – none of which, he told me to my considerable surprise, was any of the Board's business.

Yours sincerely

A handwritten signature in black ink, appearing to be 'ADV ANTHONY BRINK', written over a light grey circular stamp or watermark.

ADV ANTHONY BRINK

CC: Attorneys Chantal Kisoona and Nokwanda Molefe: PAIA Unit, SAHRC

**Third PAIA Request**

**FORM A**

**REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY**

(Section 18(1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000))

**[Regulation 2]**

**FOR DEPARTMENTAL USE**

Reference number:

Request received by (state rank, name and surname of information officer/deputy information officer) on (date) at (place).

Request fee (if any): R .....

Deposit (if any): R .....

Access fee: R .....

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

**A. Particulars of public body**

**The Information Officer**

**CEO Ms Vidhu Vedalankar**

**Legal Aid South Africa**

**Private Bag X76**

**Braamfontein 2017**

**Johannesburg**

**B. Particulars of person requesting access to the record**

*(a) The particulars of the person who requests access to the record must be recorded below.*

*(b) Furnish an address and/or fax number in the Republic to which information must be sent.*

*(c) Proof of the capacity in which the request is made, if applicable, must be attached.*

Full names and surname : **Anthony Robin Brink**  
Identity number : **590225 5116 081**  
Postal address : **25 Baker Road, Prestbury, Pietermaritzburg 3201**  
Fax number : **086 672 0776**  
Telephone number : **033 344 2420**  
E-mail address : **arbrink@iafrica.com**

Capacity in which request is made, when made on behalf of another person:

**N/A**

### **C. Particulars of person on whose behalf request is made**

*This section must be completed only if a request for information is made on behalf of another person.*

Full names and surname : **N/A**  
Identity number : **N/A**

### **D. Particulars of record**

*(a) Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.*

*(b) If the provided space is inadequate please continue on a separate folio and attach it to this form. **The requester must sign all the additional folios.***

1. Description of record or relevant part of the record:
2. Reference number, if available:
3. Any further particulars of record:

**See annexure headed 'THIRD PAIA RECORDS REQUEST: ANNEXURE TO FORM A'**

**E. Fees**

<p>(a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a <b>request fee</b> has been paid.</p> <p>(b) You will be notified of the amount required to be paid as the request fee.</p> <p>(c) The <b>fee payable for access</b> to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.</p> <p>(d) If you qualify for exemption of the payment of any fee, please state the reason therefor.</p>
--

Reason for exemption from payment of fees:

N/A

**F. Form of access to record**

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 hereunder, state your disability and indicate in which form the record is required.

Disability: N/A		Form in which record is required:	
<p>Mark the appropriate box with an "X".</p> <p>NOTES:</p> <p>(a) Your indication as to the required form of access depends on the form in which the record is available.</p> <p>(b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.</p> <p>(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.</p>			
<b>1. If the record is in written or printed form -</b>			
<input checked="" type="checkbox"/>	copy of record*	<input type="checkbox"/>	inspection of record

<b>2. If record consists of visual images -</b>				
(this includes photographs, slides, video recordings, computer-generated images, sketches, etc.)				
<input type="checkbox"/>	view the images	<input checked="" type="checkbox"/>	copy of the images*	<input type="checkbox"/>
				transcription of the images*
<b>3. If record consists of recorded words or information which can be reproduced in sound -</b>				
<input type="checkbox"/>	listen to the soundtrack (audio cassette)	<input checked="" type="checkbox"/>	transcription of soundtrack* (written or printed document)	
<b>4. If record is held on computer or in an electronic or machine-readable form -</b>				
<input type="checkbox"/>	printed copy of record*	<input type="checkbox"/>	printed copy of information derived from the record*	<input checked="" type="checkbox"/>
				copy in computer readable form* (on compact disc)
*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you?				<b>YES</b>
<b>A postal fee is payable.</b>				
<i>Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.</i>				
In which language would you prefer the record? <b>English</b>				

**G. Notice of decision regarding request for access**

*You will be notified in writing whether your request has been approved/denied. If you wish to be informed thereof in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.*

How would you prefer to be informed of the decision regarding your request for access to the record? **By email**

Signed at Pietermaritzburg on this 9th day of March 2011.



.....  
SIGNATURE OF REQUESTER

## **THIRD PAIA RECORDS REQUEST**

### **ANEXURE TO FORM A**

#### **SECTION D: RECORDS REQUIRED**

1. LASA's complete Approval Framework with all notes. (Record V1, annexed to CEO and information officer Vedalankar's letter to the records requester Adv Brink on 28 January 2011, is incomplete and only shows Note 31. (Bundle, pages 225–7))
2. LASA's complete Recruitment protocol if it extends beyond nine pages. (Record V2 annexed to Vedalankar's letter ends abruptly on page 9 and appears to be incomplete. (Bundle, pages 228–34))
3. Brink's written consent to a recruitment check on him. (Paragraph 31 of Vedalankar's letter indicates that a recruitment check was performed on Brink; and section 1.3.3 of the Recruitment protocol requires the candidate's written consent.)
4. KZN ROE Vela Mdaka's authorization of the conduct of the recruitment check performed on Brink in terms of clause 1.3.2.1 of the recruitment protocol. (Bundle, page 233)
5. Mdaka's delegation of the power to authorize the conduct of a recruitment check on Brink to KZN Regional Human Resources Manager Baboo Brijlal in terms of clause 1.3.2.1, if Mdaka delegated this power.
6. The minutes of the Board meeting held on 29 May 2010.
7. The minutes of the Board meeting held on 30 October 2010.
8. The agenda of the Board meeting held on 26 February 2011.
9. The minutes of the Board meeting held on 26 February 2011.
10. The communication to the Eastern Cape ROE in 2010 that the Mthatha Senior Litigator post wasn't going to be filled.
11. The communication to the Mthatha JCE in 2010 that the Mthatha Senior Litigator post wasn't going to be filled.

12. The 'regret letter' sent in 2010 to the candidate selected and recommended for appointment as Senior Litigator, Mthatha, conveying that LASA executive management had resolved not to fill the post; personal information may be blacked out. (Per Nair's letter to Brink on 3 August 2010 read with Vedalankar's letter to Brink on 18 October 2010. (Bundle, page 19; and page 104, paragraph 7.3))
13. The instruction issued to Board Secretary Bee-Mari Schoeman not to circulate Brink's 30 November 2010 petition addressed to the Chairperson and the Board of Directors to all Board members and not to put it on the agenda of the next Board meeting for discussion, as Brink had requested, and furthermore not to respond to Brink's correspondence to her. (Bundle, page 198, paragraph 6; and page 207, first paragraph)
14. All email communications between Judge Mlambo and Vedalankar concerning Brink's petition to Judge Mlambo and the Board of Directors on 30 November 2010.
15. LASA Chairperson Judge Dunstan Mlambo's 'request..' to the Board of Directors 'to ignore all communications from' Brink. (Per Judge Mlambo's email to Brink on 24 January 2011. (Bundle, page 209))



# SAHRC

## Complaint Form

### FOR OFFICIAL USE

Case Number .....

Date Received.....

Received by .....

Acknowledged date .....

Acknowledged by .....

Please read the complaint pamphlet and the note at the back of this form before filling in this form. Please write clearly and use **CAPITAL LETTERS**. If there is not enough space on this form for your answer, please use a separate piece of paper and send it to us together with this form.

**Note:** if there is more than one person who would like to send a complaint to the SAHRC, write the details of these people on a separate form or photocopy this form. Be sure to include all the information asked for in the form for each of these people.

### YOUR DETAILS

(Everyone completing this form must fill in 1 - 6)

Mrs, Ms, Mr?

**ADV**

Surname:

**BRINK**

#### 1. Your name

First name(s):

**ANTHONY ROBIN**

**2. Your ID number**

**590225 5116 081**

**3. Your race**

**N/A**

**4. Female/Male**

**N/A**

**5. Your address and telephone number(s)**

The address where you live: **25 BAKER ROAD, PRESTBURY, PIETERMARITZBURG, KWAZULU-NATAL**

Postal Code: **3201**

The address we can send letters to: **AS ABOVE**

Telephone number at home: **033 344 2420**

Telephone number at work: **AS ABOVE**

Fax number: **086 672 0776**

Cellular phone number: **083 779 41 74**

Email: **arbrink@iafrica.com**

**6. What language would you like us to write to you in?**

**ENGLISH**

The following questions must be filled in if you are writing for somebody else or for an organisation. If your own rights were violated, then do not fill in this page.

**7 – 12. If this complaint is for someone else, please tell us about him or her**

**N/A**

**13. If this complaint is for an organisation, please tell us:**

**N/A**

**TELL US ABOUT WHAT HAPPENED**

**14. Is the problem still happening?**

**YES**

**15. If yes, on what date did it happen?**

**SEPTEMBER 2010 TO DATE.**

**16. Where did it happen?**

**IN JOHANESBURG, ALTERNATIVELY PIETERMARITZBURG.**

**17. Which rights in the Bill of Rights were violated?**

**MY RIGHT TO INFORMATION HELD BY THE STATE IN TERMS OF SECTION 32 OF THE CONSTITUTION, 1996.**

**18. Please tell us the name or names of who violated these rights?**

**MS VIDHU VEDALANKAR, INFORMATION OFFICER AND CEO: LEGAL AID SOUTH AFRICA ('LASA')**

**19. Where can we contact them?**

**TEL: 011 577 2000**

**FAX: 011 877 2222**

**EMAIL: vidhuv@legal-aid.co.za**

**LEGAL AID SOUTH AFRICA**

**29 DE BEER STREET**

**BRAAMFONTEIN**

**JOHANNESBURG 2017**

**GAUTENG**

**20. If you do not know their names, please tell us anything you *do* know about them**

**N/A**

**21. In your own words, tell us exactly what happened.** Include all the information, which you think is important. Be as brief as possible. If you need more space, please use a separate piece of paper.

**PLEASE SEE ANNEXURE**

**22. Have you reported this case to anyone else?**

**YES, TO THE SAHRC PAIA UNIT**

**23. Can we use your name in news reports or letters we write for you?**

**YES**

**24. Did anybody see what happened?**

**I HAVE INFORMED LASA CHAIRPERSON JUDGE DUNSTAN MLAMBO AND SEVERAL MEMBERS OF LASA'S BOARD OF DIRECTORS OF THE INFORMATION OFFICER'S VIOLATION OF MY CONSTITUTIONAL RIGHT TO ACCESS LASA'S RECORDS. THE BOARD HAS NOT INTERVENED.**

**25. Please tell us how you heard about the SAHRC (radio advert, newspaper, poster, from a friend, from an NGO or CBO)**

**I AM AWARE OF THE SAHRC FROM MY KNOWLEDGE OF THE LEGAL SYSTEM AS A PRACTISING LAWYER.**

Your signature:

A handwritten signature in black ink, appearing to be a stylized 'B' or similar character, enclosed in a rectangular box.

Date: **11 APRIL 2011**

Thank you for filling in this form. We will get back to you as soon as possible. If you have any queries, please call us and ask to speak to someone in the Legal Department.

Note: We may put some of the information you give on this complaints form onto a computer. This helps us monitor progress and produce statistics.

We may also give information to the other party in the case (that is the person or people who violated your rights). If you do not want any of your details given out, please answer 'NO' to question number 23.

**What to do once you have filled in the form. Once you have filled in this form, please post or fax it to us at:**

Johannesburg – Private Bag 2700, Houghton 2041

Tel: 011 – 484 8300 Fax: 011 – 484 1360/7149

Free State – P O Box 4245, Bloemfontein 9300  
Tel: 051 – 447 1130/7957 Fax: 051 – 447 1128

Eastern Cape – P O Box 972, East London 5200  
Tel: 043 – 722-7821/25/28 Fax: 043 –722 7830

KwaZulu Natal – P O Box 1456, Durban 4000  
Tel/Fax: 031– 304 7323/4/5

Limpopo – P O Box 55796, Polokwane 0700  
Tel: 015 – 291 3500/3504 Fax: 015 – 291 3505

Western Cape – P O Box 3563, Cape Town 8001  
Tel: 021 – 426 2277 Fax: 021 – 426 2875

North West – P O Box 9586 Rustenburg 0300  
Tel 014 – 592 0694 Fax (014) 594 1089

Mpumalanga – P O Box 6574 Nelspruit 1200  
Tel 013 – 752-8292/5870 Fax 013 – 752-6890

## **ANNEXURE TO COMPLAINT FORM**

Ms Vidhu Vedalankar, information officer and CEO of Legal Aid South Africa ('LASA') has persistently violated my fundamental constitutional right of access to documentary information held by the state, guaranteed by section 32 of the Bill of Rights of the Constitution, 1996; and in flagrant contempt of her legal obligations under section 11(1) of the Promotion of Access to Information Act 2 of 2000 ('PAIA') she is unlawfully refusing to provide me with copies of the records I've requested or put up an affidavit under section 23 concerning records that don't exist.

The history of the matter, as at 3 March 2011, is recorded at pages 2–11 of the enclosed memorandum, which I prepared for the assistance of the SAHRC's PAIA Unit.

I've been vainly attempting to obtain access to certain of LASA's records since mid-2010.

For whatever reason, the SAHRC's PAIA Unit has not mediated under section 83 of PAIA to assist me exercise my fundamental constitutional right of access to the records I've requested, despite my repeated written and telephonic requests that it do so.

My first request for 51 specified records was delivered on 30 August 2010. Vedalankar's initial response was to ignore it. After the PAIA Unit negotiated an undertaking to deal with it, Vedalankar responded on 18 October 2010 by refusing my request in its entirety.

In a petition to LASA Chairperson Judge Dunstan Mlambo and several members of LASA's Board of Directors, I pointed out that Vedalankar had refused my request on manifestly bogus grounds. Notwithstanding its oversight responsibility to ensure LASA is managed according to law, the Board failed to intervene. The PAIA Unit, to whom I copied my petition, did not respond either.

I filed a second request for 18 further records on 15 December 2010. In her response on 28 January 2011, Vedalankar did not answer my second request and instead revisited my first request in August, tacitly abandoning her original reasons and substituting them with a slew of new but equally bogus reasons for blocking my access to the records I'd requested.

On 17 February 2011 I wrote a 48-page letter to the PAIA Unit showing the legal vacancy of Vedalankar's new reasons, and addressing Vedalankar's demonstrably false allegations concerning the core dispute between us. The PAIA Unit did not respond.

On 3 March 2011, with a view to assisting the PAIA Unit to mediate in the matter, I sent it a memorandum critically analyzing and pointing up the legal and factual spuriousness of Vedalankar's new reasons for refusing my August 2010 request for the second time. I also drew a draft section 23 affidavit for Vedalankar to sign concerning non-existent records. The PAIA Unit did not respond. I copied both documents to Vedalankar. She did not respond.

On 9 March 2011 I filed a third request for 15 specified records. Vedalankar ignored it.

On 23 March 2011 I sent the PAIA Unit a reformatted version of the memorandum, including my third records request in an addendum and providing space for the PAIA Unit's comments on my analysis. The PAIA Unit did not respond.

Although in terms of section 11(3) of PAIA my purpose in seeking access to LASA records is immaterial, I record here that I now urgently require the records I have requested or sworn confirmation in some cases that they don't exist for the purpose of prosecuting a claim against LASA in the Labour Court. The mandatory preliminary conciliation hearing in the CCMA is set down for later this month on 20 April 2011. I specifically need the records and Vedalankar's section 23 affidavit in order to finalize my Statement of Claim

under Rule 6 of the Rules of the Labour Court; and I have only six weeks from the date of the conciliation hearing in which to file and serve it.

I also need the documents for the purpose of bringing an action in the Equality Court against Vedalankar personally, in which I will be seeking substantial damages from her for violating my constitutional right to equality and not to be unfairly discriminated against (particulars of which are irrelevant for immediate purposes).

What makes this case extraordinarily serious is that Vedalankar is consciously and deliberately abusing her position as LASA information officer to conceal evidence of her illegal conduct as CEO in order to pervert the true and just determination of my imminent claims in the Labour Court and the Equality Court on all the available evidence.

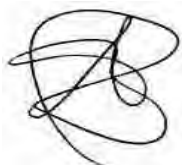
I enclose some recent email correspondence with the PAIA Unit. Although my telephone and email dealings with the PAIA Unit have been uniformly pleasant, it would appear from its failure to answer my recent correspondence and to mediate on my behalf to assist me access the records to which I'm entitled, that it lacks the capacity to carry out its statutory function, intended by Parliament, to monitor and facilitate compliance with PAIA in terms of section 83 – even though my memorandum makes it so easy.

In the situation, I hereby appeal to the SAHRC to prosecute my complaint that Vedalankar is violating my fundamental right to documentary information held by the state, as guaranteed by section 32 of the Bill of Rights and given effect by PAIA, at a public hearing, urgently convened in terms of Article 6.5 of the Complaints Handling Procedures, for Vedalankar's interrogation by the SAHRC concerning her contemptuous refusal to comply with her constitutional and legal obligations.

If, despite this, Vedalankar persists in unlawfully withholding the records I need and continues to refuse to provide me with a section 23 affidavit, I request

that the SAHRC applies in its own name in terms of Article 7.2 to the South Gauteng High Court, Johannesburg, for an order compelling Vedalankar to comply with my records requests, on pain of the usual sanction for contempt of court.

Dated at Pietermaritzburg this 11th day of April 2011.

A handwritten signature in black ink, appearing to be 'A. Brink', written over a light grey rectangular background.

ADV ANTHONY ROBIN BRINK

All material documents in this matter are archived online at:

[www.tig.org.za/LASA](http://www.tig.org.za/LASA)

username: lasa

password: LASA2010

**SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

33 Hoofd Street  
2<sup>nd</sup> Floor, Forum 3  
Braampark  
**Braamfontein**  
2198

Private Bag X 2700  
Houghton  
2041

Fax numbers  
will be communicated shortly.

Tel: (011) 877 3600

Fax numbers:  
Email: NVKwaza@sahrc.org.za



Per email: [arbrink@iafrica.com](mailto:arbrink@iafrica.com)

Our Ref: GP/2011/0166

**Please quote our ref in all correspondences**

Date: 12 April 2011

Dear Anthony

The S.A. Human Rights Commission acknowledged receipt of your complaint

The Commission was set up to investigate violations of those rights that can be found In the Bill of Rights, which is chapter 2 of the Constitution.

We have referred your complaint to one of the Legal Interns for screening process in our Gauteng Provincial Office. Should it be found to be a violation of one of those rights, it will be forwarded to the Legal Officer who will contact you in due course.

In the event that it is a matter that the Commission cannot deal with, you will be informed accordingly.

Yours Faithfully

---

Ms N. Kwaza

Per:

S.A. Human Rights Commission

Know your Rights. Accept your Responsibilities

**Chairperson:** L. Mushwana; **Deputy Chairperson:** P. Govender **Commissioners:** L. Mokate, B. Malatjie, J. Love and T. Titus

**Executive Officer:** K. Ahmed



Advocate Anthony Brink

25 Baker Road

Pietermaritzburg

3201

8 April 2011

*per e-mail*

18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

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Dear Adv. Brink,

## **Promotion of Access to Information Act**

### **Third request for records**

#### **Senior Litigator Position, Pietermaritzburg**

I acknowledge receipt of your third request for records dated 9 March 2011. As the National Operations Executive, I am the Deputy Information Officer, duly delegated by the Information Officer in terms of section 17 of the Promotion to Access Information Act, 2 of 2000. The requests you made fall within my scope and ambit of operation and I am the person who is familiar with the facts.

Hereunder I respond to all your requests sequentially and also advise where a record does not exist.

#### **1. Request 1**

The full Approval Framework is attached.

**2. Request 2**

The policy deals with Recruitment, Induction, Probation and Relocation. You have been provided with the entire extract of the policy as far as it relates to the recruitment aspect. The remaining part of the policy does not deal with recruitment issues and is therefore irrelevant.

**Request 3**

Paragraph 31 referred to does not state that there was a reference check done to you. Rather, it refuses to grant you information based on a number of reasons that include possible reference checks that may or may not have been done. I can confirm that no reference checks were done on you. As a result, no consent was obtained from you.

**4. Request 4**

As indicated in response to request 3, no reference checks were conducted in respect of your application for the Senior Litigator position.

**5. Request 5**

See the response to paragraph 3 and 4 above.

**6. Request 6-9**

I can confirm that no item relating to you was either on the agenda or tabled at any of the Board meetings. The Board's responsibility primarily relates to policy issues and not operations hence appointments and freezing of positions are dealt with by Executives.

Your request for the information is refused in terms of section 44(1) (a) of the Promotion of Access to Information Act 2 of 2000 as amended.

**7. Request 10-11**

The communication to the Eastern Cape ROE was done verbally by the NOE and as such no written record exists. It was the responsibility of the ROE Eastern Cape to communicate this decision to the Mthatha JCE in any manner he chose appropriate. This information is supplemented by an affidavit annexed hereto in terms of section 23 of Act 2 of 2000.

**8. Request 12**

The communication that the position was not to be filled was conveyed to the relevant candidate by the Regional Operations Executive of the Eastern Cape. The information requested is refused and cannot be provided as it relates to third parties as envisaged in terms of section 34(1) of the Promotion of Access to Information Act 2 of 2000 as amended

**9. Request 13 to 15**

The information requested is refused as it is not relevant because it is after you were informed that we are not proceeding to fill the Senior Litigator position.

**Yours faithfully,**

A handwritten signature in black ink, appearing to read 'Brian Nair', is written over a horizontal line. The signature is stylized and somewhat cursive.

**Brian Nair**

**National Operations Executive**

**REQUEST FOR INFORMATION IN TERMS PROMOTION OF ACCESS TO  
INFORMATION ACT 2 OF 2000**

**In the matter between:**

**ANTHONY BRINK**

**Applicant**

**and**

**THE LEGAL AID SOUTH AFRICA**

**Respondent**

---

**AFFIDAVIT IN TERMS OF SECTION 23 OF THE PROMOTION OF ACCESS TO  
INFORMATION ACT 2 OF 2000**

---

I, the undersigned,

**BRIAN NAIR**

do hereby make oath and state that:

1. I am an adult male person employed by Legal Aid South Africa, a statutory body established under Legal Aid Act 22 of 1969, having its principal place of business at 29 De Beer Street, Legal Aid House, Braamfontein, Johannesburg.

2. The information contained herein is, save where otherwise stated by me or where the content clearly indicates the contrary, within my personal knowledge, and to the best of my belief, both true and correct.
3. I am the National Operations Executive of Legal Aid South Africa, responsible for all functions and personnel delivering legal representation to indigent persons.
4. I am equally the person responsible to make all appointments to certain positions in terms of our Approval Framework. The positions referred to herein also include that of Senior Litigator.
5. I confirm that I am the Deputy Information Officer duly delegated by the Information Officer in terms of section 17 of Promotion of Access to Information Act 2 of 2000. I therefore and in compliance with section 17(3) annex my written authority (as annexure BN1) in terms of which I depose to this affidavit.
6. I am accordingly in the best position to respond to a number of requests raised by Mr Anthony Brink.
7. I confirm that the communication with Eastern Cape ROE was done verbally and as such no written records exists in respect of Mr Brink's requests 10-11 of his third request for records dated 9 March 2011

Signed at Braamfontein on this 8<sup>th</sup> day of April 2011

  
\_\_\_\_\_  
**DEPONENT**

Signed and sworn before me at Braamfontein this 8th day of April 2011 after the Deponent declared that he is familiar with the contents of this statement and regards the prescribed oath as binding on his conscience and has no objection against taking the said prescribed oath. There has been compliance with the requirements of the Regulations contained in Government Gazette R1258, dated 21 July 1972 (as amended).

COMMISSIONER OF OATHS:

  
\_\_\_\_\_  
**MOLATELO MAKHURA**  
COMMISSIONER OF OATHS  
PRACTISING ATTORNEY RSA  
7th FLOOR BRAAMFONTEIN CENTRE  
23 JORISSEN STREET  
TELEPHONE (011) 403-2765

FULL NAMES:

\_\_\_\_\_

CAPACITY:

\_\_\_\_\_

ADDRESS:

\_\_\_\_\_



National Office  
101, 102, 103, 104, 105  
Constitutional Centre  
101, 102  
Tel: 011 497 2000  
Fax: 011 497 2222  
[www.legal-aid.co.za](http://www.legal-aid.co.za)

1<sup>st</sup> March 2011

Mr Brian Nair  
National Operations Executive  
Legal Aid South Africa

Dear Brian

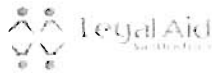
**APPOINTMENT AND DELEGATION AS DEPUTY INFORMATION OFFICER  
FOR LEGAL AID SOUTH AFRICA**

I hereby, and in my capacity as the Chief Information Officer and in compliance with section 17(6), appoint you to act as the Deputy Information Officer for Legal Aid South Africa with effect from 1<sup>st</sup> March 2011. Your appointment shall be valid until withdrawn by the Chief Information Officer or Chief Executive Officer.

Regards

Vidhu Vedalankar  
Chief Executive Officer and Chief Information Officer

**Your voice. For justice.**



Your voice. For justice.

**LEGAL AID SOUTH AFRICA : APPROVAL FRAMEWORK**

**CHANGES INDICATED IN RED FONT**  
**THE COLUMN ON THE EXTREME RIGHT INDICATES CHANGES IN ROWS IN THIS VERSION**

<b>Key to Levels</b>		<b>Key</b>	
A.	Final approval	CEO	= Chief Executive Officer
B	Must agree	COO	= Chief Operations Officer
C	Must be consulted (before)	NOE	= National Operations Executive
D.	Must be informed (after)	CFO	= Chief Financial Officer
E	Originates	EXEC	= The executive responsible for the line function in question (Exec includes ROE and Board Secretary but excludes JCE)
		CSE	= Corporate Services Executive
		ROE	= Regional Operations Executives
		HRE	= Human Resources Executive
		LDE	= Legal Development Executive
		ISE	= Information Systems Executive
		CE	= Communications Executive
		BS	= Board Secretary
		CLM	= Corporate Legal Manager
		ISM	= Impact Services Manager
		JCE	= Justice Centre Executive
<b>Key to Other</b>			
AC	Audit Committee		
RC	Remuneration Committee		
LSC	Legal Services Committee		
LSTC	Legal Services Technical Committee		
Board	Board of Directors (refer Note 29 & 30)		
B/Exco	Board Executive Committee		
Man/Exco	Management Executive Committee		
BAC	Bid Adjudication Committee		

In the event of any conflict between this approval framework and any other Legal Aid South Africa policy the Approval Framework will prevail.

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	Changes
<b>1</b>	<b>STRATEGY AND PLANNING</b>									
1.1	Strategic Plan		A	C	E				C/ All Committees	
1.2	Business Plan		C	A	B	E			C/All Committees	
<b>2</b>	<b>BUDGET</b>									
2.1	Within Treasury allocation and approved surplus	1	A	C	C	C	E	C	C/ All Committees	
2.2	Deficit Budget	2	B	C	C	C	E		A/ National Treasury	
2.3	Reallocation of budget - Operational Expenditure & Capital Expenditure (only within operational or capital) (Except Contingency)									
2.3.1	Reallocation of budget between line items within a cost centre subject to an aggregate of 8% of cost centre					C (excl JCE)	D	E	E (JCE)	
2.3.2	Reallocation of budget <R200,000 across cost centres subject to an aggregate of 1% of the total budget					B	A	E	C	
2.3.3	Reallocation of budget <R350,000 across cost centres subject to an aggregate of 4% of the total budget					A	C	E	C	
2.3.4	Reallocation of budget between cost centres subject to a maximum of 8% of total budget				A	B	C	E	C	
2.3.5	Reallocation of budget in excess of 8% between cost centres		A		B	C	C	C		

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 20)	Man/ Exco	CEO	COO/ NOE (21)	CFG	EXEC	OTHER	
2.4	Transfers between operational expenditure and capital expenditure or vice versa									
2.4.1	Transfers <R500,000					A	C	E		
2.4.2	Transfers <R1,000,000				A	C	D	E		
2.4.3	Transfers > R1,000,000		A		C		D	E		
3	<b>EXPENDITURE</b>									
3.1	Expenditure (Operating & Capital) including salaries, wages, allowances	24								
3.1.1	Expenditure within budget <R50,000	3						A/E		
3.1.2	Expenditure within budget R50,000 – R250,000							A/E		
3.1.3	Expenditure within budget R250,000 – R500,000	13 & 16				A		E	C/A/C	
3.1.4	Expenditure within budget >R500,000	13 & 16			A			E	B/BAC C/A/C	
3.1.5	Expenditure > R10million	13 & 16	A		D	D		E	B/BAC C/A/C	
3.2	Write off and disposal of assets – depreciated value									
3.2.1	<R1million								authority as per 3.1	
3.2.2	>R1million		A		B	C		E		
3.3	Write off of bad debts in any one year									
3.3.1	< R50,000		D				B	A/E		
3.3.2	R50,000 – R200,000		D		C	A	C	E		
3.3.3	<R1million				A	C	C	E		
3.3.4	>R1million		A	C		C	E	C	C/A/C	
4	<b>ACCOUNTING AND REPORTING</b>									
4.1	Establishment of policy		A	C	C	C	C		B/A/C	
4.2	Deviation in application of policy		A	C	C	C	E		B/A/C	
4.3	Statutory Accounts		A	C	E	C	C		B/A/C	
4.4	Annual Report		A	C	C	E	C		B/A/C	
4.5	Valuation of properties and portfolio		A	C	C	C	C		B/A/C	
5	<b>INTERNAL CONTROLS</b>									
5.1	Establishment of controls and changes thereto									
5.1.1	Approval framework		A	C	B			E/C/S/E		
5.1.2	Procedure manual			C		E		C/E		
5.1.3	Corporate Governance including Code of Ethics		A	C		C		E (B/S)		
5.2	Internal auditors	14								
5.2.1	terms of reference (3 year Rolling Plan)		A		C			E (A)	B/A/C	
5.2.2	appointment/dismissal of external consultants			C	A		E	E (A)	C/A/C	
6	<b>BANKING</b>									
6.1	Setting of overall policy on banking relationships and spread of banking services		A	C	C	C	E			
6.2	Change of main bankers		A	C	C	C	E	D	C/A/C/B/A/C	
6.3	Approval of signing procedures and signatures "A" and "B" signatories		D	C	A	C	E			
6.4	Periodic negotiation and acceptance of banking facilities		D	C	A	C	E			

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	Changes
7	<b>AUDITORS</b>									
7.1	Appointment and dismissal at LAB of agent of AG	4	D	D	D				D/AC	
7.2	Reports (non-routine audits)		D		E				D/AC	
7.3	Non-auditing consultancy fees	18	D		B		A	E	A/BAC	
7.4	Auditing fees		A	C	B	C	C		D/AC	
7.5	Interim and Final Audit Plans		A	C	B	C	C		C/AC	
8	<b>HR MATTERS</b>	5								
8.1	<b>Personnel Structure</b>									
8.1.1	Approval and periodic revision of grading policy		A	C	C	C		E(HRE)	C/RC	
8.1.2	(a) Establishment of new positions, regrading existing positions and abolition of posts at executive senior managerial & within budget (levels 14-16)		A		B	C		E C (HRE)	C/RC	
	(b) Levels (11-13) & OSD - CM - 1 ; OSD - LP - 9 & 10 and MR - 5				A	B		E C (HRE)		
8.1.3	Establishment of other new positions, regrading existing positions and abolition of posts within existing structure & within budget (levels 1-10) and OSD - SU - 1 & 2 and OSD - LP 1 - 8				B	A		E C (HRE)		
8.2	<b>Appointments</b>	17 & 21								
8.2.1	(a) CEO (Level 16)		A/E						C/RC	
	(b) COO or NOE (Level 15.5)		A		B/E				C/RC	
8.2.2	(a) Executive (other than the CEO, COO & NOE).		C B/Exco		A/E	B/E			D/RC	X
	(b) Senior Management and Senior Professional staff (levels 11-13, OSD - CM - 1 and OSD - LP - 9&10, OSD - MR - 5)				B	B		E A	D/RC HRE (17)	
	(c) OSD - SU - 1 & 2 and OSD - LP-8					B		A/E (ROE) A	HRE (17)	
	(d) Other permanent staff (below level 11 and OSD - LP - 1 to 7)							A incl JCE		
8.2.3	Temporary staff - including OSD-CP-1									
	(a) Up to 3 months (maternity leave 4 months)							A	C (HRE - to facilitate SAP)	
	(b) More than 3 months					A		E	C (HRE - to facilitate SAP)	
8.3	<b>Remuneration: Fixed Packages</b>									
8.3.1	Annual review and adjustments		A	C				E (HRE)	C/RC	
8.3.2	Interim adjustments (Professional, management and administrations)		A	C				E (HRE)		
8.3.3	Annual Performance Bonus All staff including modifiers		A					E	C/RC	
8.4	<b>Changes to conditions of employment</b>									
8.4.1	Changes to general terms and conditions of employment		A	C	B	B		E(HRE)	D/RC	
8.4.2	Changes to the conditions of employment restricted to an office or a department of the national office					A (COO)		B(HRE)		
8.4.3	Changes to the conditions of employment restricted to a single employee							A(HRE)		

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Manl Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	
<b>8.5</b>	<b>Code of Ethics</b>									
8.5.1	Policy		A	C	C	C		E (HRE)	C/CR	
<b>8.6</b>	<b>Disciplinary Proceedings</b>									
8.6.1	Appointment of a Chairperson, Investigating Officer and Prosecuting Officer including Chairperson to hear an appeal									
	(i) in matter involving CEO		A							X
	(ii) in matter involving COO, NOE		A		B/E					X
	(iii) in matter involving all other staff				A	A	E			X
8.6.2	Any suspensions or dismissals whether part of a disciplinary enquiry or otherwise									X
	(i) in matter involving CEO		A							X
	(ii) in matter involving COO, NOE	32	A		B/E					X
	(c) Executives (other than the CEO, COO, NOE)	33	C		A/E	B/E				X
	(d) in matter involving all other staff				A	A	E		D/CEO, COO, NOE & HRE	X
8.6.3	Discipline									X
	(a) CEO (Level 16)		A/E						C/RC	X
	(b) COO or NOE (Level 15.5)	32 & 33	A		B/E				C/RC	X
	(c) Executives (other than the CEO, COO, NOE)	32 & 33	C		A/E	B/E				X
	(d) Senior Management and Senior Professional staff (levels 11-13, OSD - C1, 1 and OSD - LP - 3&4, OSD - MR - 5)	32			A	A		B/E	D/HRE	X
	(e) OSD - BU - 1 & 2 and OSD - LP-8	32				B		A/E (ROE & JCE)	D/HRE	X
	(f) Other permanent staff (below level 11 and OSD - LP - 1 to 7)	32						A incl JCE	C/ROE, D/HRE	X
<b>8.7</b>	<b>Incapacity Leave</b>									
8.7.1	Maximum 30 days in any one sick leave cycle							E A(HRE)		
8.7.2	For > 30 days but < 1 year in any one leave cycle					A (COO)		E (HRE)		
8.7.3	For > 1 year in any one leave cycle				A			E (HRE)		
<b>9</b>	<b>PUBLIC RELATIONS</b>									
9.1	All press releases and presentations	10			A			E (CE)		
9.2	Advertising content					A		E (CE)		
9.3	Annual report		A	C	B			E (All Execs)		
<b>10</b>	<b>OPERATIONS</b>									
10.1	Appointment/dismissal of									
10.1.1	Board Member(s)	6	A	C	C					
10.2	Member's Fees									
10.2.1	Board	7	B				E	E (BS)	A/Minister	
10.2.2	Board Committee Members		A				E	E (BS)	B/AC, B/RC, B/LSC	
10.3	Litigation on behalf of the LAB & Board Resolution	15								
10.3.1	Where a matter, on behalf of the LAB, proceeds to the Supreme Court of Appeal or the Constitutional Court		D		A			E/CSE		

	RESPONSIBILITY SUBJECT	NOTES	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE (21)	CFO	EXEC	OTHER	
10.3.2	Litigation on behalf of the LAB itself where the matter:	23								
	(a) involves the prosecution or defence of a claim for an amount in excess of R5million		A B/Exco		C			E/CSE		
	(b) involves the prosecution or defence of a claim for <R5million		D		A			E/CSE		
	(c) involves the prosecution or defence of a claim for between <R500,000					A		E/CSE		
	(d) involves the prosecution or defence of a claim for <R250,000							A (CSE)		
	(e) involves the prosecution or defence of a claim for less than <R50,000								A/CLM)	
10.3.3	Any settlement in respect of the Capital Sum at a value more or less than the initial claim shall be approved by the same authority that approved the litigation									
10.4	<b>Insurance</b>									
10.4.1	Directors and Officers Liability	B	A	C		C		E		
10.4.2	Periodic review									
10.4.2.1	Professional negligence	B	D	A		C		E		
10.4.2.2	Other	B	D	A		C		E		
10.4.3	Implementation of new insurance programme	B						E	at per expenditure authority level	
10.5.1	Contracts	24 26 27 28							authority as per 3.1	
10.5.2	Where the payments in terms of the proposed contract (other than a property lease) will extend beyond the MTEF		A			E				
10.6	<b>Travel, Accommodation and Subsistence</b>									
10.6.1	Travel, accommodation and subsistence arrangements/claims for official travel by an employee, member or invitee of the Board, within South Africa at the cost of the LAB	3 19						A		
10.6.2	Travel, accommodation and subsistence/claims for official travel by an employee, member or invitee of the Board external to South Africa whether at the cost of the Legal Aid Board or otherwise	20	A B/Exco							
11	<b>LEGAL AND ADMINISTRATIVE MATTERS</b>									
11.1	All documentation pertaining to transactions, correspondence and agreements influencing the sale or development of land, including the landlord's consent and approval of licence applications or servitudes over immovable property	B	A		C		E/B	CSE/E		

	RESPONSIBILITY SUBJECT	NOTES	Board (25 & 30)	Man/ Exco	CEO	COO/ NOF (21)	CFO	EXEC	OTHER	
11.2	<b>Destruction of Documents</b>									
11.2.1	Destruction of documents converted to electronic images							AL/CE		
11.2.2	Destruction of Documents not converted to electronic images (has to take place until 7 years after last payment/3 years after last action if no payment)							AL/EXCO	AD/CO (for all financial reports)	
11.2.3	Transfer of records to National Archives (board agendas, board minutes and annual reports)					A		EB/Board Secretary		
12	<b>OTHER</b>									
12.1	Any member of Management Exco may delegate their authority, be it in terms of this approval framework or their authority to sign contracts, to any other employee if the Executive will be absent from work or out of the country				A			E		
12.2	The CEO may further delegate any authority delegated to her				A					

<b>General Note</b>	
Failure to comply with the provisions of this approval framework may lead to: <ul style="list-style-type: none"> <li>Disciplinary proceedings - in the event of any serious management misconduct may result</li> <li>Consequences in terms of the Public Finance Management Act and the regulations formulated including punishment and liability</li> <li>Personal liability in the event of the non-compliance resulting in the LAE suffering damages</li> </ul>	
<b>NOTES:</b>	
1	See section 53(1) of the Public Finance Management Act No. 26 of 1998
2	See section 53(3) of the PFMA.
3	May be delegated to manager by the CEO and the EXEC jointly. May be delegated below R20 000 by the EXEC. Justice Centre Executives, the Special Projects Manager, the Board Secretary, and all Finance Managers reporting directly to the CFO are delegated to approve expenditure up to R50 000 except in respect of capital expenditure. Further delegations must be in writing. Any delegation may be terminated either by written withdrawal or by cessation of employment. For purposes of this document a "Manager" is a person reporting directly to a member of Man/Exco and responsible for the management of staff or resources.
4	Auditor General approval required in addition. Should take place every five years. Initiated by A - G.
5	Subject to Section 9 of the Legal Aid Act No. 22 of 1969.
6	See also Section 4 of the Legal Aid Act No. 22 of 1969.
7	In conjunction with the Minister of the Public Service and Administration.
8	Except that additions to the schedule of an existing policy or renewal of an existing policy, provided within budget, may be effected after the event.
9	See also Section 3 of the Legal Aid Act No. 22 of 1969.
10	The CEO may delegate the approval of press releases and presentations including media interviews not related to changes of policy to any Executive.
11	All amounts set out in the approval framework are inclusive of VAT. Approval limits relate to the expenditure which may be authorized in any one financial year.
12	EXEC includes Regional Operations Executive, and the Board Secretary but excludes Justice Centre Executives.
13	All expenditure >R500 000 is to be made in terms of the Supply Chain Management Policy by tender. If a Tender approved by the Bid Adjudication Committee is not the lowest in terms of price, the decision of the Bid Adjudication Committee must be ratified by the Management Executive Committee. If the party selected by the Bid Adjudication Committee is the party offering the lowest price the CEO or COO (in accordance with the Approval Framework) may conclude the contract after approval by the Bid Adjudication Committee without prior approval by the MAN/EXCO. Payments for all expenditure approved by the Board to be authorized by the CEO.
14	The CEO is entitled to require the Internal Audit Department to initiate audits and/or investigations but is not entitled to terminate or curtail audits and/or investigations once approved by the Board, the Board Executive Committee or the Audit Committee.
15	Notwithstanding anything contained in this paragraph 10.3 the CEO, SDE or CSE are authorized to do whatsoever may be necessary to protect the Board and/or a client's rights, prevent default judgment, avoid prescription or comply with any statute or Rule of Court pending any necessary decision by Board Exco. All litigation on behalf of the LAE is to be conducted under the control of the Corporate Services Department.
16	Applicable only to audit matters where the Audit Committee is to be consulted in advance by report to the Audit Committee.

	RESPONSIBILITY SUBJECT	NOTES	Board (28.A.30)	Man/ Exco	CEO	COO/ NOE (31)	CFO	EXEC	OTHER	
17	It is the responsibility of the line function Executive to ensure that such is provided for in the budget and MTEF and that a vacancy exists in respect of the post concerned. The HRE to confirm budget and vacancy and EE statistics with regard to JIC/region/dept.									
18	This relates to the performance of non-auditing consultancy work by any firm which is either the agent of the Auditor-General in respect of the external audit or an internal audit service provider.									
19	No employee may approve his/her own travel, subsistence and/or accommodation. No subordinate may approve an employee's travel, subsistence and/or accommodation. The CEO may expend funds on her/his travel, subsistence and/or accommodation within the budget allocated to the CEO in the annual budget approved by the Board.									
20	When Board Exco are not available international travel, accommodation and subsistence may be approved by the chairperson and the CEO jointly subject to such being tabled at the next Board Exco meeting.									
21	All appointments are to be in accordance with the standard letter(s) of appointment to be found on the U Drive.									
22	Where the disposal of assets or the write off of bad debts is originated by the CFO he/she must act in conjunction with the CEO.									
23	In respect of Impact Services, amounts not greater than R500 000 for any one matter in any one financial year are committed by decision of the Legal Services Technical Committee and require the agreement of the CEO. The CEO, NOE and LDE may jointly commit to expenditure up to R50 000 in any one matter.									
24	Certain agents (e.g. insurance brokers) receive an income from commission. It is necessary to ensure such commissions are disclosed. In considering whether you have authority to approve a contract you must consider: • The amount to be paid by the LAB in any one financial year • The amount to be received by the agent as commission in any one financial year									
25	To approve a contract you must be permitted to approve the greater of the payments to be made by the LAB or the commission to be earned.									
26	Contracts <R50 000 00 per annum can be signed by Justice Centre Executive without vetting by the Corporate Legal Section. All other contracts >R50 000 00 per annum to be vetted by the Corporate Legal Unit before sign off.									
27	The contracts of the Impact Litigation Unit are to be prepared/be vetted by the Impact Litigation Unit and signed as per the Approval Framework.									
28	Where the payments in terms of the proposed contract are over not more than 36 months and fall within the budget in respect of current financial year and/or the MTEF. An exception is made in respect of leases of immovable property where a maximum duration of 60 months is permitted and only the first 36 months fall within the budget in respect of current financial year and/or the MTEF. Where a contract continues over more than one financial year and where the payments vary during the duration of the contract, the aggregate expenditure in the financial year in which payments are highest will determine the authority level required for approval.									
29	All authority as per this column is reserved for the Board, unless otherwise specified as delegated to Board Exco. It is further noted that as per Clause 3.1 of the approved Board Exco Charter - "The Exco is conferred with all the powers conferred upon the Board by the Legal Aid Act No. 22 of 1969 that may be delegated and the Exco shall be responsible for: • • • decisions on any matter requiring decision by the Board between Board meetings"									
30	On 24 November 2007 the Board adopted the following Resolution: "Having noted the provisions of section 56 of the Public Finance Management Act, 1999, in its capacity as accounting authority in terms of section 49 of the Act, the Board hereby delegates to the Chief Executive Officer of the Legal Aid Board all of the powers entrusted or delegated to the accounting authority in terms of the Act including the Treasury Regulations under the Act, without limitations or conditions and with the power of substitution. In doing so the Board notes that it is not divested of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty. The Board furthermore notes that it may confirm, vary or revoke any decision taken by the Chief Executive Officer as a result of this delegation, subject to any rights that may have become vested as a consequence of the decision"									
31	Delegation to the COO and NOE shall be in accordance with the functions each is responsible for ie all delegated authority to the COO will be for those functions and executives reporting to him/her and all delegated authority to the NOE shall be for those functions and executives reporting to him/her; It is noted that this delegation is not interchangeable ie The COO shall not have authority to approve matters relating to functions that are the responsibility of the NOE and vice versa.									
32	Matters of Discipline in this regard exclude verbal and written warnings.									X
33	In matters, which in the view of the CEO, need urgent and immediate action and wherein any delay in taking disciplinary proceedings will compromise the interests of Legal Aid South Africa, the CEO may act after consulting with the chairperson of the Board. The matter to be reported to the Board Exco by email as well as (if next meeting). An example will be and without limitation suspension of an executive due to an allegation of fraud.									X

#### ANNEXURE A

On 24 November 2008 the Board adopted a resolution delegating the authority to litigate on behalf of the Legal Aid Board to the Chief Executive Officer and the Corporate Services Executive. Although that resolution is no longer duplicated in this Approval Framework, it remains in force.



Advocate Anthony Brink

25 Baker road

Pietermaritzburg

3201

8 April 2011

*per registered mail*

25 De Villiers Street

Stellenbosch

7600

021 885 4200

021 885 4201

021 885 4202

021 885 4203

[www.legal-aid.co.za](http://www.legal-aid.co.za)

Dear Mr. Brink,

**Promotion of Access to Information Act**

**Affidavit in terms of section 23 of PAIA**

We refer to the above matter and attach herewith an affidavit with annexures in terms of section 23 of the above Act.

We attempted to send you an e-mail without success. We will continue to attempt sending per e-mail to avoid delayed delivery.

**Yours faithfully,**

**Thembile Mtati**

**Corporate Services Executive**

**REQUEST FOR INFORMATION IN TERMS PROMOTION OF ACCESS TO  
INFORMATION ACT 2 OF 2000**

**In the matter between:**

**ANTHONY BRINK**

**Applicant**

**and**

**THE LEGAL AID SOUTH AFRICA**

**Respondent**

---

**AFFIDAVIT IN TERMS OF SECTION 23 OF THE PROMOTION OF ACCESS TO  
INFORMATION ACT 2 OF 2000**

---

I, the undersigned,

**BRIAN NAIR**

do hereby make oath and state that:

1. I am an adult male person employed by Legal Aid South Africa, a statutory body established under Legal Aid Act 22 of 1969, having its principal place of business at 29 De Beer Street, Legal Aid House, Braamfontein, Johannesburg.

2. The information contained herein is, save where otherwise stated by me or where the content clearly indicates the contrary, within my personal knowledge, and to the best of my belief, both true and correct.
3. I am the National Operations Executive of Legal Aid South Africa, responsible for all functions and personnel delivering legal representation to indigent persons.
4. I am equally the person responsible to make all appointments to certain positions in terms of our Approval Framework. The positions referred to herein also include that of Senior Litigator.
5. I confirm that I am the Deputy Information Officer duly delegated by the Information Officer in terms of section 17 of Promotion of Access to Information Act 2 of 2000. I therefore and in compliance with section 17(3) annex my written authority (as annexure BN1) in terms of which I depose to this affidavit.
6. I am accordingly in the best position to respond to a number of requests raised by Mr Anthony Brink.
7. Hereunder, I respond to all the concerns or accusations that Legal Aid South Africa may not have fully responded to Mr Brink's previous requests. I follow his sequencing of the 20 (twenty) points he refers to in his Memorandum to the Human Rights Commission dated 3 March 2011.

## **FIRST REQUEST, AUGUST 2010**

### **PART 1**

#### **Reply to paragraph 1-2**

8. The National Operations Executive, in consultation with both the Chief Executive Officer and the Human Resource Executive, agreed that the process of recruitment for Senior Litigators will include a second round of interviews. This



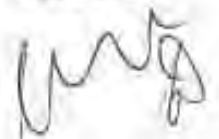
decision was taken verbally in April 2008. Since then the second interview panel has sat on three separate occasions to consider prospective candidates.

9. It was agreed that the second interview panel will consist of identified National Office executives. This decision was guided and informed by the seniority of the senior litigator position.
10. The Chairperson of the Board was also invited to participate in this panel.
11. The second interview panel would consider all candidates recommended from the first round of interviews to the second round of the interviews. The second interview panel would however not be bound to support the recommendation of the first interview panel. It is confirmed that the second panel had previously refused to support a candidate that was recommended by the first panel for this same position that is under dispute.
12. If after the second round of interviews a recommendation is made, the Regional Operations Executive in charge would finalise the appointment only after the National Operations Executive and the Chief Executive Officer agree with the recommendation.

## **PART 2**

### **Reply to paragraph 9**

13. The second round of interviews was not proceeded with and as such, no candidate or persons were considered for the second round. The decision that led us not to proceed with the second round was fully explained to Mr. Brink in the letters by the Chief Executive Officer dated 18 October 2010 and 28 January 2011. I specifically refer to attachments "V1", "V3" to "V6", "V8" and "V10" in the letter dated 28 January 2011 from the Chief Executive Officer to Mr. Brink, clearly



indicating that the reason to freeze the positions of Senior Litigator was due to fiscal pressures.

14. For the sake of completeness, I further mention that no written record exists of the decision taken in July 2010 by the NOE in consultation with the CEO and HRE to freeze the senior litigator post.

### **PART 3**

#### **Reply to paragraph 10**

15. There were no time frames set to finalise the recruitment process for the senior litigator positions. It was always anticipated that the process will be completed within a reasonable time. However, as communicated in our earlier submissions/ letters to Mr. Brink dated 18 October 2010 and 28 January 2011, the uncertain funding difficulty resulted in a decision being taken by Legal Aid South Africa executives to delay and eventually freeze the recruitment of certain positions including the vacant senior litigator positions. For the sake of completeness, I further mention that no written record of this decision taken exists except annexures "V1" to "V12" which have already been furnished to Mr. Brink.

### **PART 4**

#### **Reply to paragraphs 11-12**

16. The decision was taken by me in consultation with the Chief Executive Officer and the Human Resources Executive. The background leading to the decision was explained to Mr. Brink on letters and annexures referred to on paragraph 15 above. For the sake of completeness, I further mention that no other written record of this decision exists.

**PART 5**

**Reply to paragraph 16**

17. No records of discussions exist where Mr. Brink was mentioned after August 2009 by the Management Executive Committee.

**PART 6**

**B: OTHER RECORDS**

**Further reply to paragraph 1:**

18. I am advised that there are no other records that exist save for what was previously provided to Mr. Brink.

**Further reply to paragraph 28**

19. I annex hereto a copy of my email instruction to the ROE which is marked "BN2".

**Further reply to paragraph 32**

20. As far as I could ascertain, this information was communicated verbally by the ROE to the JCEs at both Durban and Pietermaritzburg JCs. I am also informed that copies of the regret letters were forwarded to both the JCEs.

**PART 7**

**RECORDS**

**Further reply to paragraph 3 and**

21. I am not aware of any such written communications.

**PART 8**

**Further reply to paragraph 13**

22. I confirm that no such written records exist.



**Further reply to paragraph 14**

23. I confirm that no such written records exist as the decision was taken by me in consultation with Chief Executive Officer and the HRE.

**Further reply to paragraph 15**

24. I confirm that the documentation relating to the reasons were sent to Mr. Brink in the letter by the CEO dated 28 January 2011.

**PART 9**

**Further reply to paragraph 16**

25. To the best of my knowledge, I can confirm that no such correspondence exists.

**Further reply to paragraph 26**

26. I confirm that regret letters were sent to two other applicants for the senior litigator positions. However, such information cannot be disclosed to third parties without their consent.

**PART 10**

**Further reply to paragraph 17-18**

27. I can confirm that the request by the CEO for me to provide Mr. Brink with a response was done per e-mail. Copy thereof is attached marked "BN3".

**PART 11**

**Further reply to paragraph 25**

28. I refer you to the reply to part 6 with specific reference to paragraph 19 above.

**PART 12**

**Further reply to paragraph 33**

29. I confirm that no written records of this decision exist. For the sake of completeness I refer you to paragraph 16 above.

Handwritten signature and initials in black ink, appearing to be 'W' and 'D'.

**PART 13**

**Further reply to paragraph 35**

30. I confirm that a search was conducted on our internal email system and there are no records found where Mr. Brink's name was discussed or appears prior to his request for information except for an email from one Jeremy Brink containing your CV sent by the Pietermaritzburg JCE and which was further forwarded to Vela Mdaka.

**PART 14**

**Further reply to paragraphs 1-3**

31. I submit with respect that the documentation supplied to Mr Brink by the CEO in her letter of 28 January 2011 contains all the relevant information requested.

**PART 15**

**Further reply to paragraph 4**

32. There are no written records of the relevant discussions between myself and the CEO.

**PART 16**

**Further reply to paragraph 5**

33. I confirm that the consultation with the HRE on this matter was done verbally.

**PART 17**

**Further reply to paragraph 6-8**

34. The documentation forwarded to Mr Brink by the CEO in her letter of response dated 28 January adequately covers, I submit, all the information requested in these paragraphs.

**PART 18**

**Further reply to paragraph 9**

35. I confirm that no written record of this decision exists. For the sake of completeness I refer to paragraph 16 hereinabove.

**PART 19**

**Further reply to paragraph 10**


36. The decision taken by me, in consultation with the Chief Executive Officer and Human Resources Executive, is in accordance with the Approval Framework and within the powers delegated to the executive. There is no need, in terms of the above Framework, for the executive to refer to the Board in this regard. The Board was therefore not informed of the decision.

**PART 20**

**Further reply to paragraph 11**

37. I confirm that all regret notifications were communicated by the relevant Regional Human Resources Managers. However, such information can only be disclosed upon consent by the relevant third parties being granted.

Signed at Braamfontein on this 8<sup>th</sup> day of April 2011

  
\_\_\_\_\_  
**DEPONENT**

Signed and sworn before me at Braamfontein this 8<sup>th</sup> day of April 2011 after the Deponent declared that he is familiar with the contents of this statement and regards the prescribed oath as binding on his conscience and has no objection against taking the said prescribed oath. There has been compliance with the requirements of the Regulations contained in Government Gazette R1258, dated 21 July 1972 (as amended).

COMMISSIONER OF OATHS:

FULL NAMES:

CAPACITY:

ADDRESS:



\_\_\_\_\_  
**MOLATELE MAKHURA**  
\_\_\_\_\_  
COMMISSIONER OF OATHS  
PRACTISING ATTORNEY RSA  
\_\_\_\_\_  
7th FLOOR BRAAMFONTEIN CENTRE  
23 JORISSEN STREET  
\_\_\_\_\_  
TELEPHONE (011) 403-2765

**BNI**



Legal Aid  
South Africa



1<sup>st</sup> March 2011

Mr Brian Nair  
National Operations Executive  
Legal Aid South Africa

Dear Brian

**APPOINTMENT AND DELEGATION AS DEPUTY INFORMATION OFFICER  
FOR LEGAL AID SOUTH AFRICA**

I hereby, and in my capacity as the Chief Information Officer and in compliance with section 17(6), appoint you to act as the Deputy Information Officer for Legal Aid South Africa with effect from 1<sup>st</sup> March 2011. Your appointment shall be valid until withdrawn by the Chief Information Officer or Chief Executive Officer

Regards

*V. V. Vedalankar*

Vidhu Vedalankar  
Chief Executive Officer and Chief Information Officer

Your voice. For justice.

**BN2**

**From:** Brian Nair  
**Sent:** 16 August 2010 08:57 AM  
**To:** Vela Mdaka  
**Cc:** Bertus Appel  
**Subject:** FW: Senior Litigator Position: Pietermaritzburg

Hi Vela

As discussed, please find our response letter to Mr Brink. Also ensure that you inform your HR section to regret all persons who attended senior litigator interviews for both PMB and Durban as we will not be proceeding this these recruitment.

Thanks

Regards

**Brian Nair**  
National Operations Executive



Tel: 011 877 2000  
Fax: 011 877 2222  
[www.legalaid.co.za](http://www.legalaid.co.za)

**From:** Nadeen Long  
**Sent:** 04 August 2010 01:55 PM  
**To:** arbrink@iafrica.com  
**Cc:** Brian Nair  
**Subject:** Senior Litigator Position: Pietermaritzburg

Dear Mr Brink

Attached hereto please find a response to your letter dated 11 July 2010.

Thank you.

Regards

*Nadeen Long*  
Executive PA to Brian Nair  
National Operations Executive  
Legal Aid South Africa  
Tyndal Street, Durban  
Tel: 031 877 2000  
Email: [Nadeen@legalaid.co.za](mailto:Nadeen@legalaid.co.za)

**DN3**

-----Original Message-----

From: Vidhu Vedalankar

Sent: 29 July 2010 02:33 PM

To: Brian Nair; Amanda Clark

Subject: FW: Complaint against the HRE & an interview process

Hi Brian

Please see attached letter

I am not sure what is happening with these senior litigator appointment but we need to finalise the process and advise the persons interviewed of the outcome.

Please will you look into this and discuss with Mandi and then discuss with me.

Regards

Vidhu Vedalankar

CEO

Tel: 011 877 2000

Fax: 011 877 2222

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**REQUEST FOR INFORMATION IN TERMS PROMOTION OF ACCESS TO  
INFORMATION ACT 2 OF 2000**

In the matter between:

**ANTHONY BRINK**

**Applicant**

And

**THE LEGAL AID SOUTH AFRICA**

**Respondent**

---

**CONFIRMATORY AFFIDAVIT**

---

I, the undersigned;

**VIDHULEKHA NARDEV VEDALANKAR**

Do hereby make an oath and state:

1. I am a major female and employed as a Chief Executive Officer for Legal Aid South Africa. I am the Chief Information Officer and duly authorised to depose to this confirmatory affidavit.
2. The facts which are herein so confirmed are to my knowledge true and correct, save where the converse so appears and is so expressly stated.

- 3 I have read the affidavit of Mr. Brian Nair and agree with and confirm the contents insofar as they apply to me.

Signed at Braamfontein on this...5<sup>th</sup>...April day of 2011.

N. N. Ndabakhe

**DEPONENT**

With the relevant provisions of Annexure A of the rules governing the administration of an oath or affirmation No. R. 1258 of 21 July 1972 as amended by G.N.R. 1648 of 19 August 1977 (as amended) having been complied with:

The deponent has acknowledged that he understands the contents of this declaration, has no objection to taking the prescribed oath and considers the prescribed oath to be binding on his conscience and that he has uttered the words "*So help me God*"



**COMMISSIONER OF OATHS**

**ADDRESS:**

**MOLATELO MAKHURA  
COMMISSIONER OF OATHS  
PRACTISING ATTORNEY RSA  
7TH FLOOR BRAAMFONTEIN CENTRE  
23 JORISSEN STREET  
TELEPHONE (011) 409-2765**

**REQUEST FOR INFORMATION IN TERMS PROMOTION OF ACCESS TO  
INFORMATION ACT 2 OF 2000**

In the matter between:

**ANTHONY BRINK**

**Applicant**

And

**THE LEGAL AID SOUTH AFRICA**

**Respondent**

---

**CONFIRMATORY AFFIDAVIT**

---

I, the undersigned;

**AMANDA CHARLOTTE CLARK**

Do hereby make an oath and state;

1. I am a major female and employed as a Human Resources Executive for Legal Aid South Africa. I am duly authorized to depose to this confirmatory affidavit.
2. The facts which are herein so confirmed are to my knowledge true and correct, save where the converse so appears and is so expressly stated.

3. I have read the affidavit of Mr. Brian Nair and agree with and confirm the contents insofar as they apply to me.

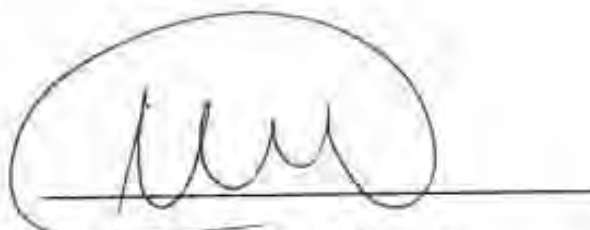
Signed at Braamfontein on this.....<sup>5<sup>th</sup></sup>..... day of April 2011.



**DEPONENT**

With the relevant provisions of Annexure A of the rules governing the administration of an oath or affirmation No. R. 1258 of 21 July 1972 as amended by G.N.R. 1648 of 19 August 1977 (as amended) having been complied with:

The deponent has acknowledged that he understands the contents of this declaration, has no objection to taking the prescribed oath and considers the prescribed oath to be binding on his conscience and that he has uttered the words "*So help me God*".



**COMMISSIONER OF OATHS**

**ADDRESS:**

**MOLATELO MAKHURA**  
COMMISSIONER OF OATHS  
PRACTISING ATTORNEY RSA  
7TH FLOOR BRAAMFONTEIN CENTRE  
23 JORISSEN STREET  
TELEPHONE (011) 403-2765



# CERTIFICATE OF OUTCOME OF DISPUTE REFERRED TO CONCILIATION



CASE NUMBER: KNPM 926-11

I certify that the dispute between

ANTHONY ROBIN BANK  
(referring party)

And  
LEGAL AID SOUTH AFRICA (LASA)  
(other party/parties)

Referred to conciliation on / ~~condonation~~ granted on: 29/3/2011 (insert date)

Concerning

- Unfair Dismissal
- Mutual Interests
- Organisational Rights
- Unfair Discrimination
- Severance Pay
- Unfair Labour Practice

And relates to

- Misconduct
- Reason Unknown
- Incapacity: Ill Health
- Interpretation & Application
- Operational Requirements
- Poor Work Performance
- Entitlement
- S186(2) ( )
- Constructive

Condonation:

- Granted
- Not Applicable

was resolved on the \_\_\_\_\_ or  remains unresolved as at 20/04/2011

If this dispute remains unresolved, it can be referred to:

- CCMA Arbitration
- Labour Court
- None
- Strike / Lockout



Official stamp of the CCMA

F.A. MOODLEY  
Name of Commissioner (Please Print)

[Signature]  
Signature of Commissioner

Place

P.M. BURG

Date

20 APRIL 2011

**SAHRC COMPLAINT: GP/2011/0166**

**ADDENDUM TO COMPLAINT FORM**

**AMENDED AND FURTHER COMPLAINT**

My complaint against Legal Aid South Africa information officer Vidhu Vedalankar on Monday 11 April 2011 for ‘violating my fundamental right to documentary information held by the state, as guaranteed by section 32 of the Bill of Rights and given effect by PAIA’ was filed after the expiry of the 30-day period prescribed by section 25 of PAIA for compliance with my third records request and I’d received no response.

It transpires, however, that my third request was indeed dealt with – by deputy information officer Brian Nair, newly appointed by Vedalankar for the job. On 19 April I learned from LASA that its email to me with attachments on 8 April had been trapped as ‘oversize’ by LASA’s ‘MailMarshal’ email software, and so had not been transmitted to me; and that in view of this, hardcopy originals of the documents were mailed to me by registered post. I collected these on the same day.

Nair also dealt with my First Memorandum to the SAHRC’s PAIA Unit detailing the outstanding records specified in my first and second requests in August and December 2010 that I still required, or confirmation on oath that they didn’t exist.

I accept that LASA’s response out of time to my third request was the result of unanticipated technical difficulties, and I accordingly waive the point.

Nair has finally provided me with the long-outstanding section 23 affidavit I require concerning my first and second requests in August and December 2010, as redacted in my First Memorandum. He has also put up a section 23 affidavit concerning my third records request.

Nair’s two section 23 affidavits comply with PAIA for my purposes.

It is to be regretted, however, that like Vedalankar has twice done in this matter, Nair has also conflated my PAIA requests with the core dispute between us about his and Vedalankar’s unlawful abortion of my appointment to the senior professional post for

which I was selected and recommended by a professional selection panel, an issue wholly irrelevant to my PAIA requests; and he has likewise abused the occasion to contend aspects of Vedalankar's and his demonstrably false version of the facts ahead of the impending trial of my claim to appointment and compensation/damages in the Labour Court (my Statement of Claim is substantially complete and the case will be launched soon). Misconceiving the purpose of a section 23 affidavit, Nair even puts up superfluous confirming affidavits, which are not contemplated by PAIA and are therefore irrelevant.

At all events, now that I have section 23 affidavits in respect of both my first and second records requests as redacted in my First Memorandum and my third records request, I withdraw my complaint to the SAHRC that the information officer has not provided me with a section 23 affidavit as required by PAIA.

My residual complaint for adjudication in this regard is that in contempt of her obligations under section 23 of PAIA, Vedalankar has kept me waiting unnecessarily for more than six months for an affidavit in respect of my first and most extensive records request delivered on 30 August 2010. And it wasn't just legal ignorance, because I highlighted this requirement and quoted the Act in my covering letter of 26 August.

I further persist with my complaint that in violation of my constitutional right to access LASA's records, deputy information officer Nair is still unlawfully withholding several critically important records from me, required for the preparation of my case in the Labour Court; and he is doing so on grounds that are manifestly factually and legally spurious. Nair's given reasons for refusing my requests are analysed and debunked in my Second Memorandum annexed hereto.

I have included provision in my Second Memorandum for the SAHRC's PAIA Unit to record its concurrence or disagreement with my factual and legal analysis. The PAIA Unit's shared opinion that the reasons given by Nair are legally irrelevant, conveyed to him for discussion with legally qualified personnel in LASA (neither he nor Vedalankar are legally qualified), ought to suffice to exact the outstanding records that he is unlawfully withholding.

But if it doesn't, and Nair continues concealing the evidence of the records I need for my case, I persist with my appeal at the conclusion of my complaint to the SAHRC earlier this month that the SAHRC convene 'a public hearing, urgently ... in terms of Article 6.5 of the Complaints Handling Procedures, for Vedalankar's [and Nair's] interrogation by the SAHRC concerning [their] contemptuous refusal to comply with [their] constitutional and legal obligations'.

And, 'If, despite this, Vedalankar [and Nair] persist.. in unlawfully withholding the records I need ... I request that the SAHRC applies in its own name in terms of Article 7.2 to the South Gauteng High Court, Johannesburg, for an order compelling Vedalankar [and Nair] to comply with my records requests, on pain of the usual sanction for contempt of court.'

The difference between civil wrongs and crimes is that the public have an interest in the proper prosecution of the latter. Vedalankar's and Nair's contempt for the constitutional rights circumscribed by section 32 of the Constitution and made practically enforceable by PAIA is obviously a matter of public interest and importance, exceeding my personal interest, particularly having regard to the special aggravating circumstances in the matter.

It is plain that the real reason that Vedalankar and Nair have persistently concealed records from me, and from the Labour Court – asserting the most transparently vacuous pretexts for doing so – has been to delay and pervert the true and just determination of my claim.

The Preamble to PAIA 'Recogniz[es]' that 'the system of government in South Africa before 27 April 1994, amongst others, resulted in a secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations'.

It was precisely to put an end to these abuses that PAIA was enacted.

Not only have Vedalankar and Nair abused their power as CEO and NOE of a public body to secretively violate my human right to equality and not to be discriminated against on prohibited unconstitutional grounds and then attempted to cover this up

with lies, they have also abused their power as information officer and deputy information officer to conceal the documentary evidence revealing this.

To this end, Vedalankar as information officer has even lied to me to cover her tracks as CEO.

Item 35 of my first records request in August 2010 sought ‘All and any other electronic records, including internal email, in which the word ‘Brink’ features, where it clearly or possibly refers to the records requester Adv Anthony Brink ( – conduct a search on the word ‘Brink’ of the computer server at LASA’s national office on which all computer files, documents, and email are archived).’

Vedalankar falsely replied on 28 January 2011: ‘As for request 35: To the best of knowledge [sic], there are no other electronic records referring to you.’

In truth and in fact, there were ‘such other electronic records referring to you’ – on her own computer.

In my August letter to Vedalankar covering my first request, I drew her attention to Section 90(1)(b) of PAIA, and quoted it: ‘A person who with intent to deny a right of access in terms of this Act ... conceals a record ... commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years.’

I considered it necessary to mention this in view of the many lies I’d already been told by two other executive managers.

Despite being warned of this criminal sanction for concealing records, Vedalankar deliberately suppressed ‘other electronic records referring to’ me.

On 30 November 2010 I petitioned LASA Chairman Judge Mlambo and the Board of Directors about Vedalankar’s refusal to comply with PAIA and her unlawful discrimination against me.

I emailed my letter as a PDF attachment individually to Judge Mlambo and to those members of the Board listed in LASA’s annual report whose email addresses I’d found by internet searching. I did not copy Vedalankar in.

On 6 December Board Secretary Bee-Mari Schoeman (I hadn't copied her in either) emailed on Judge Mlambo's behalf to acknowledge his receipt of my letter and to tell me he was 'presently out of the country' and would respond when he could. I thereafter ascertained from his secretary at the Labour Court that he was returning on the 22nd.

Judge Mlambo emailed me his reply on 30 December 2010.

The PDF properties folder of his letter, however, tell that it was authored on Vedalankar's computer two weeks earlier on the 15th, while Judge Mlambo was still in the USA.\*

This shows that there was email correspondence between Vedalankar and Judge Mlambo within the ambit of my request item 35.

Please advise me whether I should report Vedalankar's criminal contravention of section 90(1)(c) of PAIA to the police.

Please advise me further what steps will be taken to force Vedalankar to disgorge these records that she's hiding and lying about. (When I called for them specifically in my third records request, deputy information officer cluelessly refused them as 'not relevant'.)

As my recent email with the PAIA Unit of the SAHRC shows (copied to the Complaints Registrar on 11 April together with my complaint), I have repeatedly asked whether LASA has been registered as a PAIA delinquent in the SAHRC's next report to Parliament, and what the reporting period is. And whether a particular Commissioner has been appointed to oversee the implementation of PAIA, as Parliament has urged. I have not been favoured with a reply.

It is unprofessional – even in the public service – for attorneys not to respond to correspondence, and I would ask that my simple questions in this regard be answered at last. The matter is extraordinarily important.

Even if the remaining critically important records that Nair is unlawfully withholding are finally surrendered to me – thereby averting the need for an application to the

High Court to compel – please advise me what action will the SAHRC take concerning Vedalankar’s and Nair’s shocking display of contempt for section 32 of the Constitution, and their abuse of their offices as information officer and deputy information officer in not complying with their obligations under PAIA in order to conceal the evidence of their violation, as CEO and NOE, of my constitutional right to equality and not to be discriminated against on prohibited grounds in the democratic constitutional era.

A year ago, on 14 April, at a meeting between SAHRC representatives and the Parliamentary Portfolio Committee on Justice and Constitutional Development, John Jeffrey MP emphasized ‘the importance of people getting access to information’, and urged the appointment of a dedicated Commissioner to oversee this, even offering more money for the project.

Dene Smuts MP remarked: ‘We do not have access to information in South Africa. The whole thing is characterized by mute refusal.’ Even with ‘limited resources, there’s never any excuse to do nothing. ... We would appreciate it if the Commission would just get cracking’ notwithstanding staff turnover problems etc. And ‘It would be great if you would just try to cut through all the difficulties and get going.’

I would be grateful, and I look forward to the SAHRC’s response and advices.

This complaint almost certainly concerns the most serious case of deliberate contempt for PAIA by information officers of a public body yet reported to the SAHRC.

Dated at Pietermaritzburg this 28th day of April 2011.



ADV ANTHONY BRINK

\*All material documents in this matter are archived online at:  
[www.tig.org.za/LASA](http://www.tig.org.za/LASA)  
username: lasa  
password: LASA2010

## **SECOND MEMORANDUM**

**TO: ATTORNEYS CHANTAL KISOON AND NOKWANDA MOLEFE, PAIA UNIT, THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

**IN RE: ADV ANTHONY BRINK AND LEGAL AID SOUTH AFRICA**

**A CRITICAL ANALYSIS DEMONSTRATING THE FACTUAL AND LEGAL IRRELEVANCE OF THE REASONS ADVANCED BY BRIAN NAIR, DEPUTY INFORMATION OFFICER OF LEGAL AID SOUTH AFRICA, FOR REFUSING ACCESS TO CERTAIN SPECIFIED RECORDS DULY REQUESTED UNDER SECTION 11 OF THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000**

This Second Memorandum comprises two sections.

Section 1 deals with newly appointed LASA deputy information officer Brian Nair's response to Parts 9 and 20 of my First Memorandum of 3 March 2011, in which I identified the records I still require but which LASA information officer Vedalankar has unlawfully withheld and which records Nair persists in unlawfully withholding.

Section 2 deals with Nair's unlawful refusal of records specified in my third records request of 9 March 2011.

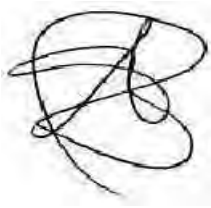
For ease of reference, Parts 9 and 20 of my First Memorandum are recited in Section 1 below, detailing the records I need that Vedalankar and Nair have unlawfully withheld. Likewise, the records specified in my third records request that Nair has unlawfully refused are recited in Section 2.

In each case, I will analyse and demonstrate the obvious factual and legal vacancy of the reasons Nair advances for unlawfully refusing me access

to the records I need, in violation of my constitutional right to information.

I have made provision for the SAHRC's PAIA Unit to record its opinion regarding Nair's reasons for concealing from me and from the Labour Court the evidence of the records I seek and which I now urgently require for the preparation of my case against LASA in that court.

I respectfully request this matter be given priority attention: the outcome of my referral of my unfair discrimination complaint to the CCMA was the issue of a non-resolution certificate, as expected, following a conciliation hearing on 20 April, and I am required to launch my case in the Labour Court within six weeks of that date.

A handwritten signature in black ink, appearing to be 'A. Brink', written over a light grey rectangular background.

ADV ANTHONY BRINK

28 April 2011

arbrink@iafrica.com

033 344 2420

083 779 4174

## **SECTION 1**

### **First Memorandum**

#### **PART 9**

26. Excluding the ‘regret letter’ to Brink from KwaZulu-Natal Regional Operations Executive Vela Mdaka (‘Mdaka’) on 23 August 2010 and emailed to Brink by Brijlal by way of an email attachment on the same day, the ‘regret letters’ sent to all of the other shortlisted candidates interviewed by the KwaZulu-Natal regional professional selection board on 12 November 2009 – following the decision made not to ‘be proceeding with the filling of any of these posts’, i.e. ‘all vacant Senior Litigator posts’ (– per Nair’s letter to Brink).

#### **Information officer’s response on 28 January 2011:**

30. As to your request.. ... 26 ...: I have exercised my discretion against granting you access to this information in terms of sections 43(1) as it relates to confidential correspondence with third parties.

#### **Requester’s critical analysis and comment in First Memorandum on 3 March 2011:**

Section 43(1) of the Act doesn’t provide that ‘confidential correspondence with third parties’ (the information officer’s homebrewed faux legal phrase) is excluded from access by a records requester. The section provides (in the heading) for the ‘Mandatory protection of research information of third party and protection of research information of public body’. ...

Request B26 manifestly has nothing whatsoever to do with ‘research information of third party [or] public body’ nor with ‘Operations of public bodies’. It is a request for copies of the ‘regret letters’ allegedly ‘sent to all of the other shortlisted candidates interviewed by the KwaZulu-Natal regional professional selection board on 12 November 2009’. Copies of these letters are required, and any confidential information (addresses, telephone numbers) may be blacked out. ...

## **Deputy information officer's response on 8 April 2011:**

I confirm that regret letters were sent to two other applicants for the senior litigator positions. However such information cannot be disclosed to third parties without their consent.

## **Requester's further comment:**

The term 'personal information' defined in section 1 of PAIA 'means information about an identifiable individual, including, but not limited to ... (f) correspondence sent by the individual that is implicitly or explicitly of private or confidential nature or further correspondence that would reveal the contents of the original correspondence'.

Section 34(1) of PAIA provides that 'the information officer of a public body must refuse a request for access to a record of the body if its disclosure would involve the unreasonable disclosure of personal information about a third party'.

Section 34(2) provides: 'A record may not be refused in terms of subsection (1) insofar as it consists of information – (a) about an individual who has consented in terms of section 48 or otherwise in writing to its disclosure to the requester concerned'.

I am not seeking any 'personal information about a third party' or 'about an individual' or 'correspondence sent by' him.

I am seeking copies of formal 'regret letters' sent to the other shortlisted applicants interviewed for the vacant Pietermaritzburg and Durban Senior Litigator posts. Four were interviewed, including me. Our names are no secret and appear on KZN Regional Operations Executive Vela Mdaka's Motivation form, signed off by the selection panel in November 2009.

This Motivation form, supplied to me by the information officer on 28 January 2011, well over a year after my successful interview, shows that indeed I was selected and recommended for appointment to the Pietermaritzburg Senior Litigator post for which I had applied (as Bongani Mngadi was chosen for Durban).

Mngadi's information to me on the telephone on 12 November 2010 was that he'd already been notified 'in April/May' 2010 that the Durban

post wasn't going to be filled. (In contradistinction, despite my persistent appeals for information, I was deliberately kept waiting in the dark.)

Mngadi told me he never got any 'regret letter' in August 2010, like I did.

The deputy information officer appears to confirm this in his reasons for refusing me copies of the other 'regret letters': 'I confirm that regret letters were sent to two other applicants' – not three.

As mentioned, I have the other candidates' names. Their addresses are 'publicly available', as section 34(2)(c) puts it, kept on register by the Law Society. The names and addresses on the 'regret letters' are accordingly not 'personal information about a third party' or 'about an individual'.

Bald 'regret letters' from LASA, such as the one I received, giving no reasons and containing no 'personal information about a third party' or 'about an individual', are manifestly not hit by section 34 of PAIA and are therefore compellable and must be disclosed.

No consent by the addressees is required under section 34(2) of PAIA, and the deputy information officer ignorantly misstates the law in alleging it is.

The deputy information officer's refusal to disclose these records is incompetent and unlawful.

The record is compellable and it must be disclosed.

**SAHRC PAIA Unit's comment:**

We agree/We disagree because

## **SECTION 2**

### **Third records request on 9 March 2011**

#### **Record 3.2**

LASA's complete Recruitment protocol if it extends beyond nine pages. (Record V2 annexed to Vedalankar's letter ends abruptly on page 9 and appears to be incomplete. (Bundle, pages 228–34))

#### **Deputy information officer's response on 8 April 2011:**

The policy deals with Recruitment, Induction, Probation and Relocation. You have been provided with the entire extract of the policy as far as it relates to the recruitment aspect. The remaining part of the policy does not deal with recruitment issues and is therefore irrelevant.

#### **Requester's comment:**

It makes no intelligent sense for the information officer to claim that only part of a document entitled 'Recruitment' deals with recruitment, and that the section dealing with e.g. 'Induction' is not a recruitment matter.

In terms of section 11(3) of PAIA, an information officer's opinion as to what he thinks the requester's purpose is in requesting a record is irrelevant.

PAIA does not require that a record of a public body be relevant to anything for it to be compellable.

'Relevance' is not a criterion for the discoverability of a public record.

No discretionary or mandatory grounds exist for refusing me the complete 'Recruitment' protocol, only some of which has been provided.

I have requested the complete record and PAIA entitles me to access and read it.

See further the dicta of the Supreme Court of Appeal judgment in the Mittalsteel case quoted in the introduction to my First Memorandum.

The deputy information officer's refusal to grant me access to the complete Recruitment protocol is unlawful.

He is required by PAIA to disclose the complete record.

**PAIA Unit comment:**

We agree that PAIA entitles the records requester to access the complete record. / In our opinion the records requester is not entitled to access the complete record because

**Records 3.6–9**

6. The minutes of the Board meeting held on 29 May 2010.
7. The minutes of the Board meeting held on 30 October 2010.
8. The agenda of the Board meeting held on 26 February 2011.
9. The minutes of the Board meeting held on 26 February 2011.

**The deputy information officer's response on 8 April 2011:**

I can confirm that no item relating to you was either on the agenda or tabled at any of the Board meetings. ... Your request for information is refused in terms of section 44(1)(a) of the Promotion of Access to Information Act 2 of 2000 as amended.

**Requester's comment:**

The deputy information officer's response reveals his entire lack of understanding of how section 44(1)(a) applies to records requests of this nature.

He appears to think that section 44(1)(a) veils all agendas and minutes of public body Board meetings from access by the public. Certainly he thinks that all he has to do is invoke the sub-section against my request and that is the end of it; he doesn't even need to apply his mind to each record and exercise a discretion whether or not to refuse access to them, much less does he need to provide a full statement of his reasons, sufficient for a court to interrogate their reasonableness and their validity.

The Supreme Court of Appeal recently considered and rejected this approach in *The President of the Republic of South Africa and Others v*

M & G Media Ltd (570/2010) [2010] ZASCA 177; 2011 (2) SA 1 (SCA) (14 December 2010), likening it to that of apartheid officials.

The court noted in paragraph 19 of the judgment that ‘The affidavits that have been filed by the appellants are reminiscent of affidavits that were customarily filed in cases of that kind [tried under apartheid legislation, discussed]. In the main they assert conclusions that have been reached by the deponents, with no evidential basis to support them, in the apparent expectation that their conclusions put an end to the matter. That is not how things work under the Act. The Act requires a court to be satisfied that secrecy is justified and that calls for a proper evidential basis to justify the secrecy.’

As the court put it in the following paragraph: ‘What the appellants’ case amounts to is little more than rote recitation of the relevant sections and bald assertions that the report falls within their terms. That is not the “stark and dramatic contrast” with the past that was referred to by Mahomed DP. Nor does it reflect the “culture of justification” that was referred to by Mureinik and which is imbedded in the Act.’

The apartheid ‘past’ to which the court referred was (per paragraph 18) ‘another time [when] courts were regularly confronted with laws that precluded them from going behind conclusions and opinions formed by public officials’. (In the instant case, the deputy information officer hasn’t even got as far as expressing an opinion and conclusion.)

The court noted in paragraph 22: ‘Some provisions of the Act make secrecy mandatory and others make it discretionary. The sections with which we are concerned are both discretionary. ... Section 44 allows access to a record to be refused “if the record contains an opinion, advice, report or recommendation obtained or prepared ... or an account of a consultation, discussion or deliberation that has occurred ... for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law.”’ (ellipsis in the judgment)

The deputy information officer doesn’t even think about whether I’m seeking a record of that nature: he just sees the words ‘including, but not limited to, minutes of a meeting’ and reckons that permits him, without

more, to bar me from accessing and reading the agendas and minutes of LASA Board's meetings.

It's notable that information officer Vedalankar takes a different view of the matter. On 28 January 2011 she gave me the minutes of the Board meeting of 31 July 2010 as well as the 'Report to Board' on 16 July from herself and her fellow executive managers – concerning a policy proposal and resolution. Unlike the deputy information officer, Vedalankar appreciates that such records are not ipso facto secret, to be concealed from the public under section 44(1)(a).

In *Minister for Provincial and Local Government v Unrecognised Traditional Leaders, Limpopo Province (Sekhukhuneland) 2005 (2) SA 110 (SCA)*, the Supreme Court of Appeal held: 'It is clear that s 44(1)(a) limits the right of access to information and s 36 of the Constitution requires that the scope of such a provision be restricted only to an extent which is reasonable and justifiable. Section 39(2) obliges every court to promote "the spirit, purport and objects of the Bill of Rights" when interpreting any legislation. It must also be borne in mind that the Act was enacted in order to give effect to access to information and promote the values of openness, transparency and accountability which are foundational to the Constitution.'

These values are not exhibited by the deputy information officer in concealing the evidence of the records I require for trial.

And in *CCII Systems (Proprietary) Ltd v Fakie NO and Others 2002 JDR 0897 (T)* the Hartzenburg J held obiter in paragraph 18 of the judgment: 'The applicant argues that if he was de-selected as supplier due to political pressure or some impropriety a comparison between draft reports and the final one may indicate that that is what happened. Conversely if there was no impropriety the very same comparison will prove that. That raises the question what the object of section 44 is. It was submitted that it is not to hamper a public body in its administration and formulation of policy and to guard against the supply of confidential information prematurely. Senior and junior officials must be able to talk freely about the development of policy matters and their interaction at a stage before finalisation should not at that stage be accessible. Opportunistic entrepreneurs should not be allowed to obtain information along this route which give them an unfair advantage over

their rivals. In my view it does not deal with historic situations. The joint report has been finalized and accepted by Parliament. At this stage the draft reports are only of historic importance and cannot obstruct the joint commission in its work. In my view they are no longer protected by the provisions of section 44.'

This is to say, on Hartzenburg J's construction of section 44, the minutes of LASA board meetings held in the past in regard to settled policy matters 'are no longer protected by the provisions of section 44', even if such minutes were hit by section 44 in the first place.

Nair's statement that 'no item relating to you was either on the agenda or tabled at any of the Board meetings' does not count as a legitimate reason for refusal. He did not know my purpose in seeking the records, and his opinion as to what it might be is irrelevant under section 11(3) and is no valid basis to refuse my requests.

Although it's irrelevant to the decision of my request, I record that my purpose in seeking these records is to determine whether at any of the Board meetings whose agenda and minutes I requested, the Board (a) resolved to abolish or freeze posts to resolve funding problems, and (b) even discussed the abolition or freezing of posts to this end.

In other words, besides the Board's resolution to abolish 56 junior practitioner posts, and none other, taken at its meeting on 31 July 2010 on Vedalankar's, Nair's and other executive managers' recommendation, the Board has never discussed, much less resolved to abolish or freeze any other posts, including critical Senior Litigator posts.

I also wish to establish whether the Board discussed funding issues at the meetings in question.

My main discrimination case is founded on Vedalankar's and Nair's gravely unlawful conduct: their violation of my constitutional rights to equality and not to be unfairly discriminated against on prohibited unconstitutional grounds and their breach of the provisions of the Employment Equity Act in this regard. This is to say, their 'substantial contravention of, or failure to comply with, the law' as contemplated by the overriding provisions of section 46 of PAIA under the heading 'Mandatory disclosure in the public interest'.

PAIA entitles me to all these records and the deputy information officer is withholding them unlawfully.

**PAIA Unit comment:**

We agree that PAIA entitles the records requester to access these records, absent a statement of reasons supported by evidence that the refusal of access to these records is reasonably justified under section 44(1)(a). / In our opinion the records requester is not entitled to access these records because

**Record 3.12**

The ‘regret letter’ sent in 2010 to the candidate selected and recommended for appointment as Senior Litigator, Mthatha, conveying that LASA executive management had resolved not to fill the post; personal information may be blacked out. (Per Nair’s letter to Brink on 3 August 2010 read with Vedalankar’s letter to Brink on 18 October 2010. (Bundle, page 19; and page 104, paragraph 7.3))

**Deputy information officer’s response on 8 April 2011:**

The communication that the position was not going to be filled was conveyed to the relevant candidate by the Regional Operations Executive of the Eastern Cape. The information requested is refused and cannot be provided as it relates to third parties as envisaged in terms of section 34(1) of the Promotion of Access to Information Act 2 of 2000 as amended.

**Requester’s comment:**

Section 34(1) of PAIA does not bar the disclosure of a record by reason of the fact merely that it ‘relates to third parties’; and the deputy information officer’s stated reason for refusing this record is irrelevant and bad in law.

The point is addressed at length in Section 1 above.

I require the record and PAIA entitles me to it.

I mentioned in my request that ‘personal information may be blacked out’. This excludes the successful Mthatha applicant’s name and professional contact particulars, which I require.

Although section 11(3) of PAIA stipulates that my purpose in seeking any record of a public body is immaterial, I record here that I wish to consult the successful Mthatha applicant with a view to calling him as a possible witness to testify in my impending case in the Labour Court.

I also propose advising him of his rights that Vedalankar and Nair, as CEO and NOE, have violated, and to offer to assist him pro bono to vindicate them.

**PAIA Unit comment:**

We agree that PAIA entitles the records requester to access this record with the name and professional contact particulars visible and not blacked out. / In our opinion the records requester is not entitled to access this record/is not entitled to know the name and professional contact particulars of the successful Mthatha candidate because

**Record 3.13**

The instruction issued to Board Secretary Bee-Mari Schoeman not to circulate Brink’s 30 November 2010 petition addressed to the Chairperson and the Board of Directors to all Board members and not to put it on the agenda of the next Board meeting for discussion, as Brink had requested, and furthermore not to respond to Brink’s correspondence to her. (Bundle, page 198, paragraph 6; and page 207, first paragraph)

**Record 3.14**

All email communications between Judge Mlambo and Vedalankar concerning Brink’s petition to Judge Mlambo and the Board of Directors on 30 November 2010.

### **Record 3.15**

LASA Chairperson Judge Dunstan Mlambo's 'request..' to the Board of Directors 'to ignore all communications from' Brink. (Per Judge Mlambo's email to Brink on 24 January 2011. (Bundle, page 209))

#### **Deputy information officer's response on 8 April 2011 regarding requests 3.13–15:**

The information requested is refused as it is not relevant because it is after you were informed that we are not proceeding to fill the Senior Litigator position.

#### **Requester's comment:**

As mentioned above with reference to section 11(3) of PAIA, an information officer's opinion as to the relevance or otherwise to any fact or issue of a public body's record is itself legally irrelevant.

The deputy information officer's refusal to provide access to the records described in items 3.13–15 above, on the ground that in his opinion these records are 'not relevant', is unlawful.

The records are all discoverable and compellable under PAIA and must be provided.

For easy reference, I quote below from my letter to information officer Vedalankar on 9 March 2011 covering my third PAIA request and dealing with the principle applicable to requests 3.14 and 3.15:

Apropos of the status of the records identified in my new record requests 14 and 15, the Sarah Palin Yahoo email scandal in the US is instructive. In September 2008 the Governor of Alaska and Vice Presidential candidate was found to have been using a private email account to discuss government business. An article in *iTwire* pointed up the issue involved: 'Personal emails are not part of the public record. That's the general state of play when it comes to politics in the good ol' USA. It is why there are official public email accounts which are designed for official business use and which become part of the official public record.' (<http://bit.ly/hnyXO8>)

Your reciprocal communications with Judge Mlambo concerning my letter to him and the Board on 30 November 2010 while he was

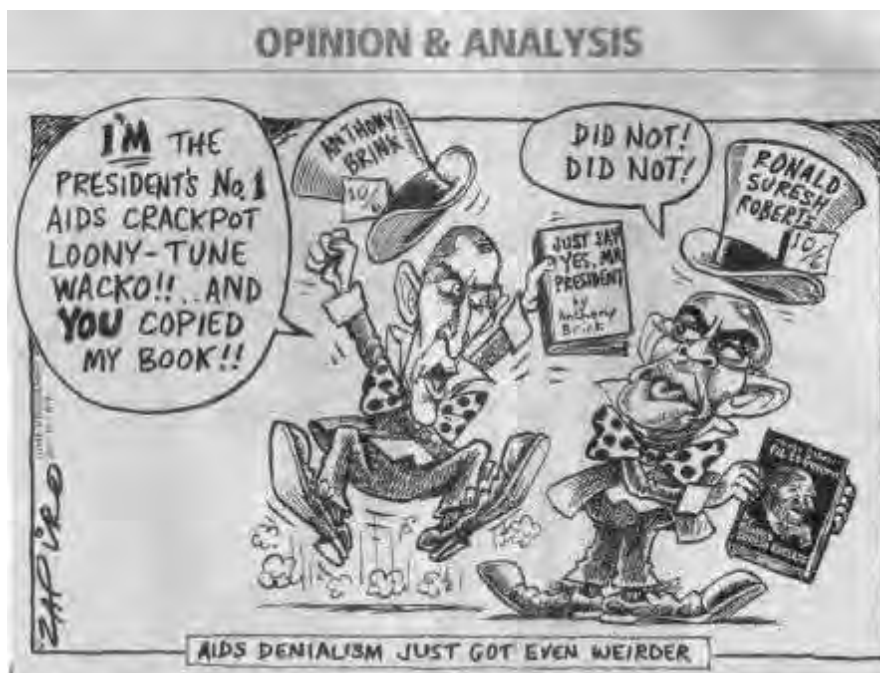
abroad in the US are public records, and I require them. Likewise the record of Judge Mlambo's request to the Board of Directors to ignore my correspondence to the Board concerning the breakdown of lawful governance at LASA; your and LASA's contraventions of the PFMA; and your failure, citing wholly bogus reasons, to comply with your constitutional obligations under PAIA ...

**PAIA Unit comment:**

We agree that PAIA entitles the records requester to access all these records. / In our opinion the records requester is not entitled to access these records because

## 1. THE DA FATWA AND BRINK IN PUBLIC PERCEPTION

‘SOUTH AFRICA’S TOP TWELVE AIDS DISSIDENTS: 1. Anthony Brink ... A DEMOCRATIC ALLIANCE PUBLIC HEALTH WARNING! ... The DA’s objective in compiling this list is to make it clear why these individuals are so dangerous, and raise public awareness about who they are and what they stand for. These individuals hide behind the excuse of promoting scientific debate in order to promote views that are false and dangerous. ... The DA calls on the media, the public, and professional organizations to ... exclude these individuals from positions of authority; deny their dissident views publicity; and take vigorous steps to pursue official action in respect of any infringements of the law.’ **Democratic Alliance public statement, 20 October 2005 (<http://j.mp/eJAsdz>)**



**Zapiro, Cape Times and Star, 20 November 2007**

‘the ravings of [a] drivelling conspiracy-theorist, loony, crackpot, fruitcake. ... I’m a professional at spotting weirdos.’ **David Beresford on Debating AZT, Mail&Guardian, 22 September 2000**

‘There are few rivals to Lysenko’s position in the South African AIDS debate. I wish to give this dishonourable achievement to Anthony Brink, an AIDS denialist who seems to have found the ear of the President.’ **Zackie Achmat, John Foster Lecture, University of KwaZulu-Natal, 10 November 2004**

‘This is Anthony Brink, the biggest liar.’ **Zackie Achmat, addressing supporters outside the Cape High Court in the morning, Cape Town, 21 June 2005**

‘Buffoons such as denialist campaigner Anthony Brink imagine the pressure on the president came from white journalists. The real heat came from ordinary people whose family members were dying while an ideologically perverse and stiff-necked administration

continued to withhold drug treatment.’ **Drew Forrest, deputy editor, *Mail&Guardian*, 28 October 2005**

‘... it’s not uncommon for my dear activist friends in the Treatment Action Campaign to describe the government’s policy as genocidal, based on [Mbeki’s] denialism. I’m so sorry, it’s such a life-and-death issue to the civil society forces I work with across SA ... the damage done to the progressive movement – and the society as a whole – by AIDS denialists is so intense and deep ... It is ... perhaps the most serious problem here, with at least five million HIV+ people and a government unwilling to provide proper care, justifying its resistance by using Duisberg [*sic: Duesberg*], Rasnick, Brink et al.’ **Professor Patrick Bond, email to British investigative journalist Janine Roberts, February 2006**

‘I personally think the kingpin of denialism is Anthony Brink, who rages about ARVs being toxic. His relationship with the President is first-class.’ **Fatima Hassan, AIDS Law Project attorney, ‘Is there still denialism about HIV/AIDS in South Africa?’, Harold Wolpe Memorial Trust lecture, Cape Town, 23 March 2006**

‘A dangerous AIDS dissident ... Anthony Brink, one of the most notorious AIDS dissidents in the country ... Brink, for those of you who don’t know it, is someone who has caused a great deal of harm, to say the least of it. Many people claim that his theories have had a considerable influence over President Thabo Mbeki’s disastrous views on HIV/AIDS.’ **Johannes de Villiers (translated from Afrikaans), *Die Burger*, 22 July 2006**

‘Given your public and vocal position in the debate surrounding AIDS and HIV (a debate which many see as prolonging the suffering and dying of many human beings), it is possible that some people may have difficulty in spending time socially with you.’ **Steve Dyer, saxophonist and university acquaintance, email to the author, 6 September 2006**

‘You must read [the writing of] a crazy man called Anthony Brink and read all the bad things they say about me. Do I care a damn? No, because I know it’s not true. You can never base your policy, your work or your principles on what people think of you.’ **Zackie Achmat, *Mail&Guardian Online*, 30 November 2006**

‘Brink could probably spell AIDS without consulting a dictionary, but that as far as his real knowledge goes. He has a twisted, perverse anti-science agenda that is based on him trying to “prove” the pre-conceived notion that AIDS is caused by the therapies used to treat it – an utter and manifest nonsense. He has no scientific qualifications that I am aware of nor any scientific publications.’ **Nathan Geffen, TAC national manager, *Die Burger*, 2 December 2006**

‘If you think the nutritionists and vitamin peddlers in the UK are weird, you really want to go to South Africa, where President Thabo Mbeki has a long history of siding with the HIV denialists, who believe that HIV does not cause Aids (but that treatments for it do) [namely] Anthony Brink ... the man who is credited with introducing Mbeki to HIV denialism, who has helped cost the lives of tens of thousands of people needlessly deprived of effective treatments.’ **Ben Goldacre, ‘A new all-time low’, *Guardian*, 20 January 2007**

‘... Anthony Brink [is] South Africa’s loudest AIDS denialist.’ **Nathan Geffen, *journalism.co.za*, 21 May 2007**

‘While Brink is an AIDS denialist, to compare him with Lysenko would only be justifiable if Brink had been placed in overall control of South African AIDS policy. ... Fortunately, in the end and in this instance, good sense prevailed over rhetoric. Treatment did indeed eventually materialise ... a happy ending.’ **Professor Mathew Blatchford, ‘The Discourse of HIV/AIDS Treatment Action’, presented at the Association of University English Teachers of SA Conference, University of KwaZulu-Natal, July 2007**

‘... supporting [Mbeki] at the outset of the Aids-denial debate [were] such loathed personalities as Anthony Brink.’ **Charles Molele, *Sunday Times*, 30 September 2007**

‘Do you think it ever worries Brink that he may be responsible for millions of deaths?’ **Warwick Swinney (a.k.a. ‘Warrick Sony’), musician, sound engineer and former high school friend (with a Junior Certificate), email to mutual friend Hamish Davidson, 20 June 2008**

‘Been reading the brilliant Mbeki biography by Mark Gevisser and it’s amazing to see the influence Brink had on him. Fuck man he must be responsible for millions of lives!! Where is his head at – he’s not even a medical person. Look I stick with homeopathy and my kids haven’t ever had antibiotics but with a mass epidemic you have to bend a bit.’ **Warwick Swinney, email to Hamish Davidson, 16 October 2008**

‘Our own “City of Choice” [Pietermaritzburg] gets a mention [in *The Virus, Vitamins & Vegetables* by Kerry Cullinan and Anso Thom] in what has to be one of the most shocking chapters – the story of the government’s strange denialist bedfellows including Anthony Brink ... described by a prominent international scientist as “delusional” [and, according to Cullinan, responsible for] “the madness, sheer weirdness and despair of a decade with Mbeki and Tshabalala-Msimang [who] came to have the ear of the president, health minister, and other top officials ... by exploiting divisions etched by apartheid ... with nothing to offer other than ideology in place of ARVs for people with weak immune systems”.’ **Julia Denny-Dimitriou, *Witness*, 18 May 2009**

‘But there remain a few die-hard pseudo-libertarians, oddball contrarians and conspiracy theorists who challenge this science. I find it strange that we never think of entertaining debates on whether HIV causes AIDS any longer ... but we all defend free speech when we let these denialists spread their confusion.’ **Max du Preez, ‘Nuclear power not the best option’, *Mercury*, 22 March 2011**

‘You’re evil, evil.’ **Australian AIDS activist to Brink at the 13th International AIDS Conference in Durban, July 2000, before crowning him with her pot of take-away curry and rice**

‘No thanks from me to South Africa’s AIDS activists and Human Rights lawyers, all of whom have looked away – one of whom said that she could not afford to examine the issues raised by me or she would be out of a job, and another who opined that I was a public menace and should be killed.’ **From the preface to *Debating AZT: Mbeki and the AIDS drug controversy* by Anthony Brink**

**See also the *Sunday Times* hit:**

The Treatment Action Campaign arranged an attack on Brink's integrity in the *Sunday Times* on 5 February 2006 – for which editor Mondli Makhanya unreservedly apologized and agreed to publish a correction. (Search on 'hit' at <http://j.mp/cDIQjr>)

More ignorant, histrionic fear-and-loathing sentiment in regard to former President Mbeki – shared across the political spectrum – is reflected in 'For very great is the number of the stupid' (per Galileo). (<http://j.mp/kXI2Yk>)

## **2. THE REASON**

*Debating AZT: Mbeki and the AIDS drug controversy* (<http://j.mp/cDIQjr>)

'Why should a lawyer have to do the work that doctors and scientists ought to be doing?'  
**President Thabo Mbeki to Professor Sam Mhlongo, c. 2002**

'It must be said in Mbeki's defence that Brink ... is an able lawyer who argues his case with persuasive force. ... "That was the first time I became aware of this alternative viewpoint," Mbeki told me. ... He was able to persuade the country's most experienced investigative journalist, Martin Welz, of the validity of his case, so that Welz not only published a series of ... articles on AIDS in his investigative magazine, *Noseweek*, but also wrote a rapturous foreword to Brink's book on AZT.' **Allister Sparks, *Beyond the Miracle: Inside the New South Africa* (Jonathan Ball, 2003)**

"That," Mbeki told me, "is what sparked it off ..."  
**Mark Gevisser, *Thabo Mbeki: The Dream Deferred* (Jonathan Ball, 2007)**

## **3. A RECENT HISTORICAL PRECEDENT IN SOUTH AFRICA**

### **The Suppression of Communism Act 44 of 1950**

'The Suppression of Communism Act ... gave the government the power to ... 'name' people who could be barred from holding office, practicing as lawyers or attending meetings. ... The Act, later extended through the Internal Security Act, sanctioned the banning/punishment of any group or individual intending to bring about '*any political, industrial, social or economic change in the Union by the promotion of disturbances or disorder, by unlawful acts or omissions or by the threat of such acts and omissions*'. ... Between 1948 and 1991, the apartheid government banned more than 1,600 men and women. Banned persons endured severe restrictions on their movement, political activities, and associations intended to silence their opposition to the government's apartheid policies and stop their political activity.' Per [sahistory.org](http://sahistory.org) (<http://j.mp/gIM2u5>); see further the 1985 Kairos Document on 'Communism' quoted in Brink's letter to Adv Paul Hoffman SC.

25 Baker Road  
Prestbury  
Pietermaritzburg 3201  
13 May 2011

Attorney Danalene Franzman  
Director: Legal Services Programme  
South African Human Rights Commission  
Per email: dfranzman@sahrc.org.za

Dear Danalene

Brink/LASA: SAHRC Complaint: Reference no: GP/2011/0166

I'd be grateful if you'd update me on progress in this matter. I filed my Amended and Further Complaint with the SAHRC together with my Second Memorandum two weeks ago, and haven't even received an acknowledgment.

To complete my Statement of Claim I now urgently need the incriminating records that LASA is unlawfully withholding from me. I say urgently, because time is running out for the filing of my claim: I have six weeks from the date of the Conciliation hearing on 20 April, and the weeks are flying by.

I've done all the leg-work for your PAIA Unit attorneys in my Second Memorandum, in which I expose the vacancy of the reasons given for rejecting my records requests with reference both to PAIA and reported judgments on its application. For immediate purposes, all the PAIA Unit needs do is take an hour to read my legal analysis and note their agreement (or disagreement) with my claims to under PAIA to the records being withheld from me, and then convey its shared or dissenting opinions to LASA. What could be easier?!

As I've mentioned before, this is an extraordinarily serious matter, and it has enormous public implications. Although Chantal earlier assured me that she'd accordingly 'taken a special interest' in the case, she wrote in mid-April that she'd 'closed her file'. She did so on the basis of some major misconceptions:

First: when I filed my complaint that LASA had, inter alia, ignored my third request for records, I'd not yet received LASA's response, delivered out of time via the post for the reasons set out at the top of my Amended and Further Complaint. The papers crossed in the post as it were. I imagine this made my complaint about LASA's non-compliance with PAIA look irrational.

Second: although the affidavits that LASA finally supplied meet the requirements of section 23 of PAIA, deputy information officer Brian Nair continues to unlawfully withhold certain records critically important to the presentation and proof of my case. The legal and factual vacuousness of his reasons for doing so ought to have been obvious to any lawyer at a glance. (Nair has a background in school-teaching.)

So the matter certainly isn't 'closed'.

In my Amended and Further Complaint I pointed up the clear evidence (at pages 4–5) that notwithstanding the criminal penalties for this, CEO Vedalankar as information officer has concealed records from me; and I've since discovered another instance of this.

In his response last month, Nair has provided me with an email Vedalankar sent him on 29 July 2010 concerning my letter to her of the 12th. The Subject bar commences with 'FW:', showing unequivocally that there was preceding email traffic about my letter; yet this has been withheld from me under cover of Vedalankar's false statement on 28 January 2011: 'As for request 35: To the best of knowledge [sic], there are no other electronic records referring to you.'

Would you advise me what the SAHRC intends doing about Vedalankar's evident contempt for section 32 of the Constitution and her flagrant contravention of PAIA in order to conceal records from me that I need for pleading and proving my case? (Her conduct as CEO will be its central focus.)

Notwithstanding several discouraging remarks by certain senior members of the Portfolio Committee on Justice and Constitutional Development, I have to believe that the SAHRC actually functions at a practical level. My most basic human rights in the democratic era have been trampled on and I need the SAHRC's help in vindicating them.

Would you let me know what the SAHRC is doing to assist me?

Yours sincerely

A handwritten signature in black ink, appearing to be 'Anthony Brink', written in a cursive style.

ANTHONY BRINK

Cc: CEO: Mr Kayum Ahmed

Case document archive online at: [www.tig.org.za/LASA](http://www.tig.org.za/LASA) username: lasa password: LASA2010

**From:** Anthony Brink [<mailto:arbrink@iafrica.com>]  
**Sent:** 16 May 2011 10:05 AM  
**To:** 'Danaline Franzman'; 'Zena Nair'  
**Cc:** 'Kayum Ahmed'; 'Naledzani Mukwevho'; 'Chantal Kisoona'  
**Subject:** RE: Brink/LASA: SAHRC Complaint: Reference no: GP/2011/0166

Many thanks Danaline.

Looking forward to movement in the couple of weeks I have left to perfect my now 50-page statement of claim in light of the outstanding, obviously unlawfully withheld records.

I greatly appreciate your prompt, efficient, and professional attention to this extraordinarily important matter.

All the best

Anthony Brink

033 344 2420

083 7794174

**From:** Danaline Franzman [<mailto:dfranzman@sahrc.org.za>]  
**Sent:** 16 May 2011 06:47 AM  
**To:** Anthony Brink; Zena Nair  
**Cc:** Kayum Ahmed; Naledzani Mukwevho; Chantal Kisoona  
**Subject:** RE: Brink/LASA: SAHRC Complaint: Reference no: GP/2011/0166

Dear Adv Brink

Receipt of your email is herewith acknowledged. My apologies in advance for any failure, omission or delay on the part of the SAHRC, through the Gauteng Provincial office, to formally acknowledge receipt of your correspondences forwarded by email on 28/4/11 to the administrative secretary in that office.

Kindly note that I have alerted the Acting provincial manager in the Gauteng office (Mrs Zena Nair) to this issue, and have requested her to look into the matter and to ensure that an acknowledgement letter is provided to you as soon as possible, together with a short status report, once relevant colleagues have had an opportunity to peruse all related correspondences and to discuss the case/steps taken to date by our PAIA unit with the latter.

I trust that you will find the above to be in order.

Kind regards

Danaline Franzman  
Head of Programme: Legal Services  
South African Human Rights Commission  
33 Hoofd Street  
2nd floor, Forum 3  
Braampark, Braamfontein  
Tel: + 27 (0)11 - 877 3621/6  
Email: [DFranzman@sahrc.org.za](mailto:DFranzman@sahrc.org.za)  
[www.sahrc.org.za](http://www.sahrc.org.za)

**From:** Anthony Brink [<mailto:arbrink@iafrica.com>]  
**Sent:** 13 May 2011 07:34 AM  
**To:** Danaline Franzman  
**Cc:** Kayum Ahmed  
**Subject:** Brink/LASA: SAHRC Complaint: Reference no: GP/2011/0166  
**Importance:** High

Dear Danalene

A letter attached.

Sincerely

Anthony Brink

This e-mail and any files transmitted with it are confidential and intended solely for the use of the individual or entity to which they are addressed. If you have received this e-mail in error please notify the Mail Administrator - <mailto:administrator@sahrc.org.za>. Any views or opinions expressed in this e-mail are those of the sender and do not necessarily coincide with those of the South African Human Rights Commission.

25 Baker Road  
Prestbury  
Pietermaritzburg 3201  
3 June 2011

Attorney Danaline Franzman  
Director: Legal Services Programme  
South African Human Rights Commission  
Per email: dfranzman@sahrc.org.za

Dear Danaline

Brink/LASA: SAHRC Complaint: Reference no: GP/2011/0166

I write to find out whether there has been any movement in this matter since my enquiry more than two weeks ago on 13 May concerning progress in the prosecution of my fundamental rights violation complaint filed on 11 April, as amended and amplified on 28 April.

You mentioned in your response that the matter was receiving attention, that the PAIA Unit would shortly be meeting to discuss it, and that I could expect an update soon.

I regret to report that I've heard nothing since.

As I've repeatedly mentioned, I'm under time pressure to file my statement of claim in the Labour Court, and LASA is unlawfully withholding crucial records requested under PAIA that I need to complete it.

Although the Employment Equity Act doesn't stipulate a specific time limit for the referral of unfair discrimination disputes to the Labour Court, and the Court hasn't yet pronounced on the matter, the academic authorities (Pretorius et al. *Employment Equity Law*) reckon a period of 90 days following the issue of a certificate of non-resolution by the CCMA is likely to be considered a reasonable time within which to refer such a dispute for trial.

The delay in resolving my PAIA requests – LASA's refusal to comply with PAIA in respect of all the records to which the Act entitles me, and your PAIA Unit's failure to date to mediate in the matter in any substantial sense – has now taken me beyond 90 days.

Consequently I'm now put to making a case in my statement of claim that I've acted with reasonable promptness in referring my claim to the Labour Court for trial, and my correspondence to and from the SAHRC, including this letter, will form part of my document bundle in the case to show that any dilatoriness in the matter has not been mine.

And the longer my claim for outstanding records remains unresolved, holding up the launch of my action, the more difficult it will be to satisfy the Labour Court that I've come in time.

As I've said before, my Second Memorandum of 28 April makes it all so easy.

I'd appreciate an urgent response.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Anthony Brink', written in a cursive style.

ANTHONY BRINK

Cc: CEO: Mr Kayum Ahmed, and PAIA Unit attorneys Chantal Kisoona and Nokwanda Molefe

Case document archive online at:  
[www.tig.org.za/LASA](http://www.tig.org.za/LASA) username: lasa password: LASA2010

2011/06/07

RE BrinkLASA SAHRC Complaint Refer...

**From:** Danaline Franzman [df Franzman@sahrc.org.za]  
**Sent:** 07 June 2011 05:39 PM  
**To:** Anthony Brink  
**Cc:** Zena Nair  
**Subject:** RE: Brink/LASA: SAHRC Complaint: Reference no: GP/2011/0166

Dear Adv Brink

Receipt of your email, and content thereof, is herewith noted with thanks.

Kindly note further that your enquiry has been brought to the attention of the current Acting Provincial Manager in our Gauteng Provincial Office, Ms Zena Nair, who is copied herein. Ms Nair has confirmed that the matter is indeed under attention, and that a further update and response will be provided to you as soon as is reasonably possible.

Regards

Danaline Franzman  
Head of Programme: Legal Services  
South African Human Rights Commission  
33 Hoofd Street  
2nd floor, Forum 3  
Braampark, Braamfontein  
Tel: + 27 (0)11 - 877 3621/6  
Email: [DFranzman@sahrc.org.za](mailto:DFranzman@sahrc.org.za)  
[www.sahrc.org.za](http://www.sahrc.org.za)

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**From:** Anthony Brink [<mailto:arbrink@iafrica.com>]  
**Sent:** 05 June 2011 03:12 PM  
**To:** Danaline Franzman  
**Subject:** Brink/LASA: SAHRC Complaint: Reference no: GP/2011/0166

Dear Danaline

Never mind my request to dig out your last email to me; I've succeeded in retrieving it.

Sincerely

Anthony Brink

This e-mail and any files transmitted with it are confidential and intended solely for the use of the individual or entity to which they are addressed. If you have received this e-mail in error please notify the Mail Administrator - <mailto:administrator@sahrc.org.za>. Any views or opinions expressed in this e-mail are those of the sender and do not necessarily coincide with those of the South African Human Rights Commission.

**Date of Meeting:****5 Aug 2009****Chairperson:****Mr N Ramatlodi (ANC)****Documents handed out:**Legal Aid Briefing

Audio recording of the meeting:

Legal Aid Board: Strategic Plan & Budget 2009/10 briefing

Summary:

The Legal Aid Board briefed the Committee on its mandates and the establishment of Legal Aid South Africa, as also some of the historical challenges faced by the legal aid system in South Africa. It was noted that there were now 62 Justice Centres. The budget for 2009 was about R900 million. For the past four years the Board had achieved an unqualified audit. The service delivery of the Board was highlighted, and it was noted that most of its work was in the criminal law field; it intended to increase its reach in civil matters. Its practitioners were of high quality and there were now increased numbers of attorneys in-house. Challenges to the delivery of legal aid were noted. The Committee was happy to note that the issue of outstanding fees to practitioners had been rectified, but requested further information on this issue. Members also asked for an update on the farm dwellers' matters, and enquired about the ways in which the Board was involved in land restitution and prevention of illegal eviction cases, whether it handled these on a case-by-case basis, its relationship with the Department of Land Affairs (as it was then called) and the results of the tender by that department. The Committee was concerned that the footprint of the Legal Aid Board in rural areas needed to be improved, especially in areas such as the Northern Cape where the distances were so large, and enquired what was being done in regard to increasing visibility, and whether the offices of traditional leaders were being used. Members asked the difference between Justice Centres and satellite offices, the amounts being spent on judicare, whether the means test had any room for discretion, how many cases were handled under the judicare system, and the cost. Members also asked for further information and updates on the Boeremag case. They noted that the Legal Aid Board needed also to promote itself as a suitable training ground for articles and that perhaps more information on it should be dealt with at the law schools, and the relationship with Community Development Service workers and non-government organisations was also examined.

## Minutes:

**Legal Aid Board: Strategic Plan and budget 2009/10 briefing**

Judge Dunstan Mlambo, Chairperson, Legal Aid Board, gave some introductory remarks that focused on the mandate of the Legal Aid Board (LAB or the Board), the legislative framework and the historical challenges faced by the legal aid system in South Africa. He also pointed out that increased staffing had occurred and noted with pride that in 2000 there had been only 8 offices, but that in 2009 there were now 62 Justice Centers. He highlighted to the Committee that the budget for this financial year was just slightly above R900million. He also highlighted that for the past four years the LAB had an unqualified audit, which it considered to be an outstanding achievement.

Ms Vidhu Vedalankar, CEO, Legal Aid South Africa, gave a presentation on service delivery and noted that there was a need to increase the numbers of civil cases. She highlighted that the practitioner quality scores were high, and that the Board had furthermore increased the number of qualified attorneys on the staff. She then focused on finance and sustainability (see attached document) and listed the challenges to the delivery of legal aid (see attached document).

**Discussion**

Mr J Jeffery (ANC) congratulated the Board for an impressive presentation. He highlighted that the Board should be congratulated for the work it had done, saying that a comparison between where the Board was and what it used to be, and its achievements to date showed "an impressive and dramatic" improvement. He added that prevailing perceptions of the Legal Aid Board such as the notion that it took too long to finalise matters because practitioners never arrived for the cases were anecdotal. He would therefore suggest that what the Committee needed to do, as part of its oversight duties, was to make unannounced visits in provinces to really assess the workings of the system. In addition the Committee also needed to visit courts, as this would allow Members to meet the actual role players.



**Your voice. For justice.**

*Legal Aid Briefing :*  
Parliamentary Portfolio Committee –  
Justice & Constitutional Development

5 August 2009

# Legal Aid Board Values

## **Passion for justice**

To live for giving effect to the rights enshrined in our Constitution and to be committed and dedicated to increasing access to justice for all

## **Caring**

To ensure we treat our clients and staff as human beings (and not as different from us or as numbers) in a manner that we would want others to treat us and to care for their well being.

## **Respect for human dignity (ubuntu) and diversity**

To ensure that in all our dealings with our clients, communities and staff we respect the dignity of every person regardless of class, race, gender, sexual orientation, age or any other form of prejudice. To value our differences in a manner that celebrates our diversity.

## **Empowerment**

To empower our clients to make informed choices about legal matters impacting on their lives.

To empower our staff to develop to their full potential and to contribute to achieving our vision and mission.

## **Integrity**

To be honest and ethical in all our dealings.

## **Accountability**

To be accountable to our clients on their legal matters and to the public of South Africa for the effective and efficient utilisation of public funds as well as to our Executive Authority and Parliament

for the public funds we receive and the mandate we have to fulfil.

# Legal Aid SA – Summary of Challenges

## Legal Delivery Challenges

- Inadequate practitioner per court ratio
- Unequal resourcing across the justice cluster
- Limited capacity to render civil legal aid services
- Access to Legal Aid SA services by clients in rural area
- Quality of legal services
- Sustainability problems in the paralegal sector
- High numbers of Candidate Attorneys in District Courts
- Inadequate consultation facilities for legal practitioners at courts and prisons
- Legal challenges to the delivery of legal aid.

# Legal Aid SA – Way Forward

## Delivery – Increasing Access to Justice

- Expand Legal Aid SA's National Footprint to increase access
- Increase Legal Aid SA's capacity to render civil legal aid services
- Improve linkage with community structures and organisations
- Enhance Legal Aid SA's legal advice service and online services
- Improve practitioner per court ratio to improve coverage of courts
- Improve quality of legal services rendered

## **Portfolio Committee of Justice and Constitutional Development**

**14 April 2010**

### **Briefing by the South African Human Rights Commission and South African Legal Aid on their Strategic Plans**

**Acting Chairperson:** Mr M Gungubele (ANC)

#### **Documents Handed Out:**

**South African Human Rights Commission (SAHRC) Chairperson's Report**

**South African Human Rights Commission Strategic Plan**

**South African Human Rights Commission Strategic Business Plan**

**Legal Aid South Africa Strategic Plan**

**Legal Aid South Africa Budget**

#### **Audio Recording**

##### **Summary**

The South African Human Rights Commission was concerned about delivering on its strategic objectives with its very constrained budget. After accommodation and personnel costs were met, there would be R13 million this year with which to deliver on its mandate. The new Commissioners had been in place for only 90 days. The Chief Executive Officer and the Chief Financial Officer had both left just as the new Commissioners were appointed. Given the "current volatile situation in the country" as one MP termed it, the Commission in delivering on its constitutional mandate faced immense challenges.

There had recently been a big influx of complaints regarding hate speech and race related matters. The main priority for the Commission was its monitoring function. This entailed the extent to which citizen's rights were protected and enjoyed. The budget was not enough to support all the operations of the Commission.

Despite this, the Committee complained about the lack of visibility of the Commission during the current events in the country. The Committee was also concerned that the work of the Commission itself was not visible. The strategic plan was not comprehensive enough in mapping out how the outputs would be achieved. The outputs themselves were deemed to be too many and unrealistic. A stakeholder meeting was proposed.

The main strategy of the Legal Aid South Africa was to increase access as well as focus on quality legal services. The legal quality assurance unit governed all aspects of quality control within the organisation. One of the goals of the organisation was to try and provide one practitioner per court. Legal Aid South Africa was concerned about the increasing insistence of legal aid by affluent individuals. What was more disturbing was that the courts were instructing Legal Aid to comply in these instances. The Committee was pleased with the quality of the report

##### **Minutes**

#### **South African Human Rights Commission (SAHRC) Chairperson's Report**

[...]

#### **Legal Aid South Africa (LASA) Strategic Plan**

Judge Dunstan Mlambo, Chairperson of LASA, referred to Slide 5 which indicated the approach that LASA had adopted in formulating the strategic plan. The four key components of the strategic plan were Financial, Customer, Learning and Growth as well as Internal Business Processes. The mandate of LASA came from the Constitution and the Legal Aid Act. LASA had to consider the context of the environment in which it operated when it crafted the strategic plan. LASA had considered health, living conditions, poverty and the economic situation. The legal and justice sector was also analysed. LASA considered children awaiting crime, case backlogs, prisoners awaiting trial, the number of violent crimes and the inequality that existed in South African life.

Slide 23 identified four outcomes: for there to be an efficient and effective justice sector; justice for all focusing on the poor and vulnerable; a sustainable and efficient organisation; for citizens and communities to live by the rights enshrined in the Constitution. LASA was sought out throughout the continent and internationally. LASA had 17 strategies, the main strategy was to increase access as well as focus on quality legal services.

Ms Vidhu Vedelankar, CEO, continued that LASA's methodology in its plan was to ensure that there was focus on all aspects of the business. The bottom line was to ensure there was delivery of quality legal services. The client, community aspects as well as the finance and affordability aspects were considered as externally focused aspects. The internal business process and employee and organisational aspects were internal, focused aspects. The client and community components were at the core of the business. The strategies were incorporated into programmes where LASA wanted to ensure that it was client focused and that it increased access. It was also important to focus on expanding the brand of the organisation in order to reach many more South Africans. The finance and governance issues were monitored as well as quality. The legal quality assurance unit undertook this. Organisational capacity referred to the national footprint of LASA via its nationwide offices.

Judge Mlambo in closing said that LASA was aiming for one practitioner per court but the budgetary constraints were preventing this. The regional courts were the busiest and LASA wanted to meet the demand. Courts had now started to order LASA to provide legal aid to affluent individuals. In the *Gary Porritt* case the judge had ordered LASA to provide legal aid at senior counsel rates. This was despite the fact that the defendants flew to court cases. LASA was challenging the ruling but this was a trend. The trials were expensive and if this trend continued, it would have a serious effect on the budget. In the *Boeremag* case LASA fought the matter right up until the Appeal Court and lost there. The Constitution had to add its voice to this matter.

### **Discussion**

Mr G Ndabandaba (ANC) thanked LASA for an excellent report. He asked how did LASA select lawyers from Judicare and what did they do to those who provided shoddy work.

Mr Jeffery congratulated LASA on an excellent report. Why had LASA requested more money for the implementation of the Child Justice Act, as the Act did not require the presence of lawyers at the preliminary stage of an inquiry? What was the budget for legal aid during the World Cup as there would be special courts running? What was the progress of the civil litigation claims for farm workers?

Ms Smuts asked on what grounds did the Supreme Court of Appeal turn down LASA in the *Boeremag* case?

Judge Mlambo replied that the initial number of accused in the *Boeremag* case were 23. Some of the accused did not pass the means test. The court had said that the case was extraordinary and would take a long time. The funds of the accused would probably run out before the trial ended. The Legal Aid Board then decided that they would represent the accused once their funds ran out. Usually lawyers were not appointed by the accused, instead Legal Aid appointed a lawyer. If someone fired the appointed lawyer for no good reason then LASA would no longer assist that person. However in the *Boeremag* case, LASA was instructed to provide lawyers for the accused, this enabled them to choose their own lawyers and they duly did so. LASA lost the case not to represent the accused because it was deemed unconstitutional for an accused to be unrepresented in a criminal law case, it was not in the interests of justice. In the *Garry Porritt* case the accused refused to disclose his wealth in order for a means test to be applied. The judge instructed LASA to provide advocates to represent the accused and the judge also instructed LASA to provide a certain number of advocates. The pre-trial costs would thus be in the region of R60 million for this case. The problem was that the Constitution was often relied upon by the accused who did not want to spend his own money in court. The civil claims for farm workers was outsourced by the Department of Land Affairs and the cost was probably twice as much as what Legal Aid would charge. LASA had an accreditation list for lawyers and this was based on the BEE status of lawyers. Individuals or firms had to put themselves on this list. Those practitioners who provided shoddy services were removed from the accreditation list and banned.

Mr Brian Nair, National Operations Executive for LASA, said that the necessary cost for the Child Justice Act was providing a lawyer in each case as Magistrates were requiring the presence of a lawyer during the pre-trial inquiry. LASA was actively involved in World Cup preparations and had already included a budget for its plans. It had drawn up contracts for extra staff that would work during that period and once the final budget was approved they would sign their contracts. LASA had been engaging with the Department of Land Affairs but it was unlikely that LASA would be used by the department. Land Affairs had said that it would renew the contract of the outsourced firm.

Mr Swart asked how much it cost the Department of Land Affairs to outsource to a private firm.

Mr Jeffery said that it would be unfair to burden LASA with providing this information. The Committee should rather ask the Portfolio Committee dealing with Land Affairs to obtain the information and then provide it to the Committee.

Mr Landers said that the Committee should just ask the Minister of Land Affairs directly.

Mr Ndabandaba asked of the 48.5 million people that were serviced by Legal Aid, what percentage was from the rural areas.

Mr Nair replied that 92% of cases were criminal cases. Civil legal aid was provided in mostly rural areas, the demand was bigger there.

The Chairperson commended LASA for their excellent report as it had measurable outputs, objectives as well as a commitment to targets.

*Meeting adjourned.*

**Justice and Constitutional Development Portfolio Committee  
31 March 2011  
Legal Aid South Africa Strategic Plan and budget 2011**

**Chairperson:** Mr L Landers (ANC)

**Documents handed out**

Legal Aid presentation: Strategic plans, Annual Performance Plan and budget 2011/12

**Audio recording  
(pm)**

**Summary**

Legal Aid South Africa (LASA) briefed the Committee on its strategic plans, annual performance plans and budget for 2011/12. The strategies were grouped into various categories, and the programmes indicated how the strategies would be implemented. 94% of legal aid was rendered through Justice Centres employing lawyers in-house, which participated in case flow management teams in each region, as well as through 4% Judicare instructions to private practitioners. LASA was attempting to develop a strong and recognised brand. It placed great emphasis on its own financial strength and stability. It would constantly review its business processes to ensure that they remained relevant, had sought external reviews of the Board, and aimed to maintain its unqualified audit status of the past nine years. It was aware that it needed an expanded national footprint, to staff its 128 offices, and the programmes and initiatives to develop the staff were outlined.

The Annual Performance Plan illustrated strong links between objectives and programmes. LASA emphasised that quality of service was central to every programme. It tried to adopt a risk-based approach that sought to match services to staff with specific requirements. LASA had achieved 90% coverage of regional courts, and 80% coverage in district courts. It was trying to improve the practitioner to court ratio. LASA also aimed to increase its uptake of civil matters, by 10%, which was a high target. Its new call centre, handling up to 2 000 calls a day, increased its coverage and profile, and its paralegals also assisted at other advice centres and correctional service centres. It had set targets for completion of matters in the courts. All standard operating procedures in place were reviewed regularly, and great emphasis was placed on relevant and accurate management information and reporting. LASA also tried to give support to developing systems in other countries. The budget was tabled, with a line-item breakdown and comparisons to previous years. The biggest portion of the budget went to salaries and related costs, and direct expenditure was directly related to service delivery. In 2011/12, LASA had an allocation about 4% higher than the previous year, as some costs of 2010/11 were not carried forward. However this would result in negative real-term growth, since Public Service salary agreements and contract escalations were higher than the 4% budget increase. There were insufficient allocations for full implementation of the Child Justice Act. LASA usually managed to spend around 99.5% of its budget, and was expecting to do so in the 2010/11 financial year.

All Members expressed their congratulations both on the achievements and the report. They questioned possible overlaps with the work of other entities, particularly in training, asked whether LASA would be providing services to farm dwellers and proposed that this Committee discuss the issue with the Portfolio Committee on Rural Development and Land Reform. Members felt that the LASA could do more to promote itself, enquired about the vacancy rate, wondered if there was cooperation with the Legal Resources Centre on class action work, and where any recovery of costs in civil matters was reflected in the financial statements. Members noted the recent Supreme Court of Appeal judgment in favour of LASA, on the provision of legal aid to those who did not qualify under the means test, but who could be assisted and asked to contribute to costs. Members sought clarity on the annual salary adjustments and executive management remuneration. They questioned the anomalies in the location of courts and offices, asked whether the means test was the only criterion and called for an explanation of "substantial injustice" provisions. They also asked if LASA accepted all types of work, questioned whether salaries paid to candidate attorneys were now standardised across entities, and asked if LASA had a presence in deep rural areas, how the call centre operated, and its requirements. Members noted the impressive

numbers of cases handled, and also expressed appreciation that each of the 400 000 cases cost the taxpayer about R2 800, or less if the call centre advice was taken into account. Members also discussed how LASA set its targets. Finally, Members expressed their congratulations to Judge Mlambo on his appointment as Judge-President of the Labour Court, and recorded their good wishes to Mr Peter Brits, a long-standing LASA employee, on his move to a new position.

## **Minutes**

### **Legal Aid South Africa (LASA) Strategic Plan and budget 2011/12**

Judge Dunstan Mlambo, Chairperson, Legal Aid South Africa, congratulated Mr Landers on his appointment as Chairperson of this Committee.

He noted that the 2011/12 strategic plan of Legal Aid South Africa (LASA) represented the final year of a three-year plan, and that this would be followed by a five-year plan. The strategic plan was reviewed annually. He tabled the objectives, strategy and programmes (see attached document) and explained that the strategies were grouped into specific components, relating to broad overall topics, such as clients, community, stakeholders and shareholders, and financial sustainability. LASA followed the "SMART approach" as demanded by the Auditor-General (AG), and all strategies were achievable and time-bound.

In the area of clients, community, stakeholders and shareholders, LASA sought to provide increased access, and timeous legal services, with special focus on vulnerable groups, and an emphasis on quality. The programmes listed represented the way in which the strategies would be implemented. Legal Aid sought to provide education to clients and communities about the Constitution and legal aid services. The third and fourth strategies focused on the courts, and LASA's contribution to the Justice, Crime Prevention and Security Cluster (JCPS), by way of trying to assist with improved functioning of the courts, improved co-ordination with stakeholders, advocacy and ensuring independence. Judge Mlambo explained that LASA's Justice Centres (JC) were linked to case flow management teams that ran in each region, to ensure coordination between stakeholders. LASA sought to maintain timeous accountability to Parliament and the Minister. Programmes under the fifth to seventh strategy were aimed at maintaining a sustainable and financially stable LASA, with good governance, and developing a strong and recognised Legal Aid brand. He emphasised that LASA took financial strength and stability very seriously.

Judge Mlambo then outlined that the next group of strategies looked to business groupings and programmes to ensure that the business scheme of LASA remained effective, efficient, and professional, and that its business processes were sustainable. LASA maintained that the Justice Centres remained the best way to deliver services. LASA would constantly review the business processes to ensure that they remained on track, and relevant to delivery. LASA issued exhaustive Quarterly Reports, which were tabled to the Board and the Minister. It aimed to maintain its unqualified audit status.

The next component group of strategies dealt with internal matters of employees and support systems. LASA needed to have an expanded national footprint that would enable it to deliver, and support others in the delivery of legal services. LASA constantly looked at staffing and business models. It also wished to develop the competencies of the staff, through training programmes. Its attempts to have an enabling environment to deliver legal services meant that it had policies and targets around matters such as hours in court, research hours, and consulting hours for its legal staff. Human management and practices looked at the different needs of different staff groups. LASA aimed to remain an employer of choice, by having a people-centred organisational culture. It would support its staff also by ensuring that its IT platform remained responsive to the needs of employees, and encouraged and paid for its staff to go on courses and do research.

Judge Mlambo summarised that all these strategies were achievable, relevant and allowed LASA to perform correctly.

Ms Vidhu Vedalankar, Chief Executive Officer, LASA, noted that the Annual Performance Plan (APP), also referred to as the Business Plan, expanded on the strategies. While the document she would present was not fully comprehensive, and she did not intend to go into every programme in detail, she would be happy to answer any questions around the key deliverables that were set out here. This document, for the

first time, established the links between the objectives and the programmes. She emphasised that providing quality of service was central to every programme, assured both by constant monitoring and assessment, and by interventions to improve where any deficiencies were highlighted.

Ms Vedalankar explained how the targets were then derived from the outputs. She noted the use of the phrase “risk-based”, saying that this was used to emphasise that one size did not fit all. LASA would look at the support needed by staff – a “high-risk” practitioner, with little experience, would need greater support, including greater intervention by managers. This approach made better use of resources. She explained that lower targets, based on a scorecard, were set for candidate attorneys, in view of the fact that they would serve LASA under shorter-term contracts. The Internal Audit departments would independently assess quality, aiming to review 50% of all practitioners across all justice centres in each year. These reviews would then be compared to management’s independent assessments of quality.

Ms Vedalankar noted that LASA now had a presence at all criminal courts, and had 90% coverage of regional courts, with 80% coverage in district courts, with a practitioner present for 4 days a week. LASA was trying to improve the practitioner to court ratio. It achieved this through mixed delivery: Justice Centres (JC) were delivering 94% of services, while Judicare was delivering around 5%.

She said that LASA wanted to increase its civil matters by 10% from the previous year. She conceded that the targets for civil work had not been achieved in the past, but LASA still preferred to aim for high targets and strive to improve. It had also introduced a call centre, and had increased its marketing to achieve full capacity, up to around 2 000 calls a day. Although not all vacancies in the call centres had been filled initially, and LASA preferred to wait to assess the need, it had now decided to do so. LASA gave advice to the public, largely through paralegals, and hoped to increase this by 10%. Paralegals would also visit advice offices elsewhere and correctional service centres.

It was noted that some of the targets around cases had not been reached because they were linked to pro bono agreements and arrangements with the law societies and General Council of the Bar (GCB). LASA measured the turn around time of cases, and this linked to the case backlog project. LASA aimed to complete matters within six months in the District Court, nine months in the Regional Courts and twelve months in the High Court.

Ms Vedalankar said she did not wish to present all the slides exhaustively, but moved to slide 16, which dealt with how LASA worked in the Criminal Justice System (CJS) and its review. This would include screening of matters before they were put on the roll, case flow meetings at national level, and tabling of the Legal Aid Guide and annual reports to Parliament.

Ms Vedalankar said that although LASA could not determine the amounts it received, it would report and account fully for what it had received, and justify continued funding. LASA constantly sought to improve in its own handling of finances to ensure sustainability. Plans and measures were in place to ensure good governance. To ensure good functioning of the Board, an external evaluation was being done, and the resulting report would help the Board to improve its own governance. Brand management would ensure that services were provided, and that trust and relationships were built to improve its local and international status.

She highlighted the business processes in slide 23. LASA would ensure that standard operating procedures were in place, were reviewed regularly and were reported upon. Relevant and accurate management information and sound financial management would improve on its work, and enable good reporting to Parliament and the Minister. Ms Vedalankar explained that the “national footprint” related to the infrastructure of LASA. Shortly before the global recession, LASA had completed a three-year expansion process. There were currently 128 sites through which it reached clients, and expansion of services was also achieved through the call centre.

LASA sought to increase the capacity of its legal practitioners by giving them support through training, but also expected them to take responsibility for self- training through on-line self-learning models. Other programmes were also offered, covering aspects such as and self-learning models would be made

available on-line. LASA had other programmes such as organisational culture and wellness programmes, and tried to achieve standardised delivery. IT support was an important aspect.

LASA, as well as offering legal aid in South Africa, also tried to give support to developing systems in other countries, and was frequently visited by other jurisdictions wanting to study its models.

Ms Rebecca Hlabatau, Chief Financial Officer, LASA, tabled various slides on the budget. The first showed comparisons of new funding, case backlogs (funding from previous years), and total government grants, between 2010 and 2013. She noted that the amounts shown included allocations for Occupation Specific Dispensation (OSD) adjustments. She noted that about 94% of LASA's work was done through its in house legal practitioners, so the bulk of its budget (around 72%) went to salaries and related costs. 70% of its staff were lawyers. Direct expenditure was directly related to service delivery, including Judicare.

She then tabled slides showing the link between the strategies and budgets and components of the strategy. About R833 million was allocated to the strategies aimed at client, community, stakeholders and shareholders. She noted that the contribution to building a system was directly related to the backlog, and this had an allocation of R30 million. She noted that some programmes drew their resources from more than one programme – for instance, accounting to Parliament would be reflected under salaries, printing, travelling and other costs. She said that developing a strong LASA included the building of the brand and marketing, and R9.7 million was allocated to this. About R2.5 million was related to the business processes, including ensuring sound financial management and sustainable business processes. She noted that compensation of support staff related to those not directly involved in delivery of legal services, so this would include administrative and IT staff, for instance. R156.9 million was allocated to “additional” programmes that supported the running of LASA, and this included matters such as depreciation, office rental, travel and other costs.

Ms Hlabatau tabled a comparison of line-item budgets for 2010/11 and 2011/12, which showed a 4% increase, which had included the backlog for OSD funding, not carried forward to the 2011/12 year. Direct expenditure decreased by 16%, because the allocations for 2010/11 included once-off funding, such as World Cup funding, and implementation of the Child Justice Act. The reasons for the variances were shown.

Ms Hlabatau then described the challenges relating to funding. The government grants increase was about 6%, but annual salary adjustments were higher. Contract escalation, such as office rental, security and cleaning costs, amounted to about 12% increase, which again was higher than the macro-increase. This resulted in negative real-term growth. There was inadequate funding to implement the Child Justice Act.

She noted that over the last seven years, LASA had spent around 99% of its budget, and the as-yet-unaudited figures for the financial year ended 31 March 2011 indicated that it would spend about 99.6%. LASA had nine years of unqualified audit reports, with unqualified reports with no matters of emphasis for the past five years. All the AG's recommendations were implemented within the agreed timeframes.

### **Discussion**

Mr Jeffrey commented LASA on yet another comprehensive and impressive report, noting that its reporting on quality control was most encouraging. He asked if the Committee's Budgetary Review and Recommendation Report (BRRR) had been sent to LASA.

Ms Vedalankar said that she had only just received it.

Mr Jeffrey appealed to the Chairperson that the Committee should, in future, ensure that this was set out to all entities. He noted that the Committee should be emphasising the quarterly reports as well. He said that the BRRR had made some recommendations in relation to OSD funding, additional funding for civil work and clarity on Child Justice Act implementation, but this could not be addressed in this meeting.

Mr Jeffrey wondered if there were potential overlaps with the work of other entities. The South African Human rights Commission (SAHRC) and the Department of Justice and Constitutional Development (DOJ) were already running education campaigns on the Constitution, and LASA indicated it was doing something similar. He urged that any public awareness on this issue should be coordinated. He also noted LASA's work in advice offices, but noted that the DOJ had received money from the European Union (EU) to set up advice offices through civil society structures, and asked if there were links.

Ms Vedalankar clarified that LASA was not setting up separate advice offices but was linking into existing offices, by sending paralegals and legal practitioners to provide extra legal capacity. A coordinating body of advice officers might be linking with DOJ on the EU funding. Educating the public about the Constitution was not really the responsibility of LASA, and it would not run direct campaigns but built an understanding of those rights as it marketed its own services. LASA was considering how best to cooperate with the SAHRC and others on specific programmes; although it did not have the capacity to run its own strategy, it would support others where it could.

Mr Jeffrey asked if there had been any developments on the provision of legal services to farm dwellers, noting that a private firm had been asked by the Department of Rural Development and Land Reform (DRDLR) to set up a roster of private practitioners to handle this a while ago, after some concerns about LASA's ability and quality of services.

Judge Mlambo said that he was not aware of any further developments. LASA had not been approached again, after the appointment of attorneys Cheadle Thompson, and he was not aware how many farm dwellers they had reached. Land claims seemed to be receiving less media attention.

Ms Vedalankar added that LASA had read a report that this contractual arrangement was now coming to an end, and had written formally to the Director General of the DRDLR to investigate cooperation with LASA. There had been no suggestion made to the LASA that the DRDLR's decision was based on perceived lack of quality. LASA believed that it could achieve more, for less, than private firms, and would welcome support from this Committee in engaging with the Minister.

Mr Jeffrey suggested that it might be useful to discuss this with the Portfolio Committee on Rural Development and Land Reform. He could not recall exactly where the comments about quality had emanated, but perhaps it would be useful for LASA to consider employing more specialist people at a central level to advise and train practitioners. The State was obliged to provide legal support on a number of issues around land rights and evictions. He did not think that this issue needed to be included in the Committee Report, but that discussions should be held.

Mr Jeffrey noted the references to the brand and publishing, said it was unfortunate that no journalists were present, and commented that perhaps LASA should have its own media officers or promote itself more.

Judge Mlambo responded that LASA had invited all media houses to the launch of Legal Aid Live, and LASA was receiving some attention in law report programmes, radio initiatives and other matters. However, he took the point.

Mr Jeffrey enquired about the vacancy rate, generally, and at professional assistant level.

Ms Vedalankar replied that in 2010/11, LASA had set a target of 96% of all posts being filled, although it had then held back on filling some of the vacancies because of the uncertainty of obtaining OSD funding in Phase 1, which, if not recovered, would have put the LASA into deficit. OSD was now settled in the baseline figures, and she thanked the Committee for its support in this regard. LASA now had 96% of all posts filled.

Mr Jerry Makokoane, Chief Operations Officer: LASA, added that the vacancy rate for professional staff was about 5.5%, for support staff it was 4% and there were no vacancies at executive level.

Mr S Swart (ACDP) noted that LASA had a high standard. He thought that the “impact legislation” in civil work was commendable. He noted, however, that the Legal Resources Centre (LRC) undertook similar class-action work, and he asked if LASA had discussed this with LRC, particularly as LASA had said that the number of applications received determined whether it could do the work.

Judge Mlambo said that there were discussions with the LRC. LASA funded some of this work through Judicare, and also had taken over one of the LRC’s senior lawyers.

Mr Swart asked where any possible recovery of costs in civil actions was reflected.

Ms Hlabatau noted that this appeared under “other income” on page 143 of the report. R28 000 was recovered in the last year.

Judge Mlambo informed the Committee that LASA had recently won a Supreme Court of Appeal matter in which it had appealed against a lower court ruling that it must give legal aid to those who did not necessarily meet the means test. The Supreme Court of Appeal had ruled that a person who did not qualify for the means test, but who could not fund his or her full costs for a protracted case, could be assisted but asked to contribute. LASA was looking at amending the provisions of the Legal Aid Guide, and was sensitising judicial officers to this point, asking that they order contributions where appropriate. LASA had always believed that it was unsustainable to require LASA to fund everything, and this ruling would assist it in stretching its budget further.

Mr Swart noted the financial constraints, but asked why annual salary adjustments were higher than increases in the overall allocation.

Ms Vedalankar said this was because the Public Sector Bargaining Council’s agreed settlement was higher.

Mr Swart questioned the Executive Management remuneration. Whilst he was aware of the need to retain highly skilled people, he called for explanation of what appeared in the “other” column, which cumulatively amounted to a fairly large percentage of the expenses.

Ms Hlabatau explained that Senior Management Staff could choose how to structure their salary, and that “other” would include matters such as the amounts allocated to, for instance, a thirteenth cheque, medical aid, pension, cash allowances or retirement. The total, including the “other” was informed by the Public Service salary levels.

Mr J Sibanyoni (ANC) congratulated Judge Mlambo on his appointment as Judge-President of the Labour Court, and expressed his gratitude that through Judge Mlambo’s interventions, many of the past problems with the former Legal Aid Board and late payments had been overcome. However, he asked that some delays in payments to practitioners in December 2010 should be investigated. He was pleased that LASA was now taking civil work.

Mr Sibanyoni said that there was still a problem with the former cross-border boundaries, as some LASA offices were based in places that were difficult for communities to access, since they may have to drive about 60 kilometres to the relevant office although another centre was geographically closer. This was particularly a problem in Witbank.

Judge Mlambo agreed that there were some anomalies. For instance, although King Williams Town was closest to the Bisho High Court, people preferred to institute action in the Grahamstown High Court, whilst a person committing a criminal offence in East London might be tried in Port Elizabeth, not Bisho. This was a hangover from the apartheid days, and it had cost implications for LASA. The Witbank issue had been discussed and hopefully should be resolved.

Mr Brian Nair, National Operations Director, LASA, added that 95% of Justice Centres did cover courts in that province, except where the court in another province might be closer. LASA tried to ensure that,

particularly in civil work, clients would not have to travel, especially for consultations. Justice Centres worked in clusters, so a client could visit the closest office and be advised by phone or by visiting practitioners. The DOJ was implementing rationalisation of courts, which should deal with the problems outlined by Judge Mlambo, and ensure that process was served at the court closest to the community.

Mr Sibanyoni noted that legal aid could be offered where failure to do so might result in “substantial injustice”, and asked if this implied that the means test was not the only qualifier, or if the nature of the case was also taken into account. He said that if LASA was to grant assistance on a wide scale, irrespective of means, this could result in legal practitioners being deprived of their client base.

Mr Mlambo said that the LASA Board had not changed its approach to applying the means test, other than instances that Mr Nair could outline.

Mr Nair added that LASA would apply the means test to Regional and High Court matters. LASA did not grant assistance for certain cases in the District Courts, as listed in the Legal Aid Guide, including traffic offences. The Justice Centre could, however, give legal assistance in cases where the local head office believed that substantial injustices would occur otherwise – for instance, where a particular court was handing down inappropriate sentences to those who were unrepresented. He reiterated that a person who did not qualify under the means test, but who also did not have the financial resources to run a long trial, could be asked to contribute some costs, on a monthly basis, to LASA for its help. The Board was considering introducing a contributions policy to deal with this in a more standardised way.

Mr Sibanyoni asked if candidate attorneys employed by the National Prosecuting Authority (NPA) were better paid than those articulated to LASA.

Judge Mlambo said that OSD had been introduced to correct the situation, which was now equalised. Those who left LASA for NPA generally left for higher positions.

Mr Nair added that candidate attorneys, who were of course on contract for the duration of their articles, might move to the NPA to accept a position as an intern prosecutor, hoping that they would then be appointed permanently.

Ms S Shope-Sithole (ANC) also congratulated Judge Mlambo on his appointment and his impressive approach to financial issues. She asked if LASA had an office in Bushbuckridge.

Judge Mlambo replied that there was indeed a satellite office there, and that expansion outwards from Bushbuckridge probably justified establishment of a Justice Centre being established, but financial constraints were preventing this at the moment.

Ms Shope-Sithole asked that reports in terms of the Public Finance Management Act should be sent through regularly from LASA.

Judge Mlambo said that the reports were sent to the Minister, but that LASA would in future also send them to the Committee.

Ms D Schafer (DA) asked for an explanation of the percentage targets for quality of practitioners.

Ms Vedalankar said that LASA had standard instruments, or scorecards, to measure quality, such as court and file work, and these varied for the different categories of staff. These could be made available. There was substantial work done in preparing these and linking them to outputs.

Ms Schafer asked if anyone could phone LASA advice offices, or whether there was a means test for this.

Mr Nair noted that originally the toll-free number had played a recorded message stating that the advice was limited to people earning less than a certain amount, but it was found that asking people to choose an option to confirm this, and access an agent, was not practical. Currently, anyone could phone in for

advice, irrespective of their means, but would need to pass the means test in order to take the matters further through a Justice Centre.

Dr M Oriani-Ambrosini (IFP) asked how many clients had been served during 2010/11.

Mr Nair said the case figures were expected to be around 400 000 at the end of the financial year, compared to about 416 000 in the previous year, and should increase over the following years.

The Chairperson asked if the breakdown between civil and criminal matters was available.

Mr Nair said that at the end of the third quarter of 2010/11, 93% criminal and 7% civil matters were handled.

Dr Oriani-Ambrosini said that the figure of 400 000 cases was quite impressive, and noted that this meant about R2 800 was expended on each case. He congratulated LASA on its achievement.

Judge Mlambo added that the figure of R2 800 per case would drop if the legal advice was also factored in. This illustrated LASA's contention that the Justice Centre model was the best for South Africa.

Mr Jeffrey asked how civil matters were logged.

Mr Nair explained that they would be logged when the client was assessed as qualifying for legal aid and the file was opened. Most civil matters did not proceed through the full trial process, as most were resolved through mediation or negotiation.

Dr Oriani-Ambrosini noted that the performance of NPA was assessed by conviction rates, and asked how LASA was assessed.

The Chairperson pointed out that the National Director of Public Prosecutions had stressed that some people were prepared to use their positions to "stretch out" legal proceedings, knowing full well that LASA was limited in how far it could take matters.

Mr Jeffrey said that the NPA could set targets for convictions, because this body decided what cases to prosecute. LASA was faced with a responsibility, but had no choice whether to take on the case.

Judge Mlambo said that the number of convictions or acquittals was not a true measure of effectiveness. He pointed out that those who had the resources would not approach LASA, but LASA was constitutionally obliged to deal with even cases that were unlikely to succeed. LASA was proud of its intervention and pointed out that it achieved acquittals, withdrawals or reduced sentences, in about 25% of the matters.

Judge Mlambo thanked Members for their guidance and comment, and hoped that Legal Aid would continue to be relevant to South African society. He agreed that there was much still to be done in reaching the rural poor, but LASA had realised, from comments made by traditional leaders, that it must also establish satellite offices in far-flung areas. LASA maintained its commitment to rendering legal aid services.

Judge Mlambo noted that he had asked to be released from his Chairmanship of the LASA. He also noted that a long-serving employee, Mr Peter Brits, would be leaving LASA, and would be sorely missed.

The Chairperson congratulated Judge Mlambo on his appointment at the Labour Court, and LASA on its excellent performance. The Committee would miss Judge Mlambo if he were no longer to chair the LASA Board. He also asked that the Committee's best wishes be conveyed to Mr Brits for his new endeavours.

The meeting was adjourned.



**Legal Aid**  
South Africa

**Your voice. For justice.**

Legal Aid SA Briefing :  
Parliamentary Portfolio Committee –  
Justice & Constitutional Development

31 March 2011

## Budget 2011-12

Description	Budget 2011/12	Budget 2010/11	Percentage
Salaries and related costs	R867,887,362	R835,887,752	4%
Case backlog	R30,000,000	R25,000,000	20%
Direct expenditure	R96,682,229	R115,777,741	-16%
Operating expenditure	R195,825,609	R165,068,257	19%
Capital expenditure	R17,741,747	R37,516,932	-53%
Total Budget	R1,208,136,947	R1,179,250,681	2%

# LEGAL AID BOARD



## Strategic Plan 2009 - 2012

draft

5 September 2008

Office of the CEO

- III. Lack of specialised legal skills taking cognisance of the complexity of the context in which the organisation operates
- IV. Lack of staff, legal and administrative staff
- V. High staff mobility in the justice sector
- VI. Lack of career pathing for administrative staff and legal staff
- VII. Lack of capacity to provide impact litigation
- VIII. Internal pressure on practitioners to deliver targets rather than to concentrate on the depth of matters or choose impact cases
- IX. Lack of legal education will affect the quality of legal services delivered
- X. Limited access to research materials which affects planning and preparation for cases; coupled with a lack of research skills
- XI. Rural recruitment difficulties are evident which impacts further on limited service delivery in rural areas
- XII. Ineffective staff attraction and retention strategy which impacts on staff morale
- XIII. Ratio of PAs to CAs is an issue as there are many CAs and this impacts on the quality of services delivered and the image of the organisation
- XIV. Specialised units (eg High Court Units, Children's Units) are effective and the Legal Aid Board should capacitate for specialised skills.

#### 3.6.2. *Information systems*

- XV. The IT platform is not keeping pace with the needs of the organisation
- XVI. Poor capturing of data leads to a lack of data integrity which in turn results in poor planning and decision-making
- XVII. Frustrations with IT systems and a lack of IT support
- XVIII. Lack of resources to upgrade IT systems
- XIX. Unreliable business intelligence
- XX. Lack of software and prioritisation for legal research and access to legal research sites

#### 3.6.3. *Organisational climate*

- XXI. Staff are passionate about their work and committed, however there are issues which impact on staff morale

## **STRATEGIES 2009-2012    Expanded**

### **Client & Community**

- I.    **To deliver client-focussed and quality legal services**
  - To increase access for clients and communities to independent legal services (civil and criminal)
  - To improve access to justice especially for rural/remote communities
  - To ensure clients receive timeous and quality legal services
  - To protect vulnerable groups
  - To deliver an independent and client-focussed legal service
  - To deliver legal services responsive to client need
  - To develop a full appreciation of the civil justice needs of the poor and provide more civil representation
  - To undertake targeted impact litigation
  - To promote ADR and restorative justice
  - To deliver legal services that take into account language needs and preferences of clients and communities
  - To define jurisprudence – re access to civil justice for the poor
  
- II.   **To educate/inform communities about the Constitution and legal-aid services**
  - To increase public education; to improve communities' awareness of their rights and responsibilities and how to access services
  - To ensure involvement of community stakeholders to better understand need and to give input into LAB services

### **Legal & Justice/ Stakeholder**

- III.   **To contribute to building an efficient and effective justice system & JCPS Cluster**
  - To ensure strategic alignment and synergy with other stakeholders and across the justice cluster
  - To assist the JCPS in delivering on its Constitutional and legislative mandate thus engendering public confidence
  - To build a functional and client-centred, service-focused justice system
  - To contribute to increasing efficiency and integration of the CJS
  - To increase public confidence in the Legal Aid Board and in the justice system
  - To focus on co-ordinated and co-operative delivery of services and programmes
  - To improve stakeholder communication within the JCPS cluster
  - To contribute to effective courts and case flow management
  - To ensure a fair trial for all accused
  - To contribute to and ensure trials commencing and being finalised expeditiously - increased turnaround times and case finalisation
  - To improve co-ordination of stakeholders at local court level
  - To foster acceptance of LAB as an equal partner in the justice cluster
  - To participate in the Criminal Justice Review to ensure the above
  - To work with stakeholders to develop an integrated IT system for JS; so that statistics can be aligned/standardised and be reliable ie integrated justice data

## LAB Strategies and Programmes 2009-12

<b><u>STRATEGIES AND PROGRAMMES 2009-2012</u></b>
<b><u>CLIENT &amp; COMMUNITY &amp; STAKEHOLDER &amp; SHAREHOLDER</u></b>
<b><u>PROGRAMMES PER STRATEGY</u></b>
<b><u>STRATEGY I: TO DELIVER CLIENT-FOCUSSED AND QUALITY LEGAL SERVICES</u></b>  Programme P1: To deliver quality legal services Programme P2: To increase access to legal aid-criminal & civil Programme P3: To deliver client-focussed legal services Programme P4: To deliver legal services to vulnerable groups/special focus areas Programme P5: To improve access to justice through Impact litigation Programme P6: To research and implement new ways of improving access to justice
<b><u>STRATEGY II: TO EDUCATE/INFORM COMMUNITIES ABOUT THE CONSTITUTION AND LEGAL-AID SERVICES</u></b>  Programme P7: Public education on Constitution and Rights Programme P8: Increasing awareness of Legal Aid Board services (x-ref with P17)
<b><u>STRATEGY III: TO CONTRIBUTE TO BUILDING AN EFFICIENT AND EFFECTIVE JUSTICE SYSTEM &amp; JCPS CLUSTER</u></b>  Programme P9: Improved functioning of courts and justice system Programme P10: Improved co-ordination with stakeholders Programme P11: Representation/advocacy of client's interests Programme P12: Ensure Independence of LAB promoted & defended (x-ref with P17)
<b><u>STRATEGY IV: TO TIMEOUSLY ACCOUNT TO PARLIAMENT AND THE EXECUTIVE AUTHORITY SO THAT THEY ARE WELL INFORMED OF LAB STRATEGY AND PROGRAMMES</u></b>  Programme P13: Ensure accountability to Executive Authority & Parliament
<b><u>FINANCE &amp; SUSTAINABILITY</u></b>
<b><u>PROGRAMMES PER STRATEGY</u></b>
<b><u>STRATEGY V: TO MAINTAIN A SUSTAINABLE AND FINANCIALLY STABLE LEGAL AID BOARD</u></b>  Programme P14: Lobby for new funds to ensure financial stability of LAB Programme P15: Ensure sustainable practices
<b><u>STRATEGY VI: TO ENSURE GOOD GOVERNANCE</u></b>

- Investigate client contributions for our services to deal with budget shortfalls
- lobby for contributions from clients that exceed the means test
- Cost orders to be used to augment funding
- explore an independent self funding model in order to ensure sustainability and for funding civil matters
- establish a fund raising initiative; lobby international fundraisers; establish international donor programme; source funds form AFF; co-operation with international legal organisations

Programme P15: Ensure sustainable practices

- Review of current delivery models
- Investigate open source technology; cheaper and reliable ISP
- More effective, timeous budgeting - budgeting earlier and more long term; proactive projection of requirements; plan for reserves
- investigate in-house travel arrangement process
- investigate option of investing in property; gradually purchase existing properties where leases are expiring; close to courts
- investigate outsourcing of fleet management; put out a tender for outsourcing of fleet management
- invest in appreciating capital acquisition programmes

**Strategy VI: To ensure good governance**

Programme P16: Maintain good governance practices

- continuous improvement and maintenance of corporate governance policies, procedures and practices
- investigate changing from PFMA control to companies' Act of 1973

**Strategy VII: To develop a strong and recognised Legal Aid Board brand (nationally & internationally)**

Programme P17: Enhance the Legal Aid Board Brand (x-ref with P12)

- marketing of LAB services (brand); billboards, television, newspaper, radio; linking with community structures; on public transport
- conduct brand marketing research
- develop and implement a brand positioning and proactive marketing strategy
- Proactively counter negative publicity; increase positive publicity to improve the LAB's image;
- Profile lawyers and quality legal services

**BUSINESS PROCESSES (INTERNAL)**

**Strategy VIII: To review business processes (delivery and support services) and ensure that they are efficient, effective, economic, client-centred, professional and independent**

Programme P18: Review and improve legal services delivery business processes (x-ref with P23)

**Delivery –external processes**

- review court ratios/court coverage ie number of courts to practitioner (as well as number of clients to practitioner)
- revisit LAB policy on appeals

- flexitime to coincide with NPA court hours
- investigate practitioners to be empowered to approve LA1 at court
- capacity to serve clients in their languages
- review rotation of attorneys in courts as it causes delays
- investigate virtual processing of applications
- CAS implementation and integration
- update LA Guide and have signed off without delay
- **Delivery –internal processes**
- Develop a viable and value-add quality assurance mechanism (reduce overregulation) - work with relevant bodies
- Review structures for relevance, include career pathing
- Review effectiveness, access and relevance of all standard operating procedures and policies (knowledge management)
- review AI and make necessary improvements
- Shift from compliance to risk based management

Programme P19: Review and improve support services business processes  
JC/Department level

- continuous review of business processes, standard operating procedures and policies; identify bottlenecks and address gaps
- Review effectiveness, access and relevance of all - allow for flexibility in local situations
- Increase transparency and consultation in decision making
- update website then inform staff about changes to policies and procedures (timeous communication)
- establish a clear instruction protocol policy
- reports to be co-ordinated and to have consistent interdepartmental deadlines
- automate processes
- deregulation of controls without compromising risk
- decentralisation of decision making at operational level - eg JCE discretion regarding budgets, procurement and recruitment
- implementation of crisis management system
- conduct staff planning in consultation with regions in order to address local requirements; review NPI study

**Strategy IX: To develop accurate, relevant and timeous management information to inform business planning and decisions**

Programme P20: Accurate and timeous management information

- Develop and maintain systems to compile accurate and timeous management information and implement a validation control system (checks and balances at time of capturing)
- Management information reports on all sectors ie delivery, finance,...
- Management information reports accessible to managers at all levels to inform management decisions ie JC, Department and Executive levels

**Strategy X: To ensure sound financial management and sustainable business processes**

Programme P21: Financial Management to maintain unqualified audit status

- Ensure implementation and maintenance of financial management systems
- Ensure compliance with all IAS and IFRS and GRAP requirements
- Investigate decentralising finance function and employ finance staff at JCs

- Use of consultative approaches to inform LAB budgeting
- financial training for managers

## **EMPLOYEE & ORGANISATIONAL CAPACITY**

### **Strategy XI: To expand the national footprint - Increase capacity to deliver and support the delivery of legal services**

#### Programme P22: National Footprint expansion

- more JCs, mobile JCs, more satellite offices,
- infrastructure improvements and extensions;
- on-line legal advice and access to LAB's services;
- 24 hour call centre;
- One-stop-shop offices close to courts;
- LAB information desks at each court
- establish refugee unit especially in urban areas
- review LAB capacity in specialised courts
- implement proper back-up system to deal with risk of load shedding/power outages align/integrate all departmental footprint planning
- conduct research on population statistics/trends/projections in order to make better planning decisions ie footprint planning

#### Programme P23: Review legal staffing/business models (x-ref with P18)

- improved children's court units
- client services department
- review CA model- CAs to do one-year's training before servicing clients; increase number of supervisors for CAs or phase out CAs
- 3 month probation period to be enforced for CAs
- appoint more SPAs to oversee CAs in order to improve quality delivery
- recruit specialist skills
- Review impact of structure of LAB and development of senior posts on career pathing
- Investigate a rural allowance; incentivise rural staff
- improve access to Jutastat and manage the system effectively
- Equip libraries at the JCs

#### Programme P24: Increased people capacity to deliver

- Recruitment and retention of competent staff
- Improve ratio of practitioners to court
- increased capacity of LAB ie more legal specialists
- Increase capacity to serve clients in their languages
- capacitate civil unit ie more staff and more supervision;
- deploy paralegals to remote areas
- establish a relief pool of practitioners

#### Programme P25: Increased support to deliver

- appoint more admin staff to support legal staff - review admin positions ie office assistant for each business unit, separate secretarial support for civil PA, split receptionist/typist position, employ filing clerks
- employ a fulltime regional psychologist as part of EAP
- Establish own research unit to validate statistics
- Practitioners to have full access to Jutastat and LexisNexis



**Your voice. For justice.**

Briefing to Parliamentary Portfolio Committee on Justice & Constitutional Development

*Legal Aid SA - Strategic Plan 2009 - 2012*

*(reviewed annually for 2010/11 in September 2009)*

## From Strategic Plan to Business Plan...

- The Strategic Plan was submitted to the Executive Authority on 30 September 2009.
- The final approved Strategic Plan informs the preparation of our **Business Plans** which will expand the strategies into programmes and projects.
- We identify **targets and measures** (Key Performance Indicators KPIs) for each of the programmes and projects and link them to budgets, responsible persons, time-frames and milestones for delivery.
- This is incorporated into each of our individual **performance contracts**.



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Ranked  
 No. 8 BEST Empowered Employer

### Introduction

Established through legislation (the Legal Aid Act of 1969 and the Constitution of South Africa), Legal Aid SA is an independent statutory body. Its mandate is to provide access to justice for indigent South Africans, through the provision of legal aid services.

### Biggest plus

The size and scope of Legal Aid SA is the firm's greatest asset. It is the largest law firm on the African continent, and employs more legal professionals than any other South African organisation.

### Biggest challenge

Legal Aid SA has identified the need to educate South Africans about democratic principles, citizen rights (including the rights of accused persons) and the role of the public defender.

### Facts and figures

Total number of staff employed (full-time): **2 451**  
 Annual turnover in Rands for 2009 (RSA only): **R961,013,325**  
 Industry sector: **Public sector**  
 Black employees: **85%**  
 Previously disadvantaged individuals in management: **82%**  
 Women employees: **45%**  
 Women in executive (senior) management: **40%**  
 Employee Assistance Programme: **Telephonic and face-to-face counselling; emergency trauma counselling and training; VCT, HIV and AIDS counselling and support; life-skills training; stress and lifestyle management.**



LEGAL AID SOUTH AFRICA

### The business

Human Resources Executive Amanda Clark explains the structure of Legal Aid SA: 'In terms of the Legal Aid Act and the Public Finance Management Act, the organisation is accountable to the Minister of Justice and Constitutional Development, and to Parliament, as its executive authorities. Legal Aid SA is guided by a team of experienced and dynamic board members led by chairperson Judge Dunstan Mlambo. This – coupled with a strong executive team under the guidance of CEO Vidhu Vedalankar – has helped us build an organisation with a formidably high-performance, value-centred culture.'

With 64 justice centres and 64 satellite offices around the country, Legal Aid SA services all courts within South Africa, and has links with all prisons holding awaiting trial detainees.

The firm's expertise resides in criminal and specified civil matters, with legal representation provided by approximately 1 700 legal professionals. 'Our employees are a unique brand of socially conscious professionals. Their aim is to defend and protect the rights of clients who are poor and vulnerable – and they do so with the highest level of professionalism,' says Clark.

During the 2009/10 financial year, Legal Aid SA provided assistance in new legal matters to 395 088 clients.

### Talent management and development

Legal Aid SA recruits around 600 candidate attorneys every year. Clark points out that this candidate recruitment programme holds benefits for the profession as well as the organisation itself, as in addition to providing a dynamic launch pad into the profession for talented individuals, it also contributes to industry transformation.

Legal professionals are faced with a plethora of career opportunities as part of a comprehensive career path, with a focus on specialising in criminal and civil law. The firm offers a platform for advanced legal practice in its high court units and through positions such as senior litigator. Alternatively, employees may follow the legal manager stream, with a career path including positions such as high court unit manager, justice centre executive or the senior executive level of regional and national operations executive. Other opportunities exist for specialist and technical staff in areas such as legal training and development, legal research »

or legal call centre management. Finally, talented individuals are sought to provide auxiliary services in the areas of finance, human resources, information technology, corporate communications and corporate services.

Clark identifies training and development as the company's primary HR priority. With this in mind, the firm offers a bursary scheme to help employees further their formal tertiary education.

Meanwhile, a succession-planning programme is in place, based on formal executive development through a leading South African university, as well as on-the-job coaching and mentoring. 'This positions us to respond to changes around roles requiring critical skills or

at executive level,' Clark says.

Employee engagement is yet another focus area, with Legal Aid SA launching several programmes to drive diversity management and organisational culture.

#### Salaries, rewards and benefits

Clark informs that remuneration packages are 'competitive'. 'Remuneration for legal professionals is in line with the public sector's dispensation for legal occupations within the justice cluster. This ensures pay parity among legal professionals in the public service. Meanwhile, remuneration for employees in auxiliary roles is within the upper quartile of the public entity market.'



**'Our employees are a unique brand of socially conscious professionals. Their aim is to defend and protect the rights of clients who are poor and vulnerable – and they do so with the highest level of professionalism.'**

**Amanda Clark**  
Human Resources Executive

In addition to guaranteed pay, a performance bonus scheme is in place. 'This incentivises employees to work towards achieving the objectives outlined in the organisation's business plan.'

Benefits for permanent employees include a medical-aid contribution, employer-sponsored pension fund membership and a housing allowance. Leave benefits include 22 days of annual leave, which increases to 26 days after 10 years' service, and four months' paid maternity leave for permanent staffers. Study leave is granted to employees participating in the bursary scheme.

#### Black economic empowerment

Clark informs that Legal Aid SA is a public entity that manages its finances in terms of the Public Finance Management Act. 'At this point, there are no opportunities for the creation of equity,' she explains.

That said, the company has implemented a broad-based economic empowerment policy which pertains largely to the procurement of goods and services from empowered suppliers.

'Added to this, a number of legal SMMEs receive opportunities through our judicare programme, which outsources the provision of legal aid services through accredited service providers,' Clark says.

#### Responsible citizenship

Legal Aid SA is working to improve the awareness of human rights among South African citizens. This is done through an innovative concept called Fairplay, which targets school learners. 'Using sports like soccer and netball, we encourage children to play by the rules of society and our Constitution,' Clark explains.

The awareness programme further comprises public lectures on human rights, delivered to communities throughout the country, while an exhibition commemorating auspicious days on the human rights calendar has been hosted in communities, in partnership with key role players.

Legal Aid SA celebrated World AIDS Day 2009 by hosting around 2 000 AIDS orphans at a children's Christmas party. The fun and



'Our culture of high performance is nourished by our values of empowerment, caring, integrity, accountability, respect for human dignity and diversity, and passion for justice. These values are lived in all our interactions. This means treasuring our people, investing in them and empowering them. We are proud that we are at that pinnacle demanding the best of ourselves to achieve year on year of sustained high performance.'

**Vidhu Vedalankar**  
Chief Executive Officer



**Employee engagement starts with a comprehensive on-boarding programme, which focuses on orienting and assimilating recruits and helping them absorb the organisational culture.**

games also had an educational element, as the organisation used the opportunity to teach the children about their constitutional rights.

**International stance**

Legal Aid SA does not have international operations. However, it actively contributes to the development of legal aid systems on the African continent, and participates in legal aid forums around the world.

**The future**

Clark reports that Legal Aid SA's goal for 2010/11 is 'to maintain consistently high levels of quality service, while growing our client base'.

The firm has adopted a strong inward focus, too, as exemplified by the adoption of its brand internalisation programme, which was launched during 2009. 'This initiative has proved extremely successful in fostering integration between organisational culture, client services, and our overarching organisational brand,' Clark explains. The programme continues to gather momentum and the next step is to entrench – and expand on – its benefits by introducing a strong emphasis on brand ambassadorship.

She adds that the organisation is now planning to introduce an intensive leadership development programme, the aims of which are to increase the level of employee engagement, through value-based leadership.

'As a leading provider of quality, professional legal services, ensuring effective access to justice for the poor and vulnerable in an independent and caring manner remains our mission. Realising this mission can be achieved only by having an engaged workforce and dynamic leadership,' Clark states.

**The people**

Legal Aid SA targets university graduates. 'This ensures a steady stream of entry-level candidates with the correct culture fit,' says Clark. The organisation strives to retain high-performing graduates as permanent employees by offering significant opportunities for promotion, advancement and development. When necessary, the firm calls on the assistance of recruitment agencies to headhunt top talent. An internal referrals system is also in place, while the organisation's expansive network – which extends into all reaches of the industry – is also a rich source of potential candidates.

What type of individuals flourish at Legal Aid SA? 'We seek out energetic self-starters who fully embrace diversity and have a professional mindset, and who are passionate about serving the poor and vulnerable,' Clark replies. 'There is a high demand for our services, so our staff must be able to cope with a gruelling pace. It's also critical that we maintain a high standard of professional excellence.' She adds that the demands of the job make for a meaningful and fulfilling career.

Employee engagement starts with a comprehensive on-boarding programme, which focuses on orienting and assimilating recruits and helping them absorb the organisational culture. 'Relationships are collegial, with a

strong emphasis on team performance and development. A healthy competitive spirit exists between teams and regions,' Clark says.

Teamwork is an important aspect of the job, as the ability to deliver quality service relies on sharing knowledge. This is facilitated through institutionalised case discussion forums and research.

**Company culture and style**

'Our organisation is driven by a dynamic, energised and committed workforce, who are motivated by the opportunity to serve South Africa's poor,' says Clark. 'They believe that in serving the poor, they are serving themselves.'



'With its strict deadlines and emphasis on excellence, employees at Legal Aid South Africa need to be on their toes at all times, as well as keep abreast with new legal trends and business administration to ensure best service delivery to clients. The knowledge that I add value to the organisation in serving the poor and the vulnerable makes me proud that I am giving back to my community.'

**Mokgadi Morata**  
Professional Assistant-  
Corporate, National  
Office Braamfontein



**Legal Aid**  
South Africa

**Your voice. For justice.**

# Report on Performance Quarter 1 – April – June 2010

Briefing of Parliamentary Portfolio Committee on Justice

September 2010

## Employee & Organisational Capacity – Infrastructure & Staffing

INDICATOR	PERFORMANCE - 2010/11							Heat map	2009/10 No. / %
	Annual Target		Q1		YTD		Performance against Target		
	No.	%	No.	%	No	%			
<b>Infrastructure</b>									
Justice Centres (JC)	64		64		64		On track	64	
Satellite Offices (SO)	64		64		64		On track	63	
<b>Legal Staffing</b>									
PA's	854	96%	798		798		93%	781	
CAs	650	96%	618		618		95%	569	
Legal Supervisory Staff/Managers	286	96%	263		263		92%	252	
<b>Staffing</b>									
Establishment (budgeted posts)			2,595		2,595			2,513	
Number of staff (recruited)		96%	2,434	94%	2,434	94%		2,352	
Number of Lawyers			1,855	76%	1,855	76%		1,619	

# Annual Report Legal Aid South Africa 2009 / 2010

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Independent and within reach

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**STRATEGY O3: TO IMPLEMENT PEOPLE-CENTRED HUMAN RESOURCE MANAGEMENT - LEGAL AID SOUTH AFRICA AN EMPLOYER OF CHOICE**

Projects		Key Performance Indicator			Outputs	Performance against KPIs	Variance in performance against target
		Measures	Targets				
			Quality	Quantity			
03-CB-P2	Performance monitoring  Achiever Awards	Performance Contracts aligned to business plan and performance reward as per policy	Aligned to Business Plan	Annual	Performance contracts developed from Business Plan  Performance contracts signed off  IDPs developed for all staff	Performance contracts were in place.  IDPs were in place for all staff.	
		Performance contract quality checks		Reviews conducted twice, one in Q1 and one in Q3	Performance reviews for year end 2008/09 and mid-year review 2009/10	The year end reviews for 2008/09 were completed in Q1 of 2009/10 and the mid-year review process was completed during Q3.	
		Achievers recognised		Reviews conducted twice, one in Q1 and one in Q4	Review and coaching conducted and monitored. IDPs linked to individuals and included in ATP	The quality review of the midyear performance review process was completed. In general, the process was found to be consistent and in compliance.  Applaud awards were issued throughout the financial year and achievers were recognised at the National Achiever Awards held in December 2009.	
<b>Programme O3-C9: Talent Engagement</b>							
03-C9-P1	Succession planning				Implement a succession planning project	The first group of succession planning candidates completed the Certificate Programme in Leadership Development with Wits Business School in November 2009. The selection of the second co-hort was completed.	
03-C9-P2	Career pathing				Legal Aid South Africa legal career path maintained and widely understood	The legal career path was maintained and an awareness programme was implemented.	
	Separate legal and non-legal				Legal Aid South Africa non-legal career path maintained and widely understood	The non-legal career path was maintained and an awareness programme was implemented.	

## 5.10 HIV/AIDS AND HEALTH PROMOTIONS PROGRAMMES

TABLE 20: DETAILS OF HEALTH PROMOTION AND HIV/AIDS PROGRAMMES

	Question	Yes	No	Details, If Yes
1.	Has Legal Aid South Africa designated a member of the SMS to implement the provisions of the HIV/AIDS Strategy of Legal Aid South Africa? If so, provide her/his name and position.	✓		<ul style="list-style-type: none"> <li>Dayalan Naidoo – Organisation &amp; Employee Development Manager.</li> </ul>
2.	Does Legal Aid South Africa have a dedicated unit or has it designated specific staff members to promote the health and well being of its employees? If so, indicate the number of employees who are involved in this task and the annual budget that is available for this purpose.	✓		<ul style="list-style-type: none"> <li>06 Regional Human Resources Managers and 01 Human Resources Manager – Special Projects.</li> <li>Budget HIV/AIDS – R 200 000.00</li> <li>Budget Employee Assistance Programme – R200 000.00</li> </ul>
3.	Has Legal Aid South Africa introduced Employee Assistance or Health Promotion Programmes for its employees? If so, indicate the key elements/services of the programme.	✓		<ul style="list-style-type: none"> <li>Circle of Vitality – Integrated Health &amp; Wellness Programme;</li> <li>Employee Assistance Programme;</li> <li>HIV/AIDS - Education &amp; Promotion Programme.</li> </ul>
4.	Has Legal Aid South Africa established a committee as contemplated in the Act? If so please provide the names of the members of the committee and the stakeholder(s) that they represent.	✓		<ul style="list-style-type: none"> <li>Health and Wellness Committee Members:               <ul style="list-style-type: none"> <li>o Amanda Clark – HR</li> <li>o Dayalan Naidoo – HR</li> <li>o Gudu Mngomezulu – HR</li> <li>o Joy Mohlala – HR</li> <li>o Gordon Maaake</li> <li>o Anne More</li> <li>o Rochelle Morgan</li> <li>o Thabitha Monyela</li> <li>o Thabiso Nyamane – Union</li> <li>o Sophie Monjelele</li> <li>o Roselyne Mphaga</li> </ul> </li> <li>156 Occupational Health and Safety Committee Members</li> <li>156 First Aid Members</li> <li>64 Justice Centre Executives and Regional Operations Executives are assigned safety duties in terms of Section 16(2) of the Occupational Health and Safety ACT NO.85 of 1993.</li> </ul>
5.	Has Legal Aid South Africa reviewed its employment policies and practices to ensure that these do not unfairly discriminate against employees on the basis of their HIV status? If so, list the employment policies/practices reviewed.	✓		<ul style="list-style-type: none"> <li>Study Assistance and Education Policy;</li> <li>Training and Development Policy;</li> <li>Sexual Harassment, Intimidation and Victimisation in the Workplace;</li> <li>Employee Wellness Policy;</li> <li>HIV/AIDS Policy;</li> <li>Health and Safety Guidelines</li> </ul>
6.	Has Legal Aid South Africa introduced measures to protect HIV positive employees or those so perceived to be HIV from discrimination? If so, list the key elements of these measures.	✓		<ul style="list-style-type: none"> <li>Employee Wellness Policy;</li> <li>HIV/AIDS Policy;</li> <li>Employment Equity Policy;</li> <li>Grievance and Disciplinary Policy and Procedure.</li> </ul>
7.	Does Legal Aid South Africa, encourage its employees to undergo Voluntary Counselling and Testing? If so, list the results that you have received.	✓		<ul style="list-style-type: none"> <li>The Voluntary Counselling and Testing was deferred to the 2010/2011 financial year in order to focus on the following critical areas:               <ul style="list-style-type: none"> <li>o host 2000 AIDS orphans for an educational fun and games;</li> <li>o distribute HIV/AIDS, TB, Better Health 1&amp;2 and Lifestyle Pocket Posters.</li> </ul> </li> </ul>
8.	Has Legal Aid South Africa developed measures/indicators to monitor and evaluate the impact of its health promotion programme? If so, list these measures/indicators.	✓		<ul style="list-style-type: none"> <li>Peer Educators are trained to facilitate the "Circle of Vitality," an integrated health and wellness programme designed to encourage all employees to participate in health and wellness activities, including taking responsibility for their own health and wellness.</li> <li>The Circle of Vitality promotes:               <ol style="list-style-type: none"> <li>1. Health Risk Assessment;</li> <li>2. Health and Lifestyle Management;</li> <li>3. Counselling – First port of call;</li> <li>4. Peer Educators providing guidance.</li> </ol> </li> <li>Peer Educators provide regular feedback on health and wellness sessions held in their respective centres and offices.</li> </ul>



**Women's Foreign Policy Group  
and the Institute of International Education**

**April 3, 2007  
New York, NY**

**Janet Love**

National Director for the Legal Resources Centre, South Africa

***The Fight Against HIV/AIDS in South Africa***

**Peggy Blumenthal:** Welcome everybody, I am Peggy Blumenthal, the Executive Vice President of the Institute of International Education. It's so nice to welcome you and to welcome members of the Women's Foreign Policy Group who have been here before. There are a number of familiar faces and new faces. It's always a pleasure to host these events because Pat has a wonderful membership of people that we love to interact with and she and the WFPG always bring us fabulous speakers and we're really looking forward to hearing from Janet. IIE, as many of you know, administers the Fulbright Program globally. We've always had special interest in South Africa and the Vice President who led that activity, Shelia McLean, is back here today. I haven't seen her in a long time but we really welcome you and some of the alumni of the wonderful South African Education Program on the walls mixed in with Fulbright fellows and others. More recently we have gotten more involved with the issue of HIV/AIDS education throughout Africa and actually in a number of countries throughout the world as part of a project that the Packard Foundation is funding – a leadership development program in which we hope to be able to train more grassroots workers on reproductive health issues around the world to take leadership positions. So I think we're all in this together. There are many different ways to work on the problem and I know that many of you are working hard as well, so it's a real pleasure and honor to have you here today.

**Patricia Ellis:** Thank you so much Peggy. We really appreciate the partnership and working together and we're happy to be back here again. We've had many wonderful programs on different international issues and this is obviously one that many people care about given the response. We had to move from a smaller room in order to have room for everybody. So I just wanted to welcome our members, our friends, our guests of which there are a number.

I'm Patricia Ellis, President of the Women's Foreign Policy Group. We promote women's leadership and voices on all different international issues. We have done a number of programs over the years on South Africa and we've worked with some of the women ambassadors to South Africa. South Africa's had a number of women ambassadors to Washington and currently there is one who will be leaving shortly. We've also done a number of programs on AIDS and I have a special interest myself in South Africa since when I was a journalist it was one of my big stories and I had the opportunity to go back there a number of times. I was also fortunate to meet Janet and Sheila McLean in Washington. Shelia's a former Board member of the Women's Foreign Policy Group and also is a member of the Board of Southern Africa Legal Services Foundation.

I would just like to give people a little update on some of the things that the WFPG has been doing. We recently held a program about the U.S. role in refugee protection with the Assistant Secretary of State, Ellen Sauerbrey. We brought her from Washington to New York. We did a mentoring fair at Columbia University, which was very exciting. Those who couldn't participate this year should think about it for next year. The format is that we sit at tables and have students come and talk to us and ask questions in a very informal setting about all different possible careers in international affairs. We also celebrated women diplomats on the occasion of International Women's Day, which was really wonderful. I am most excited about something that is coming up in just a month, our second annual UN Study Visit. It's a conference that we hold at the UN with briefings with top officials. Right now is an exciting time under the new leadership. So far we have confirmed the new Under Secretary-General for Humanitarian Affairs, John Holmes, as one of the speakers. It's an all day event that includes a luncheon at the UN. It's very exciting and you'll be able to get more information on our website if you are interested in it. We hope a lot of you will participate, so please leave us your information.

I would now like to turn things over to Shelia McLean, who will introduce our speaker. Thank you all for coming.

**Sheila McLean:** It is a total pleasure for me to introduce Janet. I want to put this introduction in a context, a personal context, which is that about 30 years ago, public interest law was not being funded in the United States. There had been civil rights activities that were promoted by law, non-profit law firms, before public interest law was a creature of the 1970's. The Ford Foundation where I then was located was one of the first funders of that new development then.

I also went on a trip to South Africa 30 years ago that introduced me to a group of very established lawyers inside South Africa who were in the vanguard paradoxically of fighting apartheid through rule of a law—All sorts of complex issues in that statement. These lawyers were well enough informed about developments around the world that they came over to the United States with Ford Foundation funding to take a look at public interest law firms and to make some links with public interest law firms.

And then in about 1979, the Legal Resources Centre was founded. It was founded with the governing body being a group of very distinguished jurists as well as practicing lawyers. Justice Dunstan Mlambo, to my right, is in that tradition of distinguished jurists. He's on the Court of Appeals in South Africa. He is also the Chairman of the Board for the Legal Aid Society and in addition, he is on the Board of the policy-setting group that guides the work of the Legal Resources Centre.

Now we turn from that history from my days at IIE, which were unbelievably wonderful, in the 80's—fast forward to a new South Africa. With a public interest law firm that developed as a protest organization inside the country during apartheid. Janet Love is not a lawyer, she is the first non-lawyer, and you'll notice that she is a woman. She is the first woman to head the Legal Resources Centre, which is redefining its mission and has been redefining its mission to work not only in protests but to work in advocacy. By the way Ann Satchwill is here with us. Ann is the National Director of the Southern African Legal Services Foundation on whose Board I sit and we are a support organization for Janet's organization and we are helping Janet and Dunstan as they visited different places in the United States over the past ten days.

In any case, Janet, who came in protest is now a superb leader, manager, of an evolving organization. She'll talk today about HIV/AIDS, but if you have any interest in public interest law or anything else about NGOs on the ground in South Africa, during the Q & A I'm sure she'll be happy to answer

everything, because I've heard her speak before and she's superb. She'll be great and she's great at Q &A.

**Ms. Ellis:** Thank you so much Sheila. Before we turn it over to Janet, I wanted to welcome the wife of the South African Ambassador to the United Nations. Thank you so much for joining us.

**Janet Love:** Thank you everybody for making this time. I imagine that interrupting your day's schedule is not very easy. The background about the LRC I think has been given, but the Legal Resource Centre's organization is defined by the Law Society of South Africa as a Law Clinic. When you define a Law Clinic it means a few things. It firstly means that you provide services to people who would otherwise not be able to afford those legal services. The second thing that it means is that you can't charge for the services. The third in our case is that we're an institution that is not funded by the state we are an institution that is funded therefore primarily by the resources that we manage to generate from contributions that are made within South Africa. And still unfortunately, the significant portion of our contributions come from outside of South Africa. I say unfortunately because I think that within South Africa, there is a great deal of possibility for people who do have wealth-- and some old wealth, some new wealth -- to do a lot more giving to people who are really very greatly disadvantaged.

Having said all that, I thought I'm not going to spend a lot of time talking about the range of activities that the Legal Resources Centre is involved in, because that would not give us any opportunity for discussion. Instead I would explain how the LRC operates using a fairly well know case that deals with HIV and AIDS, in which the LRC was involved, and which demonstrates the way in which we believe firstly the rule of law can be used and must be used in the interests in an individual client, but also an attempt to ensure that the benefit that an individual client can have, that is a benefit that can cascade; that can become beneficial to a much wider range of people.

In 2002, the LRC was approached by two clients. One an individual client, a pregnant woman who was living with HIV and AIDS, and the second was an organizational client, at that time not very well know, but now I think very well known both domestically and internationally, the Treatment Action Campaign. In asking the LRC to intervene on behalf of this individual woman, who was very concerned that she couldn't afford medication and anti-retroviral treatment, and was obviously worried about her own health situation and that of her fetus. And the court case was pursued and our courts, our democracy, are what give rise to a whole lot of the engagements in our constitution and made it possible for us, using our constitution, to say that the interests of the unborn child, and secondly in terms of requirement that the state does provide for access for health care, the need to ensure that anti-retroviral treatment was provided for expecting and lactating mothers, the immediate interests of the child, because the constitution does not only require that the state to provide treatment for all South Africans on an equal basis, but it requires that the state gives health treatment in the case of children. So there is a distinction in our constitution in relation to children, in terms of giving them an added prioritization.

On the basis of that, the state was required and did roll out a treatment program for pregnant and lactating mothers, and it's a program that was not without its challenges. And it also led the foundation therefore, not just for the treatment of our individual client, but asked for the treatment of pregnant and lactating mothers throughout the country, but in fact has laid the foundation for treatment and treatment facilities throughout South Africa for an increasing number of people who are living with HIV/AIDS.

Having said that, we are in a very interesting time for South Africa. We went through the first five years of the country under the leadership of the National Department of Health and putting together, from 2001 to 2005, a national strategy in relation to HIV and AIDS, a strategic program of action. At the end

of 2005, the President directed that the Deputy President and the Deputy President's office should ensure that an evaluation be taken. The evaluation wasn't taken during the course of 2006, and at the beginning of 2007 the current Deputy President Mlambo-Ngcuka, has now got the mandate to lead the South African National Council that deals with HIV and AIDS. What's important about that is that in relocating...of a National Integrated Program involving all agencies of the state, involving all agencies of civil society, whether it's the voice of non-governmental organizations and non-profits, business organizations, community-based organizations, or whether it's the involvement of all the departments of government dealing with prevention on a local level, the reality is that by shifting the focus of this particular forum from the Health Department into the office of the Deputy President there is a recognition that HIV and AIDS is way beyond something that is a health issue alone. It is a health issue, but it is an issue that affects every aspect of people's lives. And when we look at how HIV and AIDS is something that in the Legal Resources Center we have specific cases that we tackle in this regard. I think it will give you an idea of the sort of issues that are related and attempt to deal with where the current National Strategic Program is intended to go. The LRC is one of the organizations, civil society, that are involved in one of the structures of the National Strategic Program, and so I am able to give you some feedback on her recent conference that was held in South Africa, regarding the government and non-government and private sector institutions.

The sort of cases that the direction of our work has taken in recent years has involved not just access to treatment. We do still have access to treatment cases, for example, recently prisoners in the Durban Westville Prison were non receiving treatment, and there was a need that the institutional arrangements are very conducive, firstly, to the possibility of people being given treatment, but also prisoners come and go and its important to contain the question of something that has reached the kind of epidemic proportions that HIV and AIDS have in South Africa, that we use every avenue. The courts did rule in our favor, and treatment is now being given to prisoners. And other groups were accessed as a result. In certain establishments where refugees are being processed there is again a need for, in some of those establishments, to ensure that facilities are available. HIV and all the opportunistic diseases that are associated with it, don't exactly ask for peoples passports before they infect them. So it's quite important that we realize the reality of refugees.

There are also issues that relate to discrimination. Once you have something that has the level of stigma that unfortunately ignorance has allowed stigma to be attached to HIV and AIDS. The ignorance of mankind not knowing how to prevent it in the sense of any kind of inoculation or something that people might be more comfortable with. When I was growing up, I remember that when people used to talk about cancer, they used to talk about it in hushed tones because that 'c' word provoked the same level of anxiety and fear. Young people today find that very difficult to believe, but in fact that was a reality. The ignorance of our society was such that we weren't able to cope with the kind of panic that cancer instilled in people because there didn't seem to be any hope. And that's exactly the kind of stigma that HIV and AIDS attract. So we do have people in the workplace. People who try and access various platforms or facilities, who are discriminated against. And we and also our partner organizations in some situations are approached by people. For example cases dealing with discrimination, sometimes the project is dealing with a whole batch of causes on a similar basis and rather than duplicate resources we work very closely with them and we transfer our client to them so that we can focus on issues where maybe small Senior Counsel resources are needed and possibly a great deal more research is needed for which we have a little bit more capacity at this stage in the legal field, than an organization like the AIDS Law Project.

I think the important thing here is to reckon with the fact that whether it's the ALP, ourselves, people at the Law Center and Clinic, there is a real coming together of organizations in South Africa to tackle

something that has reached pandemic proportions very much in a cooperative basis. As many situations will have it, when you have something that is an evil, apartheid being an example, evil tends to have the possibility to galvanize collective response and often collective response has as its end result something that has not just good, but is ejected with an enormous amount of optimism. And I do believe that is what we are seeing in our country with regard to the response to HIV and AIDS has that potential.

We also represent a number of children, in relation with issues that are to do with social grants, with care facilities, with the possibility of foster homes, and the registration of those foster homes themselves, all of which are part of the attempt by an organization like the LRC to tackle issues that deal or begin to deal with the plight of orphans. Our social grants system at the moment, as all social programs do when they are developed in a rush, still do need to have some period of review. Our social grants systems have a few anomalies. We have a situation where if you are a child, age 16, you can do many things. You can also have the obligation, or you can have the responsibility thrust upon you, of looking after four younger siblings. But to access the social grant for the child care there are things you can not do because you are too young. So what happens is that some adult goes and supposedly accesses the money on their behalf. Very often those children do not see those grants. It is not an intended consequence, but something that has to be tackled. We've got laws that are dealing with childcare facilities and foster homes. Obviously, the state has a need to ensure that foster homes are not part of the problems, but part of the solution.

At the same time there are delays in foster homes getting registered. Why? Because within our social services the capacity to go and inspect foster homes is not always there. We have for example a desire to help foster homes, a desire not to be irresponsible about that, but there's the catch up. And so there is a need sometimes for systems that are administered regularly so that we do engage with structures in government or attempt to develop those regulations and if there is a lack of willingness to do that, we unfortunately have to say to some of the provincial Departments of Welfare that it will be unfortunate, but it will be necessary for us to appeal to the courts. So our attempt is not to go the route of litigation, its costly, its time consuming, but at times it is necessary. And sometimes, in some of our cases, that is what we have had to do.

The third area that we have worked on very extensively in is in relation to women who are subjected to dreadful forms of abuse and particularly girls in schools. There's often in state of transition and notwithstanding the fact that many people regard twelve years as a substantial period of time. This country took a lot longer than twelve years to bend down its transition and in the twelve years there are a lot of very good things that have happened, for example, with our education system. Today, the number of children who don't have the access of schooling is so small in comparison to what it was, but there's schooling and there's schooling. There's schooling of a class of 30 to 35 and there's schooling of a class of 70 to 95. There's schooling in a room which has got decent shelter and a place to sit and a desk to write on and there's schooling under a tree.

Now there is a lot that still needs to be done, but one of the consequences of trying to match up with the demand for moving away from a state that services a minority of the population, the white population, to a state that serves the entire 45 million is something that has caused consequences that really do affect the safety of girls. We have schools that are, for example, at a distance from the homes of children and there are no transport facilities. It is one thing to have to walk from a place like this to maybe Rockefeller Center. It's not the shortest of walks, but it's doable, there are lights and roads. The same distance in the middle of a veldt is a totally different thing. In the early hours of the morning the numbers of girls who get raped in fields on their way to and from school is very high indeed, and that's not only in the rural areas. Secondly, we have a situation where in the schools, there are some schools

that have a toilet, a sanitation facility; other schools do not have sanitation facilities. In some cases schools that have sanitation facilities, the facilities are actually not worthy of the name. And so girls and just not able to use those facilities so they are forced to go and use the veldt, and enter a situation that has caused a lot of abuse.

But there are also other worrying things in our society. And of all of these, the rape of girls in schools has been shown to have increased the incidence of HIV and AIDS dramatically. There was an interview, a research project undertaken by the Medical Research Council at the end of last year. They reported it at the beginning of this year, in five centers in the Eastern Cape. The interviews were conducted with teenage boys. The question that was asked of these boys was: have you directly participated, or been a direct witness to a rape of a girl or any other form of physical abuse? And of the boys interviewed in the five centers, and the interviews were a fairly good sample, 20%, one in every five, said yes.

That's a level of vulnerability that girls face in schools, which is enormous. And our role in this, at the Legal Resource Centre, has been multifold. Firstly, we have represented children in schools where the security in and around the schools is not there. Secondly, we have represented people in relations to the transportation to and from schools. Thirdly, we've represented children in schools in relation to their sanitation facilities. We also have had a situation where we have raised, on a number of occasions—and now I would say that have raised in a forum—that is really giving us hope and is intended to, that we need to have better information on the basis of which we can be a lot more targeted about our preventative interventions. This we've done through the new National Strategic Plan. One of the components of the National Strategic Plan deals with monitoring and evaluation. And there has been an acceptance that the whole set, all the sets of indicators that are needed, are not purely medical indicators. There are a lot of indications that are needed, especially out of the school system, for example which of the schools are having pregnancies? What is the understanding in those schools of the incidence of abuses that are reported in those areas? What is the state of the sanitation facilities within the schools? The response of the government and of the non-government sector can be a very targeted one.

Then in relation to the questions of women, there is another area of work that we have had to deal with, and that relates to the impact of customary law and also customary practice. Insofar as women and girls—this is not purely something that relates to traditional authorities, but there are elements of it. In a number of the rural areas, local governments are not something that are likely to be a force that will be organized, and have adequate capacity anytime soon. So, it is important for us to recognize that traditional leadership firstly does have a role to play. People might, and I don't know who would, but there are people who would, want to wish that role away. But a natural fact, even if at some point in the future that might become something desirable, right now I can say to you quite clearly: wishing away customary leadership structures is not a solution. These structures play an enormous role in assuring that home-based care is organized. They play a very important role in ensuring that social grants are disbursed. They play a vital role in ensuring that support structures from organizations like the agricultural department are actually enabled and allocated to people. And there are people within the customary law and traditional leadership structures who are able to reckon with the constitutional bill of rights, and do not feel the need to assert a male superiority, primogeniture, as something that is a necessary component of customary law. Because our constitution recognizes law to the extent that it does not conflict with our bill of rights, it also has gone further to say that customary law is living law. So, in that sense it has placed the challenge before our customary law leaders to say: you need to ensure that within your accountability and within the kind of role that you play on behalf of your communities, you are able to do that in a manner that is in accordance with the constitutional rights.

Unfortunately, at the moment not all traditional authorities have that view. So we have a situation where women who lose their husbands not only have to look after their own children, but also many of their nephews and nieces, have found that they no longer have their control over their homesteads. So a nephew, because he is male is given that control. Some of these women have successfully managed to challenge the practice within tribal councils. But there is a hell of a lot of support that those women need in order to ensure that they are able to live in those areas.

The second more problematic aspect about customary practice has nothing to do with customary law, its bigotry and male chauvinism at its worst. Basically it's also caused by social pressures. We have a situation where, for example, our police force, which is predominately male, is placed under enormous pressure. They have overnight had to service a population that is far greater than the population they were trained to do. They've done it often with no communication equipment, with no transportation. They've done it in situations where they have to serve people in townships who are armed with AK-47 rifles, and they don't even have protective clothing. Police are under pressure, but the unfortunate part is that they often take out their frustration within their homes. The incidence of battery of the wives of policemen is enormous. The representation of those women is something that has certainly raised concern. It raises concerns not only because of those women, but because the same policemen have obligations. They've got obligations, for example, to serve protection orders to the husbands of women who beat them. Very often in police stations the bottom drawers of policemen are filled with protection orders that have never been served.

These are the kinds of problems that the LRC has had to deal with and attend to. We're in a society where studying the law and being able to contribute to the society through many walks of life. You can contribute within government, you can contribute at the level of institutions that work with "Chapter 9 institutions" that are those institutions that are there to safeguard our democracy. You can contribute through various walks of public service. There are many lawyers, for example, who know more about international law through their participation in foreign affairs than, at this stage, are able to contribute because they have committed themselves to another walk of life.

The number of public interest lawyers has declined dramatically. The work of the LRC is work that really is one of those places that lawyers-- even if they are only going to come and spend three or four years of their career-- come because the quality of the service that we provide, the quality of the alumni-- including people who are Senior Counsel at the Bar throughout the country-- these are experiences that young lawyers value very highly for any career whether it's a career in public interest law or a career in any other kind of law. It's really something that becomes increasingly difficult. It becomes increasingly difficult in the context where we are facing a pandemic. There is no disaster anywhere in the world, whether it's Hurricane Katrina, whether it's the pandemic of HIV and AIDS, in our country that can be tackled using state apparatus alone. All disaster management requires all walks of life: government and nongovernment, to tackle the problem. South African HIV is no different. It becomes essential for us to preserve and to grow the capacity of civil society to interact at every level.

Our National Strategic Plan has got four legs, if anyone wants to find out more about them, the one is dealing with prevention, and the whole range of interventions not just medical, that are required in relation to prevention. I've mentioned some of them that are part of our work. Some is relation to treatment, the second leg, and I've mentioned where some of our work in the legal sphere impacts on treatment, but obviously that is right across the board. Treatment is something that private institutions need to do more on. The various agencies of the state need to be doing more. And then we have research and monitoring. I've mentioned again where some of the issues we've raised are historically now receiving a very good hearing and that is one area where the human rights lawyers, public interest

lawyers who deal with HIV and AIDS have been invited by the government to participate in those committees. And the last is in relation to the law, legal rights, and human rights. And that we do participate in, and that deals with the range of issues-- behavioral changes-- such as the one I've mentioned in relation to customary practice. But also deals with certain legislative changes that are needed, for example around our social grant system.

I've said a mouthful, there's a lot more to say, but I'd like to hear the sort of things that you are interested in and really whether there are things that you have ideas on that we could take forward in public interest, representation of people who have this requirement to live full lives after being infected by HIV/AIDS. (Applause) Thank you very much.

**Ms. Ellis:** I'd just like to start off the Q&A. Following on the new approach dealing with HIV/AIDS, how specifically do you see this shaping the role that your organization can play and what are the challenges that you are trying to tackle currently in the not-to-distant future?

**Ms. Love:** It's a big question, but I think that I've attempted to stress how the participation in a National Strategic Plan has shaped our participation. It gives us real opportunities to intervene in a collegial way with various other organizations as well as with the state to ensure that we are able to impact policy and programs. We're able to have legislation that works a lot better. It becomes a learning experience for us all. Where it impacts a lot on our role I would say is that we have succeeded in convincing those who have been drafting the National Strategic Plan that the issue of women and girls is not an issue that can be put as one of many when it comes to action. It is central. If we look at the statistics between the ages of 25 and 29, 40% of women are suffering from HIV and AIDS. So what we're saying is that in order to tackle HIV and AIDS, the state has got to tackle the question of the rights of women. That of course comes to rights that we can prepare for in a very general way, and that therefore informs a big content of our women.

**Question:** I'm Lynn Heinisch, I work at CARE Media Relations. I worked in South Africa in 2003 to 2005 and did a lot of work through my organization on and around AIDS and particularly orphans. And I was interested when you spoke about children and their inability to access funds that are intended to help them. Could you talk a little more about what your organization is doing to address that or the likelihood of that being changed?

**Question:** I'm Rabia Mathai with the Catholic Medical Mission Board. I also work in South Africa--thank you for your leadership. As a person involved with children's rights and women's rights, I'm really concerned in the increase and exceptionality of AIDS. It's not going away—it's only increasing. How is South Africa going to take a lead so that we can learn about orphans and vulnerable children and home-based care for them? How exactly is there going to be accountability and scaling up to that degree? How are funds going to reach grassroots-level communities and who is going to do that?

**Ms. Love:** I would not want to even suggest that I have half of the answers on the unfolding work that needs to happen. The social grants situation is that what we've done is that we have required that the department look at the category of children's growth. At the moment children's grants end at the age of 7. Now we are looking at the ages between 7 and 28 to say what's going to happen in relation to child support grants, for the extended group of children. That's the first thing.

Secondly, were trying to get a situation where children who are -- it relates a little to the issue of orphans. I will wrap those two questions together. At the moment foster caring is treated in a manner that's the same regardless of who the foster caregiver is likely to be. What we've discussed with the

National Department of Welfare, and have drafted regulations for them on the basis of their positive feedback, is that in fact maybe we need to look at a different way of handing foster care when it involves children who are part of an extended family, as opposed to children who would go into foster facilities, of somebody who is potentially a stranger. It is stronger in some areas and families than others, but we still do have a system in South Africa, certainly amongst particular communities, a large proportion of the African community, not all but a large proportion, and of the community who lives in the rural areas. We have a large proportion of those who have an extended family fabric. So the possibility for children who are orphaned to be taken on board by the family needs to be enabled and become a lot smoother. But we need to also safeguard against a danger that has risen, where children are passed from one family member to another. We need to have some way in which its not only enabled, but it's recorded, so that an aunt, an uncle, who accepts responsibility, accepts it with a level of official endorsement in undertaking that is then recorded.

The third thing and that is the issue of child-headed households, is that in instances where an older sibling has agreed or because of the way in which the epidemic has affected various members of the family, has agreed to undertake to do the family care, that those children are given support through the home-based care network. And that their role as caregivers in the home, for their siblings, is recorded and they are then enabled to do some kind of adult education activity that then doesn't entirely disadvantage them from being able to do anything at schools, but doesn't expect of them to be the full time caregivers, but at the same time to have all the responsibilities of school going.

There are discussions at the moment that relate to the Department of Education, the Department of Health, in terms of home-based care, in order to integrate home based caregivers into the health system, and with the Department of Welfare, to enable that system. As to the extent to which it will become regulation, that is still something that has been in doubt.

I think it begins to address your question in relation to orphans. We faced a post-war type situation in relation to orphans. It's a post-WWII, post-Nazi Germany kind of situation. It becomes very important for us to use all of the facilities that exist for other purposes, for the purposes of supporting orphans. This is an enormous burden on some people within the public service, some of whom are not quick to do that. Funds need to be specifically allocated. This is where I was saying, to attend to something that at the level of the pandemic that HIV and AIDS have reached, you can't depend on state employees alone. One of our proposals is the fact that the school institution needs to be utilized, and that after care assistants need to be provided as a matter of course. Particularly in those schools where there is a high proportion of those relations who have either one or no parents still living. The difficulty at the moment is that it is happening on a voluntary basis. We do have volunteerism and a lot of philanthropy in South Africa; the sad part about it is that it increases the poorer people get and it decreases the richer they get. I'm not sure if that is a problem internationally.

In those communities you have teachers who are not well paid. You have teachers who work hard days who then stay unpaid for the afternoon, simply because they feel desperate for these kids. That's not really giving the support that kids need or that the teachers need to give. Our suggestion has been that we have to have a second wave of people who come into the schools who are associated with voluntary organizations of which there are a number, that are involved in literacy programs and so on, that actually come into schools to help children.

One of the key areas of cases that we have had that relates to this is the fact that in most cases the only meal is the school meal. A lot of our cases that we've taken up have been where the school-feeding

scheme has collapsed and isn't being attended to or the quality of the meal that is given, because of the corruption of people, is just not appropriate. We've had to intervene particularly in KwaZulu Natal.

**Question:** I'm Rihanna Kola, from Merck & Co. I was wondering if you could shed any light on when you would integrate into the school system an education program on HIV. We have a project on it and one of the indicators clearly showed that it's not HIV education that children are not digesting, it's behavior problems that keep them away from having disclosure or talking about it and this causes the lies and stigma that comes from outside to come into the schools, so they eventually shy away from it. How would you legislate in South Africa to move toward integrating at a younger age?

**Ms. Love:** There are plenty of large questions, in terms of educating children at school. They are linked to the question: how do we change attitudes? What are successful behavior changes activities? Firstly, I think that there does need to be a much stronger presence of counseling in one form or another, in institutional environments. Whether those happen to be in relation to hospitals, prisons, or schools. The difficulty there is the profession the psychiatrist's profession and social work profession in general. The clinical psychologists are required to spend a period of time doing practicals. Traditionally, that period of time has been the exclusive area of the Department of Health. Recently, there was a decision that the prisons would enable clinical psychiatrists to serve their period as well. The number of clinical psychologists is not very large, and there is a discussion about extending the requirement for practical work. Practical service, to be part of the training, which would improve the quality of training considerably, over a large area of social work. That would enable people to do certain service in places like schools, clinics, and hospitals. At the moment the big challenge to have good advisors in schools, is that they are few and far between. That's why schools can't be used as well as they could be. But it's a longer conversation that is just starting. There is a lot that has to be done around schools.

**Question:** What about faith-based groups?

**Ms. Love:** There are a number of welfare groups in the country-- the religious groups we haven't interacted directly with in relation to HIV and AIDS. We have interacted with religious groups in regards to advice centers. At this point, just as other parts of civil society have taken a knock because a lot of other fabulous people have entered other spheres of engagement. Faith-based organizations have also had people leave and play much more articulate and proactive roles outside of maybe the organized structures of that particular faith. The result is, for example in the past when we met with the South African Consulate of Churches, you would have one meeting and the word would spread. Today you can have a number of meetings, and the same degree of communication isn't there. The difficulty is to get it to being the kind of quality it needs to be, cooperation is really vital.

**Question:** I work at the African Medical Research Foundation. Around the schools there is the issue of girls. Often the predators of young girls who spread HIV and AIDS are the male teachers. I am wondering if you're going to work on that issue, and is there now legislation that is really tough? Is it actually being implemented?

**Ms. Love:** Three responses. It isn't law at the moment, but there are number of pieces of drafted legislation that have been put together. There are regulations that would follow the enactment of the children's bill. Those regulations pertain to particular forms of screening. People who deal with children need to actually go through it. Teachers, male or female, would be part of that ground. Of course the children's bill is still a bill and in the course of the next nine months the bill will be enacted, and many of the regulations will be reviewed and made more appropriate. There would indeed be the problem of monitoring. The second thing is that in fact the research, that one of the places of greatest

fear that girls have expressed, is the headmaster's office. That is an area of major concern that we have tried to engage quite seriously. We've even tried to take up the issue with trade unions because a school really lives or falls by the quality of the person who leads it. It is a public and universal statement. A third point is that there is pressure from the women's lobby that any one with a history of involvement of abuse, must be registered, similar to the UK. It hasn't gone beyond advocacy yet, but it is something that is enormously important in schools.

**Question:** I'm Rory Hayden from the Hayden-China Group. It sounds like schools are scary places to be. Does that mean that when after girls have been raped, their parents pull them out? What happens to those girls?

**Ms. Love:** I wish I could say that children are telling their families, but that's not what's happening. That's the very scary thing. There is stigma attached to rape that is reinforced by things that happen in the homes through an inadequate support system. But I wasn't to come first to the issue that you raised: that schools are a scary place. Some schools are a very scary place. A lot of schools have got scary elements. There are schools that are a lot less scary. Like the incidence of HIV and AIDS, a lot of that has to do with the geography of poverty. It's not particularly the issue of schools. It is street lighting, or the absence thereof. It is public transport, or the absence thereof. They feed from one to the other. Because there isn't an adequate support system, there is not always an adequate support level, that provides counseling, for example. In terms of the prosecutors and the police, as wonderful as many of them are, there is only so much that they can do. We're talking about men and women, who themselves need counseling because of what they've had to witness. We are in that crisis. It is a crisis that has a geographical pattern that sadly mirrors poverty.

**Question:** Elisa Slattery with the Center for Reproductive Rights. Could you talk a little bit more about the case that you mentioned earlier? What do you think about the state providing mother-child transmission programs?

**Ms. Love:** There has been a tremendous amount of implementation but again it's not without its problems. Firstly, if people have the ARV treatment, and minimized the risk of infecting their newly born children, they are very likely to have to be supplied with formula milk by the state. There are many who need formula milk. When they find that that person is getting the milk, the rumor is out: that person has HIV/AIDS. So what do you do now? How do you deal with stigma on the one hand, and what needs to be done on the other? That has set up other problems in that when people begin the program, they haven't yet been at the receiving end of the stigma, but after they start using the formula and the drugs, they face the stigma, and they withdraw. And you start to get TB resistant strains. So the provision of the ARVs is not the total of what needs to be dealt with. In some situations it's not a problem. And the stigma is not as great. The clinics have set up disguises to cover up why people are coming to receive the formula. They actually set up little centers and they require people to pay for the formula milk as if they are buying it, and if they keep their receipt, they can get their money back. That's a lot of follow up, but the combination of primary care and home based care is what we are striving towards.

**Question:** I'm Phangisile Mitshali. I work at the BMS Foundation's "Secure the Future" program in South Africa. You've been mentioning a lot about the role of home-based caregivers. Is there now a recognition that they need to be paid for the work that they do?

**Ms. Love:** I do not feel that there is recognition. We have said that there needs to be a recognition that home based caregivers need to be integrated into the understanding of what the health system requires.

We have not said that they need to get compensation. In many cases, they do not get compensation or even food to feed those they are helping. There is definitely a struggle over the worth of their service, which is very difficult. The fact of them being able to provide the service is made possible by a whole range of means. Whether or not at the end of the day that will include compensation, I personally hope that it will. The greatest generosity comes from-- on a poverty level-- the people who can probably least afford it. Strategically it is important to start where you can make a level of progress. That struggle is still on; it is still part of this strategic plan.

**Question:** My name is Elizabeth Ninan, I'm from the Catholic Medical Mission Board. I understand that there is one level that deals with child support grants and that there is some conflict with the disability grant, but I was interested most in land succession rights. For example, if the husband passes away, does the property go to the wife or to a child if he or she is above 18? But in eastern South African and KwaZulu Natal, there is communal land. What's the alternative?

**Ms. Love:** The LRC emerged out of a resistance to forced removals campaign and so the land component of our work is a major component and we deal a lot with communal-based land. There are two elements. The first element is that we have encountered the type of women who used the tribal council element to challenge what is blatant discrimination of women, in terms of secession rights. In terms of rights to property, family rights—all of which—are drawn by customary law. What we've tried to do is network with these communities. For example, it was a byproduct of a case we are bringing to the Constitutional Court, a recent case, we are challenging the unconstitutionality of the Communal Land Rights Act, which does not address that problem.

The second part of that deals with the fact that traditional law is recognized by our constitution and our Constitutional Court. In two separate judgments, the courts have made the statement that traditional law needs to be recognized, but only to the extent that it is in keeping with our bill of rights. But it needs to be understood that traditional law is living law, not text. It's a question of the process that gives life to the law. That is why the constitutional court has called it living law. There is a case of leadership concerning Mrs. Shilubana whose role has not been properly recognized. The Limpopo provincial government took her case to the courts. The High Court did not find in favor of her, at that point we were not working with her. The Supreme Court of Appeals, most of the issues raised in our amicus were endorsed, but they did not feel they could alter their decision based on the original information. We are now taking this to the Constitutional Court; we will be reintroducing on behalf of the Gender Commission the issue that relates to the rights of women in terms of secession, male primogeniture, the possibility for women to play leadership roles, on one hand. And on the other hand for courts to make it clear what they mean by living law.

These are some of the issues, and what we are hoping will unfold. It's a wonderful area of work at the moment, because it's really got such a potential impact on so many people. It's got an enormous potential benefit.

**Question:** I'm Michael Fleshman from the UN. One of the big issues that emerged a few years ago was the issue of how to engage the private sector. It is my understanding that the big employers haven't really followed through with it. What is the status of the private sector? How many people that need antiretroviral drugs currently have access to them?

**Ms. Love:** Firstly, on the issues of the numbers. I don't want to give you guesswork; I need to look it up. When it comes to the private sector, there is a problem in that the emphasis has been the need of the state to follow through and commit the following numbers. The state has got obligations, but what we

have been saying in the new National Strategic Plan, is that as non-profit organizations, we want the private sector to put their numbers on the table. We want the private sector to put their activities under the scrutiny of evaluation. We have an ability to learn from one another, and tie people into the commitments that they make. So the issue that you raise is correct, the fact that it needs to be challenged, I think has been taken up. There have been quite a number of engagements, and we will see what comes out of that.

**Ms. Ellis:** Thank you so much. It's been a really a wonderful opportunity and really informative and stimulating. We really appreciate your commitment. Thank you all for your questions and participation. We hope to see you all next time, particularly at the UN Study Visit. We wish you all the best.

## 2.4 REPORT BY CHIEF EXECUTIVE OFFICER MS VIDHU VEDALANKAR

Legal Aid South Africa is proud to report on another year of high performance, delivering on our mandate and touching the lives of hundreds of thousands of South Africans by enabling them to access justice. We can report that, in this past year, we have achieved the objectives and targets we set in our Business Plan and were able to provide quality legal services to over four hundred thousand South Africans. We also maintained a strong governance platform and obtained a ninth year of unqualified audit report on our financial reports.

2009/2010 is the first year of our 2009-2012 Strategic Plan period. In our past strategic planning periods we established our National Footprint across the country and consolidated our systems and policies to ensure we are able to deliver on our mandate to provide quality legal services to indigent South Africans. Having consolidated our National Footprint our overall strategic shift for 2009-2012 is continuing high performance to become a mature organisation aiming for excellence in performance to reach many more South Africans. This will enable us to achieve our mission to be a leading provider of quality, professional legal services, ensuring effective access to justice for the poor and vulnerable, in an independent, efficient and caring manner.

Overall we are on target to make the strategic shift that we mapped for this period. In the 2009-2010 period, on the legal services delivery front we completed a 3-year expansion of our national footprint (6 new justice centres and 27 satellite offices), geared up to launch our client call centre, the Legal Aid Advice Line, on 1 July 2010 and implemented a new delivery model through agency agreements with legal firms in rural areas. To support our legal practitioners in specialist matters we set up expert panels. Our practitioners exceeded their productivity level targets for new and finalised legal matters.



**MS VIDHU VEDALANKAR**  
**CHIEF EXECUTIVE OFFICER:**  
**LEGAL AID SOUTH AFRICA**

We also established our Legal Quality Assurance Unit which has completed the audit of files of 861 legal practitioners and audited performance of 230 practitioners in court in the 2009/10 year. Practitioner quality scores, as assessed by our Legal Quality Assurance Unit, were higher than target for all categories of practitioners. We have also significantly increased assistance on general legal advice matters. A revised civil legal aid strategy approved by the Board will restructure and increase, albeit in a limited way, our capacity to increase assistance in civil matters in the new financial year.

Our strategic shift also incorporated changes to our support platform to support the delivery of quality legal services. This ninth consecutive year of an unqualified audit by the Auditor-General attested to our strong financial management and governance record. This was further strengthened by a fifth consecutive year of no matters of emphasis. Our newly launched corporate identity and 'Legal Aid South Africa' brand was positively received. We successfully implemented matrix management to ensure a greater focus on legal matters by our legal managers while the administrative and non-legal responsibilities are attended to by our support managers. We also successfully implemented a risk based management approach to supervision and support of practitioners and managers to allow greater flexibility and align supervision and support to the level of risk of individual practitioners and managers. Our IT Platform was enhanced by upgrading our internet line to allow for greater use of technology in linking to clients and we also completed our Business Intelligence module which in the new year will allow online, real-time access to management information by managers and practitioners. Consolidation of our people development programmes allowed us to successfully accredit as a Best Employer.

Reporting in line with the components of the Balanced Scorecard used in our Strategic Plan, for our Client, Community and Stakeholder Strategies our

priority continued to be increasing access to quality legal aid services. We continued a 100% coverage of all criminal courts in the country. In the past year we expanded our national footprint by 2 justice centres (in Botshabelo and Malmesbury) to 64 justice centres and by 9 satellite offices (mostly in rural areas) to 64 satellite offices. In 2009/10 we provided legal assistance in 416,149 new legal matters and finalised 422,882 legal matters. Of the new legal matters 29,028 (7%) were civil legal matters. 93% of these new matters were delivered by our in-house lawyers based at our justice centres and satellite offices, 6% through outsourcing to private lawyers (judicare) and 1% through our co-operation partners (whose programmes are funded by us). 75% of the new legal matters we assisted in were in District Courts, 16% in Regional Courts, 2% in the High Courts and 6% in other courts. In addition to the new legal matters we also provided advice to 211,874 clients in the past year. Our programmes on legal quality contributed to all quality targets being achieved for all categories of practitioners.

Legal Aid South Africa participated in 44 backlog courts as part of the backlog project run by the Department of Justice. In addition to a general link to all awaiting trial prisoners through legal advice clinics at prisons and individual consultations, a special project focused on children awaiting trial continued as did the project focused on Awaiting Trial Prisoners who were in custody for more than two years. Our various interventions to reduce the number of unrepresented accused in courts contributed to a 17% reduction in automatic reviews in the past year. In the reporting period we assisted 59,266 children in criminal and civil legal matters. A pilot project with the Masters office in Bloemfontein working with the estates involving children was very successful. An improved networking with NGOs, CBOs and community advice offices is anticipated with the signing of a co-operation agreement with NADCAO, which has a presence in all the provinces.

This will allow a more effective link and support between community members seeking advice at advice offices and our legal professionals.

Despite these successes I am still concerned that limited funding is resulting in the practitioner per court ratio in criminal courts being insufficient to meet demand at courts. This results in high caseloads carried by practitioners in many justice centres and no relief capacity to replace staff who are away from the office. In this period of economic recession this is likely to continue. The lack of funding for civil legal matters has resulted in limited capacity to render civil legal aid services, impacting negatively on the number of clients assisted in civil legal matters as evident from the decline in number of persons assisted in civil matters. This limited capacity to undertake civil legal aid also results in a limited presence in rural areas making it difficult for clients in rural areas to access legal aid. The revised civil legal aid strategy mentioned above will to a certain extent increase capacity to assist clients in civil legal aid matters.

The Legal Aid Advice Line is also responding to this gap in reaching the poor and specifically the rural poor, by allowing them access to primary legal advice on the phone without having to travel to a justice centre or satellite office. The roll-out of a new corporate identity and brand resulted in partial delays to the branding of prisons, SAPS holding cells and Courts. This will be attended to in the new financial year.

Reporting on the second component of our Balanced Scorecard, in the Finance and Sustainability Strategies we continued our strong financial performance. Our ninth unqualified audit report went together with 99,5% of the budget being prudently spent. Payment of our creditors, including judicare practitioners, was within the 30 days target period. Compliance with our supply chain management policies and procedures also continued. A strong Legal Aid

brand is part of our sustainability strategy and this was attended to through the successful roll-out of a new Legal Aid South Africa brand and advertising campaign reaching over 7 million households. This resulted in a 6% increase in awareness amongst the communities we serve, that is, lower LSM groups.

We ended the 2009/2010 year being affected by the global economic recession as were all other public sector departments and entities. The impact of the recession is significant for us, with no new government grants, cuts in our budget in real terms and an actual budget cut in the MTEF 2010-2013 cycle period. We have operated an economic budget with more than 99% of our budget being spent thus ensuring maximum delivery to our clients. These budget cuts will therefore affect our service delivery and our ability to continue to service our clients at the level we have done. Although we will make every effort to minimise the impact on delivery it remains unavoidable.

Having consolidated our delivery and support platforms we were able to successfully introduce and implement matrix management. This allowed for improved reporting and support relationships horizontally and vertically within the organisation, linking the function specific executives to managers at regional and local levels. This implementation of a matrix management approach increased management focus on legal matters with the responsibility of business unit managers at regional and local level being redefined to oversight of support roles and an increased responsibility for legal development and support within their regions and justice centres. This meant that support function executives at national level redefined and increased their responsibility for their functions and managers at regional and local level for example, for support functions like finance, human resources and communications.

The implementation of risk based management was also introduced and implemented in the past year. This introduced a more customised response to the managing of managers and of legal professionals based on their risk profile and the level of support each required. This allowed us to shift from a standard to a more customised response introducing increased flexibility and self-management for the more experienced and proficient managers and legal professionals. This resulted in management attention being focused on those staff in greater need of support. This is important for sustainability and long-term performance. Building and strengthening these approaches will continue in the next period.

We have placed a strong emphasis on accurate and timeous management information to inform our work. With the finalisation of Phase 1 of the Business Intelligence (BI) project in the past year our practitioners and managers will be able to access online real-time information on their performance and delivery data to assist them in self-management.

The staffing component of our national footprint grew only by 3% to 2,513 posts. At year end our staff recruitment was at 94% ensuring that our justice centres are capacitated to provide quality legal services to our clients. Our turnover rate, excluding our candidate attorneys who are employed on fixed-term contracts, was below 10% per annum. We finalised an employment equity audit to inform the Employment Equity Plan for 2010-2015. Overall we are achieving our targets for race and gender with the exception of the achievement of targets in respect of African females at the specialist technical and senior management levels and targets in respect of people with disabilities, which remained a challenge. These challenges continue to be addressed in our 2010-2015 Employment Equity Plan. The non-implementation of Phase 2 of the Occupation Specific Dispensation for our legal professionals due to lack of funds continues to impact negatively on staff morale.

Our people focused programmes were implemented to build a strong and positive organisational culture and brand. The programmes strive to create a work environment in which employees are engaged and satisfied thus choosing to remain with Legal Aid South Africa, as an employer of choice, and being motivated to deliver high quality services. The investment in our staff through our training and development programmes also continued with training for legal, non-legal and managerial staff being achieved. We re-energised our succession planning programme to create a talent pool able to succeed in key critical posts.

Having consolidated our performance and governance issues, the focus on developing our leadership to manage sustained performance year-on-year commenced with our leadership programme under the theme "from Compliance to Values Based Leadership". Our leadership programme extends from Executives, to JCEs, to Managers, to Principal Attorneys and SPAs. Through our Leadership Programme we aim to supplement our compliance approach with a values centred approach. Our Leadership Development Programme includes a Certificate Programme for Leadership Development which is run by one of the country's leading business schools. This allows for the training of 30 senior managers annually. It also includes assessments and self-development and training for each manager to assist them to embrace the values centred approach.

In the past few years we have become increasingly technology dependent and thus had to upgrade our IT Platform to support our business needs. The IT Investment plan approved by the Board for that purpose was implemented providing an upgraded VPN platform and increased bandwidth capacity. The high cost of technology however remains a challenge to optimising IT operational efficiencies and moving to a more integrated enterprise wide resource programme.

This is especially evident in the only issue that remains a challenge in the Auditor-General's report to management, namely the management and administration of leave. The migration to an electronic leave management system, a module within the HR-SAP application that we have implemented for HR payroll administration, remains unaffordable.

In reflecting on the past year and looking at the year ahead there is no doubt that the impact of the recession is the biggest factor looming over us and our continued performance. Our demonstrated capacity to deliver our business results and our financial results over the past year and the last few years will be tested in the period ahead. The major challenge will be minimising the cutting back of our services in response to the cuts in funding. Reduced funding will result in increased workload for our staff and inevitably a reduced service to our clients. While we will make every effort to minimise the impact it cannot be avoided.

Legal Aid South Africa is a successful high-performance organisation because of the efforts of our staff, the Legal Aid South Africa citizens. Legal Aid South Africa is a brand acknowledged for its performance generally but also for the quality of legal services delivered enabling many more South Africans to access justice. I would like to express my thanks to all Legal Aid South Africa citizens for your dedication and delivery of quality legal services, which contributes to upholding our constitutional values and rights. Thanks are also due to our Board and its Chairperson, Judge Mlambo for continuing to provide its oversight and support roles. I also want to acknowledge with appreciation the outstanding contribution of my management team across the country, who has unhesitatingly embraced a values based approach to leadership to ensure year-on-year of sustained performance.

Delivering quality legal aid services is part of protecting and defending the rights enshrined in our Constitution. We are pleased that our successful performance is able to give meaning to the Constitution and make it a living document for poor and vulnerable South Africans.



**Ms Vidhu Vedalankar**  
**Chief Executive Officer:**  
**Legal Aid South Africa.**  
**19 August 2010**

**From:** Zena Nair [znair@sahrc.org.za]  
**Sent:** 17 June 2011 09:04 AM  
**To:** Anthony Brink  
**Cc:** Kayum Ahmed; Danaline Franzman  
**Subject:** RE: Brink/LASA: SAHRC Complaint: Reference no: GP/2011/0166

Dear Sir

We confirm that Ms Franzman is correct in her advices to you. We are in the process of finalising our response in respect of your complaint and will revert to you shortly in this regard.

Yours faithfully

Zena Nair (Mrs)  
Acting Provincial Manager: Gauteng

---

**From:** Anthony Brink [arbrink@iafrica.com]  
**Sent:** Thursday, June 16, 2011 11:42 AM  
**To:** Zena Nair  
**Cc:** Kayum Ahmed; Danaline Franzman  
**Subject:** RE: Brink/LASA: SAHRC Complaint: Reference no: GP/2011/0166

Dear Ms Nair

I refer to Ms Danaline Franzman's assurance to me last week that my enquiry as to progress in this matter has been brought to your attention and that I could expect a further update and response as soon as is reasonably possible.

I write to enquire whether it might now be possible to let me know the current state of play.

For the reasons I've repeatedly explained in my correspondence, every passing day is becoming more critically prejudicial to me.

Look forward to hearing from you.

Yours sincerely

Anthony Brink

Cc: CEO Kayum Ahmed and Legal Services director Danaline Franzman.

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**From:** Danaline Franzman [mailto:dfranzman@sahrc.org.za]  
**Sent:** 07 June 2011 05:39 PM  
**To:** Anthony Brink  
**Cc:** Zena Nair  
**Subject:** RE: Brink/LASA: SAHRC Complaint: Reference no: GP/2011/0166

Dear Adv Brink

Receipt of your email, and content thereof, is herewith noted with thanks.

Kindly note further that your enquiry has been brought to the attention of the current Acting Provincial Manager in our Gauteng Provincial Office, Ms Zena Nair, who is copied herein. Ms Nair has confirmed that the matter is indeed under attention, and that a further update and response will be provided to you as

soon as is reasonably possible.

Regards

Danaline Franzman  
Head of Programme: Legal Services  
South African Human Rights Commission  
33 Hoofd Street  
2nd floor, Forum 3  
Braampark, Braamfontein  
Tel: + 27 (0)11 - 877 3621/6  
Email: [DFranzman@sahrc.org.za](mailto:DFranzman@sahrc.org.za)  
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# Vote 23

## Justice and Constitutional Development

### Budget summary

R million	2010/11				2011/12	2012/13
	Total to be appropriated	Current payments	Transfers and subsidies	Payments for capital assets	Total	Total
<b>MTEF allocation</b>						
Administration	1 472.9	1 398.1	9.8	65.0	1 604.2	1 693.1
Court Services	3 871.9	3 320.6	23.1	528.3	4 241.1	4 555.0
State Legal Services	644.1	638.6	1.1	4.5	677.9	711.8
National Prosecuting Authority	2 439.6	2 420.0	9.6	10.0	2 586.8	2 718.3
Auxiliary and Associated Services	1 821.9	359.9	1 442.1	19.9	1 973.7	2 052.4
<b>Subtotal</b>	<b>10 250.5</b>	<b>8 137.2</b>	<b>1 485.6</b>	<b>627.7</b>	<b>11 083.7</b>	<b>11 730.6</b>
<b>Direct charge against the National Revenue Fund</b>						
Judges' salaries	465.5	465.5	–	–	504.9	540.3
Magistrates' salaries	1 464.4	1 464.4	–	–	1 599.3	1 711.6
<b>Total expenditure estimates</b>	<b>12 180.4</b>	<b>10 067.1</b>	<b>1 485.6</b>	<b>627.7</b>	<b>13 187.9</b>	<b>13 982.5</b>
Executive authority	Minister of Justice and Constitutional Development					
Accounting officer	Director-General of Justice and Constitutional Development					
Website address	<a href="http://www.doj.gov.za">www.doj.gov.za</a>					

*The Estimates of National Expenditure booklets for individual votes are available on [www.treasury.gov.za](http://www.treasury.gov.za). They provide more comprehensive coverage of vote specific information, particularly about goods and services, transfers, public entities and lower level institutional information.*

### Aim

*The aim of the Department of Justice and Constitutional Development is to uphold and protect the Constitution and the rule of law, and render accessible, fair, speedy and cost effective administration of justice in the interests of a safer and more secure South Africa.*

### Programme purposes

#### Programme 1: Administration

**Purpose:** Manage the department, develop policies and strategies for the efficient administration of justice, and provide centralised support services.

#### Programme 2: Court Services

**Purpose:** Facilitate the resolution of criminal, civil and family law disputes through providing accessible, efficient and quality administrative support to the courts and manage court facilities.

#### Programme 3: State Legal Services

**Purpose:** Provide legal and legislative services to government, supervise the administration of deceased, insolvent and liquidation estates and the registration of trusts, manage the Guardian's Fund, prepare and promote legislation, facilitate constitutional development, and undertake research in support of this.

Over the medium term, the board's focus will be to increase the number of criminal and civil matters finalised, thus increasing access to justice. This will be achieved by maintaining the ratio of legal aid practitioners per district at 1:1, while for regional courts the ratio will be increased to 1.25:1 in 2012/13.

## Expenditure estimates

**Table 23.10 Legal Aid Board: Programme information**

R million	Audited outcome			Revised estimate 2009/10	Medium-term estimate		
	2006/07	2007/08	2008/09		2010/11	2011/12	2012/13
Compensation of employees	310.5	402.9	609.7	657.7	719.3	793.3	817.4
Judicare	92.6	83.4	87.7	78.3	78.3	81.8	85.1
Cooperation agreements	4.8	4.7	3.4	4.2	7.5	7.8	8.1
Impact Litigation	2.1	2.7	4.0	3.2	5.3	5.5	5.8
Civil Disbursement	1.6	1.6	2.0	2.9	1.5	1.6	1.7
Other programmes	122.1	129.1	144.2	188.0	196.0	207.4	210.7
<b>Total expense</b>	<b>533.7</b>	<b>624.3</b>	<b>851.1</b>	<b>934.2</b>	<b>1 007.9</b>	<b>1 097.4</b>	<b>1 128.8</b>

**Table 23.11 Legal Aid Board: Financial information**

Statement of financial performance R million	Audited outcome			Revised estimate 2009/10	Medium-term estimate		
	2006/07	2007/08	2008/09		2010/11	2011/12	2012/13
<b>Revenue</b>							
Non-tax revenue	17.4	26.3	34.2	16.0	16.0	16.0	16.0
<i>Other non-tax revenue</i>	17.4	26.3	34.2	16.0	16.0	16.0	16.0
Transfers received	501.4	613.0	838.1	918.2	991.9	1 081.4	1 112.8
<b>Total revenue</b>	<b>518.8</b>	<b>639.3</b>	<b>872.3</b>	<b>934.2</b>	<b>1 007.9</b>	<b>1 097.4</b>	<b>1 128.8</b>
<b>Expenses</b>							
Current expense	533.7	624.3	851.1	934.2	1 007.9	1 097.4	1 128.8
Compensation of employees	310.5	402.9	609.7	664.2	725.8	797.1	821.4
Goods and services	208.4	203.7	225.1	250.9	261.7	279.1	290.5
Depreciation	14.7	17.5	16.0	19.1	20.4	21.2	16.9
Interest, dividends and rent on land	0.1	0.2	0.2	-	-	-	-
<b>Total expenses</b>	<b>533.7</b>	<b>624.3</b>	<b>851.1</b>	<b>934.2</b>	<b>1 007.9</b>	<b>1 097.4</b>	<b>1 128.8</b>
<b>Surplus / (Deficit)</b>	<b>(14.9)</b>	<b>15.1</b>	<b>21.2</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Statement of financial position</b>							
Carrying value of assets	45.3	63.4	97.6	103.2	99.9	97.7	98.1
<i>of which: Acquisition of assets</i>	13.6	36.0	47.7	26.1	19.8	21.8	20.3
Receivables and prepayments	4.6	3.8	3.7	4.8	6.3	8.2	8.6
Cash and cash equivalents	212.5	252.0	230.7	226.1	214.8	204.0	203.9
Assets not classified elsewhere	0.7	0.9	1.3	0.9	0.9	0.9	1.0
<b>Total assets</b>	<b>263.2</b>	<b>320.1</b>	<b>333.3</b>	<b>335.0</b>	<b>321.9</b>	<b>310.9</b>	<b>311.6</b>
Accumulated surplus/deficit	125.3	142.4	164.9	164.8	164.8	164.8	164.8
Borrowings	0.9	1.0	2.0	2.1	1.2	0.8	0.4
Post-retirement benefits	1.1	1.1	1.1	1.1	1.2	1.2	1.2
Trade and other payables	30.9	47.0	32.4	27.8	29.7	32.2	33.8
Provisions	105.1	128.6	132.9	139.2	125.0	111.9	111.3
<b>Total equity and liabilities</b>	<b>263.2</b>	<b>320.1</b>	<b>333.3</b>	<b>335.0</b>	<b>321.9</b>	<b>310.9</b>	<b>311.6</b>

## Expenditure trends

The Legal Aid Board receives transfers from government through the Department of Justice and Constitutional Development, and has been allocated R991.1 million, R1.1 billion and R1.1 billion over the medium term. This is the board's main source of revenue, supplemented only by interest income. Total revenue is expected to grow at an average annual rate of 6.5 per cent, from R934.2 million to R1.1 billion between 2009/10 and 2012/13.

Expenditure is expected to increase over the medium term at an average annual rate of 6.5 per cent, rising from R934.2 million in 2009/10 to R1.1 billion in 2012/13. Compensation of employees spending is set to increase as a proportion of total expenditure, mainly due to the board's strategy to reduce the outsourcing of legal representation. This is expected to be achieved by appointing more staff and implementing the occupational specific dispensation for legally qualified professionals. The increases of 22.3 per cent in 2007/08 and 36.7 per cent in 2008/09 on transfers received were for this reason.

The 2010 Budget provides additional allocations of R13.6 million in 2010/11, R35.9 million in 2011/12 and R47 million in 2012/13 for the carry through costs in compensation of employees of salary wage agreements and the appointment of additional public defenders. The deficit realised in 2006/07 was due to depreciation, which was a non-cash item.

**THE LABOUR COURT OF SOUTH AFRICA  
APPLICATION FOR A CASE NUMBER**

**ATTENTION: Ms L Bothma, Registrar Fax number 031 301 0145**

**1. Particulars of the applicant instituting proceedings**

**Name: ANTHONY ROBIN BRINK**

**Physical address: 25 BAKER ROAD, PRESTBURY 3201, PIETERMARITZBURG,  
KWAZULU-NATAL**

**Postal address: AS ABOVE**

**Telephone number: 033 344 2420 or 083 779 4174 Fax number: 086 6720776**

**2. Nature of application: UNFAIR DISCRIMINATION CLAIM, REFERRED FOR TRIAL  
IN TERMS OF SECTION 10 OF THE EMPLOYMENT EQUITY ACT 55 OF 1998**

**3. Particulars of the respondent**

**Name: LEGAL AID SOUTH AFRICA**

**Physical address: 29 DE BEER STREET, BRAAMFONTEIN, JOHANNESBURG,  
GAUTENG**

**Postal address: PRIVATE BAG X76, BRAAMFONTEIN 2017, JOHANNESBURG,  
GAUTENG**

**Telephone number: 011 877 2000 Fax number: 011 877 2222**

**Representative:**

**Name: GUARDIAN EMPLOYERS ORGANIZATION ('GEO')**

**Physical address: 334 EQUESTRIAN ROAD, RUIMSIG, GAUTENG**

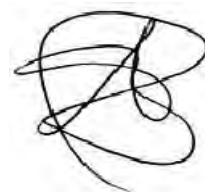
**Postal address: PO BOX 1190, RUIMSIG 1732, GAUTENG**

**Telephone number: 086 14 36436 Fax number: 086 606 2194**

**GEO REF NO: KNP926-11 CONTACT PERSON: LEONI VALENTINE**

**I certify that no previous application for a case number for the same parties in the same  
dispute has been made. I undertake to advise the Registrar in writing if proceedings are not  
initiated within 30 days or if the matter is settled.**

**Signed and dated at Pietermaritzburg, this 9<sup>th</sup> day of June 2011**



**ANTHONY ROBIN BRINK**

**From:** Anthony Brink [arbrink@iafrica.com]  
**Sent:** 23 June 2011 10:09 AM  
**To:** 'Zena Nair'  
**Cc:** 'Kayum Ahmed'; 'Danaline Franzman'  
**Subject:** Brink/LASA: SAHRC Complaint: Reference no: GP/2011/0166

**Importance:** High

Dear Mrs Nair

About a week on since your mail – ‘ We are in the process of finalising our response in respect of your complaint and will revert to you shortly in this regard’ – please provide me with a brief update as to the current state of play.

For reasons I’ve repeatedly explained, I need to know, and urgently.

A crisp progress report will suffice for the time being.

Subject to amplification in the light of the records I’ve requested, my statement of claim in the Labour Court is ready to launch.

I am now waiting on the SAHRC. See paragraph 213 in my draft statement of claim, below.

My immediate questions are:

1. Has the SAHRC’s PAIA Unit read and confirmed/disconfirmed my factual and legal analysis of the vacancy of LASA’s pretexts for withholding the records I’ve requested and need for my case? (If not, why not?)
2. If so, does the PAIA Unit agree with my contentions that these records are being unlawfully withheld from me in breach of PAIA and in violation of my fundamental right to information? (If not, why not?)
3. If so, has the PAIA Unit communicated its opinion on the legitimacy and compellability of my requests to LASA? (If not, why not?)
4. If so, has LASA responded to the PAIA Unit’s view expressed that the records in question must be produced?
5. If so, does LASA concede this and can I expect it to finally surrender the records I need?
6. If LASA remains a PAIA delinquent, what action is the SAHRC proposing to take to make it comply with the law?

With reference to my five specific questions, please advise me where things stand as at today.

What I really need to know is: Is the SAHRC working?\*

Yours sincerely

Anthony Brink

\*‘The SAHRC promotes, protects and monitors human rights in South Africa. It also has a specific responsibility to promote and monitor the implementation of PAIA.’ (SAHRC website)

25 Baker Road  
Prestbury  
Pietermaritzburg 3201  
28 June 2011

Mr Kayum Ahmed, CEO and Information Officer  
The South African Human Rights Commission  
Braampark Forum  
333 Hoofd Street  
Braamfontein

Per email: kahmed@sahrc.org.za

Dear Mr Ahmed

#### PAIA REQUEST FOR SAHRC RECORDS

I annex hereto a 'Form A' request for SAHRC records under section 11 of PAIA, together with proof of posting of the R35 request fee at the foot of it.

Although my purpose in requesting the records of a public body is immaterial under section 11(3) of the Act, I record here that I require them for the purpose of (a) a complaint to the Public Protector under section 84(b)(x), and (b) a report for the Portfolio Committee on Justice and Constitutional Development for the interrogation of the SAHRC's representatives at its next meeting: 'PAIA AND THE SAHRC: A CASE STUDY IN FAILURE: BRINK AND LASA, RECORDS REQUEST: INDOLENCE, INCOMPETENCE, PREJUDICED INDIFFERENCE, OR COUNTERMAND?'.

My report (and this letter) will be included in my document bundle in my imminent action against LASA in the Labour Court – delayed by LASA's unlawful refusal of my requests for critically relevant records needed for the presentation and proof of my case, and further delayed by the SAHRC's inaction thereanent, despite my innumerable pleas for mediation since September last year and finally my formal complaint lodged in April as a last resort to animate the SAHRC into dealing with LASA's violation of my

fundamental right to information and indeed the clear evidence that in contravention of section 90 of PAIA ('Offences') its information officer and deputy information officer have deliberately concealed incriminating records concerning their misconduct as CEO and NOE at the centre of my case.\*

My report will also canvass the SAHRC's persistent, shockingly unprofessional failure to respond to my simple repeated questions on the telephone and in correspondence over the months as to whether a specific commissioner has been appointed with oversight over the PAIA Unit, as expressly wished for by the Portfolio Committee; whether in view of LASA's persistent refusal to comply with my lawful records requests the SAHRC has registered it as a PAIA delinquent and will be reporting it as such in its next report to Parliament as required by section 84; and what the reporting period for its annual reports to Parliament is.

Two months have passed since I filed my fundamental rights violation complaint in April in a bid to finally flush out of LASA the records I need, and I've heard nothing since, notwithstanding my repeated emphasis in my regular reminders that I'm up against time limits for the filing of my claim in the Labour Court, and despite the repeated assurances I've been given that I could expect an 'update' to inform me of the state of play. Copying you in, I sent a further reminder to your acting Gauteng provincial office manager Mrs Zena Nair on Thursday last week seeking such a promised 'update'. She hasn't responded.

From the SAHRC's failure to keep me informed, the look of it is that my repeated appeals to the SAHRC since September last year to assist me in terms of its powers and functions under section 83(3)(c) to mediate and obtain LASA's compliance with the Act – even though I've done practically all the PAIA Unit's work for it in my comprehensive legal analyses set out in my two memoranda to it – have literally been a complete waste of time.

The manner in which the SAHRC publicly bills itself as our country's pre-eminent democratic institution, together with the many encouraging assurances and undertakings to me over the last nine months by email and on the telephone, keeping my hopes up that it would prevail on LASA to comply with

its constitutional and legal obligation to surrender the records I need, considered against what appears to have been the SAHRC's virtual total inaction in this extraordinarily serious matter, has been profoundly disillusioning to me to say the least of it.

I'm balefully aware that I'm considered a persona non grata by certain self-identified progressives – including at least two of your commissioners – for my active opposition to the abuses of the pharmaceutical industry in our country in relation to the majority African poor, but as Trengrove SC reminded us on winning a case for a lowly prostitute in the Labour Appeal Court in November last year, even 'the least of us enjoy the rights enshrined in the Constitution'.

In the situation, please would you give this matter your earliest possible attention.

Yours sincerely

A handwritten signature in black ink, appearing to be 'A R Brink', written in a cursive style.

ADV A R BRINK

Cc by post: Chairperson Adv M L Mushwana; Deputy Chairperson Dr P Govender; Chairperson of the Portfolio Committee on Justice and Constitutional Development Mr Luwellyn Landers MP; and senior Portfolio Committee member Mr John Jeffrey MP

\* All relevant documents in this matter are archived online for easy access at: [www.tig.org.za/LASA/SAHRC](http://www.tig.org.za/LASA/SAHRC) username: lasa password: LASA2010

**FORM A**

**REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY**

(Section 18(1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000))

**[Regulation 2]**

**FOR DEPARTMENTAL USE**

Reference number:

Request received by (state rank, name and surname of information officer/deputy information officer) on (date) at (place).

Request fee (if any): R .....

Deposit (if any): R .....

Access fee: R .....

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

**A. Particulars of public body**

**Mr Kayum Ahmed, CEO and Information Officer**

**South African Human Rights Commission**

**Braampark Forum**

**333 Hoofd Street**

**Braamfontein**

**B. Particulars of person requesting access to the record**

*(a) The particulars of the person who requests access to the record must be recorded below.*

*(b) Furnish an address and/or fax number in the Republic to which information must be sent.*

*(c) Proof of the capacity in which the request is made, if applicable, must be attached.*

Full names and surname : **Anthony Robin Brink**  
Identity number : **590225 5116 081**  
Postal address : **25 Baker Road, Prestbury, Pietermaritzburg 3201**  
Fax number : **086 672 0776**  
Telephone number : **033 344 2420**  
E-mail address : **arbrink@iafrica.com**

**C. Particulars of person on whose behalf request is made: N/A**

**D. Particulars of record**

*(a) Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.*

*(b) If the provided space is inadequate please continue on a separate folio and attach it to this form. **The requester must sign all the additional folios.***

1. Description of record or relevant part of the record:

2. Reference number, if available:

3. Any further particulars of record:

**1. All communications between the SAHRC and Legal Aid South Africa ('LASA'); between the SAHRC's officers and commissioners; and between the SAHRC and any third parties, concerning the applicant's repeated appeals to the SAHRC, commencing in September 2010, for its support under section 83(3)(c) of PAIA in facilitating LASA's compliance with its legal obligation under section 11 to afford the applicant access to specified records duly requested under the Act, and further concerning his formal complaint on 11 April 2011, amended and amplified on the 28th, that in violation of his fundamental right to information under section 32 of the Constitution LASA has persistently and unlawfully refused him access to records to which he is entitled under PAIA (your ref: GP/2011/0166).**

**2. All notes and memoranda made by the SAHRC evidencing the steps it has taken in the execution of its statutory mandate to assist the applicant in accessing all the records he has lawfully requested, and particularly all notes and memoranda evidencing the ‘special interest’ taken by PAIA Unit head attorney Chantal Kisoon in what she agreed was the extraordinary gravity of:**

**1. LASA information officer Vedalankar’s initial total disregard of the applicant’s first records request (no acknowledgment, no response, i.e. contemptuous mute refusal); and then,**

**2. Vedalankar’s wholesale refusal to comply with the applicant’s first records request under cover of a false statement of applicable law, and a fraudulently manufactured misquotation from a reported judgment ostensibly supporting it, which in truth and in fact held precisely the contrary of what she alleged and which supported the applicant’s claim for records; and then,**

**3. Vedalankar’s refusal of the applicant’s first request a second time, even rejecting and returning his mandatory request fee, and abusing the occasion to ‘demonstrate’ her allegations in her first letter refusing the applicant’s first records request in toto by putting up twelve records of her own choosing, some of which coincidentally happened to meet the applicant’s request; and at the same time failing to address and comply with the applicant’s second records; and failing to put up a peremptory section 23 affidavit in regard to non-existent records; and then,**

**4. deputy information officer Nair’s refusal of (i) the applicant’s first request for records a fourth time for the same legally spurious reasons restated, and others; (ii) his second request on spurious grounds, (both first and second requests limited in the applicant’s First Memorandum); and (iii) his third request on spurious grounds – but for two emails and LASA’s full Approval Framework provided, with the rest of the records duly requested by the applicant, and critically relevant to his unfair discrimination claim in the Labour Court, unlawfully refused.**

**Please note that the applicant does not need copies of (a) his correspondence with the SAHRC; (b) his two memoranda providing comprehensive critical analyses of the legal vacancy and irrelevance of LASA’s pretexts for failing to comply with PAIA, which he drew for the assistance of the SAHRC’s PAIA Unit in its mediation to obtain LASA’s surrender of the records unlawfully withheld; and (c) his fundamental right violation complaint, as amended, filed in April 2011.**

**E. Fees**

<p><i>(a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a <b>request fee</b> has been paid.</i></p> <p><i>(b) You will be notified of the amount required to be paid as the request fee.</i></p> <p><i>(c) The <b>fee payable for access</b> to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.</i></p> <p><i>(d) If you qualify for exemption of the payment of any fee, please state the reason therefor.</i></p>
--

Reason for exemption from payment of fees: **N/A**

**F. Form of access to record**

*If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 hereunder, state your disability and indicate in which form the record is required.*

<b>Disability: N/A</b>	<b>Form in which record is required:</b>
<p><i>Mark the appropriate box with an "X".</i></p> <p><b>NOTES:</b></p> <p><i>(a) Your indication as to the required form of access depends on the form in which the record is available.</i></p> <p><i>(b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.</i></p> <p><i>(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.</i></p>	

<b>1. If the record is in written or printed form -</b>				
<input checked="" type="checkbox"/>	copy of record*	<input type="checkbox"/>	inspection of record	
<b>2. If record consists of visual images -</b> (this includes photographs, slides, video recordings, computer-generated images, sketches, etc.)				
<input type="checkbox"/>	view the images	<input checked="" type="checkbox"/>	copy of the images*	transcription of the images*
<b>3. If record consists of recorded words or information which can be reproduced in sound -</b>				
<input type="checkbox"/>	listen to the soundtrack (audio cassette)	<input checked="" type="checkbox"/>	transcription of soundtrack*  (written or printed document)	
<b>4. If record is held on computer or in an electronic or machine-readable form -</b>				
<input type="checkbox"/>	printed copy of record*	<input type="checkbox"/>	printed copy of information derived from the record*	<input checked="" type="checkbox"/> copy in computer readable form*  (on compact disc)
*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you?  <b>A postal fee is payable.</b>				<b>YES</b>
<i>Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.</i>				
In which language would you prefer the record? <b>English</b>				

**G. Notice of decision regarding request for access**

You will be notified in writing whether your request has been approved/denied. If you wish to be informed thereof in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

How would you prefer to be informed of the decision regarding your request for access to the record?

**By email**

Signed at Pietermaritzburg on this 28th day of June 2011

.....  
SIGNATURE OF REQUESTER

**Proof of posting of request fee:**

<b>REGISTERED LETTER</b> <b>GEREGISTREERDE BRIEF</b>			
(with an insurance option)met 'n versekeringsopsie		Postage paid R _____ c	
<b>Full tracking and tracing/Volledige volg en spoor</b>		Service fee/Diensgeld R _____ c	
Addressed to/Geadresseer aan K. Ahmed Braamfontein Forum 333 Hoofdstreek Braamfontein 2000		Insurance/Versekering R _____ c Total/Totaal R 1765 _____ c	
Postcode Postkode		Insured value of contents Versekerde waarde van inhoud R _____ c	
The value of the contents of this letter is as indicated and compensation is not payable for a letter received unconditionally. Compensation is limited to R100.00. No compensation is payable with documentary proof. Optional insurance up to R2 000.00 is available and applies to domestic registered letters only. Die waarde van die inhoud van hierdie brief is soos aangedui en vergoeding sal nie betaal word. 'n brief wat sonder voorbehoud ontvang word nie. Vergoeding is beperk tot R100.00. Geen vergoeding is sonder dokumentêre bewys betaalbaar nie. Opsionele versekering tot R2 000.00 is beskikbaar en is slegs op binnelandse geregistreerde briewe van toepassing.		<b>Enquiries/Navrae</b> <b>Toll-free number</b> <b>Tolvry nommer</b> <b>0800 111 502</b>	
<b>REGISTERED LETTER</b> <small>(with a domestic insurance option)</small> <small>Call 0800 111 502 www.sago.co.za</small> <small>RD 355 289 735 ZA</small>		Initial of accepting officer Paraaf van aanneembeamepte	
<b>CUSTOMER COPY</b> 301028R Klantafskrif		Date stamp 	

## Anthony Brink

---

**From:** Lawrence Mushwana [lmushwana@sahrc.org.za]  
**Sent:** 28 June 2011 12:47 PM  
**To:** Anthony Brink  
**Cc:** Kayum Ahmed; Chantal Kisoona; ALL COMMISSIONERS  
**Subject:** RE: REQUEST FOR INFORMATIO.  
**Attachments:** Ahmed\_\_PAIA\_request\_for\_SAHRC\_records.pdf

**Categories:** Red Category

Dear Anthony

I acknowledge with thanks receipt of a copy of your e-mail and annexures addressed to our Ceo. We will ensure that the requested information is forwarded to you timeously

Regards

M L Mushwana

---

**From:** Anthony Brink [mailto:arbrink@iafrica.com]  
**Sent:** 28 June 2011 12:27 PM  
**To:** Kayum Ahmed  
**Cc:** Chantal Kisoona; Zena Nair; Danaline Franzman; Naledzani Mukwevho; Lawrence Mushwana; Pregs Govender; Pandelis Gregoriou  
**Subject:** RE:

Thank you, Kayum.  
Best wishes  
Anthony

---

**From:** Kayum Ahmed [mailto:kahmed@sahrc.org.za]  
**Sent:** 28 June 2011 12:12 PM  
**To:** 'Anthony Brink'  
**Cc:** Chantal Kisoona; Zena Nair; Danaline Franzman; Naledzani Mukwevho; Lawrence Mushwana; Pregs Govender; Pandelis Gregoriou  
**Subject:** FW:  
**Importance:** High

Dear Adv Brink,

I wish to acknowledge receipt of your PAIA request copied to the Chairperson and Deputy Chairperson. I have referred the request to Chantal Kisoona who has been delegated as the Commission's Information Officer.

Kind regards

Kayum

Kayum Ahmed  
Chief Executive Officer  
South African Human Rights Commission

[www.sahrc.org.za](http://www.sahrc.org.za)

---

**From:** Anthony Brink [<mailto:arbrink@iafrica.com>]  
**Sent:** Tuesday, June 28, 2011 11:52 AM  
**To:** Kayum Ahmed  
**Subject:**  
**Importance:** High

Dear Mr Ahmed

I attach a request for SAHRC records under section 11 of PAIA.

Yours sincerely

Adv AR Brink

This e-mail and any files transmitted with it are confidential and intended solely for the use of the individual or entity to which they are addressed. If you have received this e-mail in error please notify the Mail Administrator - <mailto:administrator@sahrc.org.za>. Any views or opinions expressed in this e-mail are those of the sender and do not necessarily coincide with those of the South African Human Rights Commission.

This e-mail and any files transmitted with it are confidential and intended solely for the use of the individual or entity to which they are addressed. If you have received this e-mail in error please notify the Mail Administrator - <mailto:administrator@sahrc.org.za>. Any views or opinions expressed in this e-mail are those of the sender and do not necessarily coincide with those of the South African Human Rights Commission.

## SOUTH AFRICAN HUMAN RIGHTS COMMISSION

33 Hoofd Street  
2<sup>nd</sup> Floor, Forum 3  
Braampark  
Braamfontein  
2198

Private Bag X 2700  
Houghton  
2041

Tel number: (011) 877 3751  
Fax number: (011) 403 0668  
Email: NVKwaza@sahrc.org.za



Our Ref.: GP/2011/0166 (Please quote reference in all correspondence)  
Your Ref.:

29 June 2011

**MR ANTHONY BRINK**

Per Email: [arbrink@iafrica.com](mailto:arbrink@iafrica.com)

Dear Sir

**RE: YOUR COMPLAINT LODGED WITH THE GAUTENG PROVINCIAL OFFICE OF THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION (THE "COMMISSION")**

We refer to the above matter and in particular to your email dated 28 April 2011, together with attachments, the contents of which have been noted.

The Commission has carefully perused all relevant documents that you have provided to it in relation to this matter and confirm as follows:

1. That you have waived your complaint in respect of your third request to Legal Aid South Africa ("LASA") for information, and that you have accordingly accepted LASA's explanation that its late response was attributed to unanticipated technical difficulties.
2. In light of having received the affidavit in terms of section 23 of the *Promotion of Access to Information Act 2 of 2000* ("PAIA") from LASA, you accordingly withdrew your complaint against the information officer of LASA.
3. That the basis of your amended complaint is premised on your dissatisfaction with the time taken by Ms Vedalankar, information officer and CEO of LASA, to provide the required affidavit in accordance with section 23 of PAIA and your belief that LASA continues to conceal further documents which you require for purposes of proceeding with your matter in the Labour Court (page 3 paragraph 4 re addendum to complaint form).

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**Chairperson:** L Mushwana; **Deputy Chairperson:** G Govender; **Commissioners:** L Mokate, B Malatji, J Love and T Titus.

**Chief Executive Officer:** K. Ahmed

## SOUTH AFRICAN HUMAN RIGHTS COMMISSION

33 Hoofd Street  
2<sup>nd</sup> Floor, Forum 3  
Braampark  
**Braamfontein**  
2198

Private Bag X 2700  
**Houghton**  
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Tel number: (011) 877 3751  
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As your complaint specifically relates to the PAIA and in light of the fact that your initial complaint had been lodged with the PAIA unit of the Commission, which unit has been set up to advance the observance of the right to access information enshrined in section 32 of the Constitution, the writer confirms having engaged with the PAIA unit in various in depth consultations regarding the assistance which it provided to you and the role which it has played herein.

We accordingly hereby wish to respond as follows to your complaint:

1. We wish to state from the outset and confirm that the withholding of records or parts thereof, on the part of the information officers of LASA was engaged in extensively by the PAIA unit on your behalf. The PAIA unit has furthermore confirmed that LASA provided some of the records requested as well as an affidavit in terms of PAIA as a result of its facilitation. The affidavit provided by LASA furthermore related to the availability of records which LASA indicated could not be furnished to you.
2. A cogent opinion demonstrating the unlawfulness of the action of the deputy information officer of LASA is made in your memorandum.
3. It is important to note however that a close consideration of the facts and adherence to principles of due process, which would *inter alia* involve obtaining evidence from both parties in this matter, would be required and necessary for the Commission to be in a position to provide a decision herein which it considers fair, objective and justifiable.
4. We note from correspondence that you have provided and based on your engagement with the PAIA unit, that you intend using responses furnished by the Commission (PAIA unit) in respect of the 5 (five) questions posed to the PAIA unit, to further your matter which is currently before or is shortly to be adjudicated upon by the Labour Court.

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5. In this regard we wish to advise that if this is indeed correct, this proposed action would be prejudicial and not necessarily in the interest of justice, as our office has not had an opportunity to test your assertions by putting your allegations to LASA for a response. It is also to be emphasized, as you were previously advised by the PAIA unit, that due to a lack of resources, the PAIA unit is not able to conduct a full investigation into the matter in order to satisfy itself to the extent required to provide the opinions as requested. This will therefore undoubtedly unfairly impact on potential proceedings before any court of law or tribunal, which in the Commission's view, would be better placed to assess and test all evidence before pronouncing on the lawfulness of the conduct of the deputy information or information officers.

Therefore, given the impact of litigation herein, on both yourself and the information holder, the Commission does not deem it appropriate at this stage to enter proceedings which you intend instituting or have instituted by providing said opinions. The Commission may however, and reserves it right to do so at a later stage, enter proceedings as an amicus of the court, if it deems such action necessary and subject to it having adequate resources to do so.

We confirm that the Commission has on various occasions communicated to you that it is unwilling to initiate or participate in proceedings in this matter for want of resources. The PAIA legislation is cognizant of the need to permit the Commission the discretion to respond to specific matters to the extent that such action is "reasonably possible".

6. It is the Commission's view therefore that on the facts of the matter before it and in terms of the PAIA legislation, specific matters which include partial and complete refusal, dissatisfaction with the quality, type or extent of information provided are to be adjudicated before the courts.
7. It is accordingly the Commission's considered opinion that it has in terms of section 83(3)(c) of PAIA provided you with assistance through the PAIA unit to the full extent of its resource availability.
8. In light of the aforementioned and in terms of Article 4.2 of the Commission's Complaints Handling Procedures, it is our opinion that this matter will more effectively and expeditiously be dealt with through adjudication by a court of law.

Transforming society. Securing rights. Restoring dignity

**Chairperson:** L Mushwana; **Deputy Chairperson:** G Govender; **Commissioners:** L Mokate, B Malatji, J Love and T Titus.

**Chief Executive Officer:** K. Ahmed

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9. In the circumstances we confirm that we are not in a position to further investigate this matter and will accordingly proceed to close our file herein.

Should you however not be satisfied with this decision you **are entitled to note an appeal in writing to the office of the Chairperson** of the South African Human Rights Commission, at the following address, **within forty five (45) days of receipt of this letter**, in which you must state the full reasons why your file should be re-opened:

The Chairperson  
Adv ML Mushwana  
33 Hoofd Street  
4<sup>th</sup> floor, Forum 3  
Braampark  
Braamfontein  
2198

Or

Private Bag X2700  
Houghton  
2041  
Tel No.: (011) 877 3654 / 3653  
Fax No.: (011) 403 0567

We wish you success in taking your matter to the Labour Court.

Yours faithfully

**ZENA NAIR (Mrs)**  
**Acting Provincial Manager: Gauteng**



**LUWELLYN LANDERS MP**  
**National Assembly**

e-mail:

llanders@parliament.gov.za

29 June 2011

Ref.: Brink (29-06-11)

Adv. Anthony Brink  
25 Baker Road  
Prestbury  
PIETERMARITZBURG

Dear Advocate Brink

Your e-mail dated Tuesday, 28 June 2011 refers.

On receipt of your original letter I submitted a letter to the Chairperson: Legal Aid South Africa (LASA), Judge D. Mlambo dated 23 March 2011 (please see Annexure **A**).

On 22 June 2011 I received a written response from Judge Mlambo, Chairperson: LASA, a copy of which I have attached (please see Annexure **B**) which serves as a formal response to your complaint.

It is important to note that whilst I have sought to comply with your request for intervention in this matter, normally neither I nor the Justice Portfolio Committee becomes involved in the day-to-day operational matters of LASA, or any other entity of the Justice family.

If I have been tardy in not responding to you sooner, do forgive me. In light of the facts set out in Justice Mlambo's response, I now regard this matter as closed. Thank you.

Yours faithfully

---

**LUWELLYN LANDERS MP**

Chairperson: Justice & Constitutional Development  
Portfolio Committee



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

PO Box 15 Cape Town 8000 Republic of South Africa  
Tel: 27 (21) 403 2911  
[www.parliament.gov.za](http://www.parliament.gov.za)

**LUWELLYN LANDERS MP**  
**National Assembly**  
**e-mail:**  
**[llanders@parliament.gov.za](mailto:llanders@parliament.gov.za)**

Ref.: Brink(1)

Judge D. Mlambo  
Chairperson: Legal Aid Board of S.A.  
P/Bag X76  
BRAAMFONTEIN 2017

23 March 2011

Dear Judge Mlambo

**ADVOCATE ANTHONY BRINK**

Attached for your attention please find copies of correspondence relating to a complaint comprising allegations made against the Legal Aid Board and it's CEO, Ms. Vidhu Vedalanker, with specific reference to his recruitment as Senior Litigator in Pietermaritzburg and refusal to comply with the provisions of the Promotion of Access to Information Act, amongst other things.

Having received Advocate Brink's letter you will understand that I must ask you, your Board and the Board's CEO for a formal response to these allegations, please.

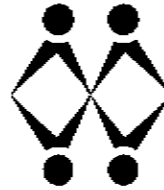
Thank you.

Yours faithfully

---

**LUWELLYN LANDERS MP**

Chairperson:  
Justice Portfolio Committee,  
National Assembly



**Legal Aid**  
South Africa

National Office

29 De Beer Street

Braamfontein

2017

Tel: 011-877-2055

Fax: 011-877-2222

[www.legal-aid.co.za](http://www.legal-aid.co.za)

22 June 2011

Mr L Landers MP  
Chairperson Justice Portfolio Committee  
National Assembly  
P O Box 15  
Cape Town  
8000

Dear Mr Landers

**Adv A Brink**

Your letter dated 23 March 2011 on the above matter refers. Please accept my sincere apology for the delay in responding to your letter. Attached please find a report on this matter which was submitted to the Minister of Justice and Constitutional Development in March 2011 and which has since been updated. In summary I wish to reiterate what I said to Mr Brink when he wrote and complained to me :

*"Your conduct is unbecoming to say the least and borders on harassment. I have on a previous occasion informed you that I could find nothing untoward in how you have been treated by Legal Aid SA. I reiterate this view. I further take this opportunity to advise you that the Board of Directors of Legal SA is not the appropriate forum to raise your matter. Your approach to the Board is therefore misdirected. Your matter was handled at Executive Management level, being the level at which such matters are handled, and should you have any issues in that regard you are free to institute whatever legal action you may deem appropriate to obtain whatever redress you fathom is due to you. For this reason I call on you to desist from communicating with Board Members in this regard. I have, in turn, requested Board Members to ignore all communications from you and/or on your behalf."*

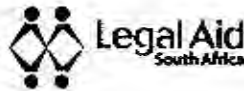
I trust that the attached report and this letter clarify the matter concerning Mr Brink.

Yours faithfully



Judge Dunstan Mambona  
Chairperson

Legal Aid South Africa



## **REPORT TO THE HONOURABLE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

### **Re: Adv Anthony Brink**

#### **1. Background**

On 12 July 2010 Advocate Anthony Brink wrote to the CEO expressing his concern with regards the delays in the finalisation of the recruitment process for the senior litigator position at our Pietermaritzburg Justice Centre. Adv Brink was an applicant for this position and he was interviewed by our regional selection panel. He was recommended by the regional selection panel to the second stage of the interview process, before a nationally constituted interview panel.

This nationally constituted panel did not however sit to consider applicants recommended for the second stage of interviews. Whilst the initial reason for this panel not sitting was caused by delays in coordinating a meeting time suitable for all members of the panel of which the Chairperson of the Board of Directors is one, other pressing financial constraints facing Legal Aid SA resulted in a decision being made not to proceed with the filling of vacant senior litigator posts. Adv Brink was subsequently informed of this decision.

This resulted in him generating numerous requests for information in terms of PAIA, arising from his discontent with not being appointed to this post. He also wrote several lengthy letters to various individuals and organisations, including to the Chairperson and other Directors of the Board of Legal Aid SA. In his letter to the Board, Adv Brink also made allegations relating to multiple contraventions of the PFMA, including the presentation of false financial information in our 2009/10 Annual Report.

#### **2. Adv Brink's discontent with non-appointment to Senior Litigator Position**

From the many letters received from Adv Brink, it is clear that he believes that he was not appointed because of a racial and political bias against him resulting in a conspiracy to exclude him from Legal Aid SA. The conspiracy he alleges relates to his political views against the use of anti-retro viral drugs for HIV AIDS and also discrimination against him as a white male. He incorrectly believes that the second round of interviews was simply a confirmation process where he appears before the Chairperson of our Board who must ratify his appointment. This however is incorrect. All executives involved in this matter have confirmed that this individual was not known to them, nor his political views or publications, and that the first time they came across his name was when his letter of complaint about his non-appointment was received.

The reason for freezing of senior litigator posts was that Legal Aid SA was going through a very uncertain period with regards the provision of funding by the DoJ to finance our OSD phase 1 implementation, which was resulting in an unbalanced budget for 2010/11. As a result various options to make up for the shortfall in our funding, including the freezing of posts, were considered. Various documents which clearly demonstrate the financial uncertainty that we were experiencing at the time, as well as contingency measures that we were contemplating to cater for this, including

the freezing of many positions, were shared with Adv Brink in response to his request for information in terms of PAIA.

Adv Brink however remains unconvinced that our reasons for freezing this post is honest, as he remains convinced that there is a conspiracy against him. Legal Aid SA, has under the current leadership, never refused legal aid nor refused appointment of any individual/s because of their race or political views. He is currently pursuing his requests for further information with the Human Rights Commission and has threatened litigation. We are satisfied that we have been open and transparent with Adv Brink in terms of the provision of information as it relates to his core complaint. We are in the process of ensuring that any outstanding requests for information are attended to in terms of PAIA, notwithstanding the fact that many of his requests do not relate to his complaint regarding non appointment. Whilst Adv Brink has threatened legal action in his correspondence to us, we remain confident that we have acted properly in this matter and that we have complied with the provisions of PAIA. We have responded to all Adv Brink's requests for information in terms of PAIA within the timeframe stipulated in the Act. We copied these responses to the SA Human Rights Commission to confirm our compliance with PAIA.

Adv A Brink subsequently referred a dispute against Legal Aid SA in the CCMA on 20 April 2011. He alleged unfair discrimination on the basis of political conscience, belief and activism on the issue of HIV Aids and to a lesser extent race. He further contended that he held the belief that this alleged unfair discrimination resulted in him not being appointed to the position of Senior Litigator at Legal Aid SA – a position for which he applied and was interviewed. The relief he sought was monetary in the amount of R55 000 per month from January 2011 (he avers to have become aware of the alleged discrimination at this point) to the date of the conciliation which totalled R220 000. The dispute could not be resolved as Legal Aid SA submitted that it believed that it had not directly or indirectly discriminated unfairly against Mr Brink on the basis averred by him or on any other basis. A certificate of non-resolution was thus issued by the CCMA on 20 April 2011 which paved the way for Mr Brink to refer the dispute for adjudication to the Labour Court, a route he has to date not pursued.

### 3. Allegations of multiple contraventions of the PFMA

In Adv Brink's November correspondence to the Board Chairperson and members of the Board, he draws attention to the fact that Table 3 in Section 4.1 at page 106 of Legal Aid SA's Annual Report for 2009/10, relating to executives remuneration, contains incorrect column totals for basic salaries, bonuses, incentives, expenses/allowances and other unspecified payments.

An examination of this table has revealed that these four column totals are indeed incorrect, although the last column relating to total expenditure is correct. It must also be noted that the row totals which show individual executives remuneration is correct. We have since been able to determine that the source of this problem was caused by human error at the time when the annual report was being prepared for printing.

This table is however not a part of the Annual Financial Statements (AFS) nor is it material to the AFS presented later in that section. They therefore do not alter any of the AFS, which do not have any errors. These are the AFS that were audited by the Auditor-General and found to 'present fairly, in all material respects, the financial position of Legal Aid SA as at 31 March 2010...".

The executives' remuneration is also referred to in Note 18.2 of the AFS (page 145 of the Annual Report) in which the total per executive as well as the overall total is indicated. The total per

*Confidential*

executive as well as the overall total in Note 18.2 of the AFS is the same as the row totals and overall total in Table 3. This confirms that the material amount included in the AFS was not incorrect and therefore our AFS 2009/10 remain correct.

Given that the AFS remain correct and that the error in Table 3 is not material to the AFS, the allegations by Brink of 'false and misleading figures' being a serious criminal offence and that our Annual Financial Statements in our Annual Report are not a 'true and fair representation' are unfounded.

4. Conclusion

Notwithstanding the insulting and malicious tone of most of Adv Brink correspondence with us on this matter, we have tried to convince him, by the provision of relevant documentary evidence, that the basis of his conspiracy theory is unfounded. It is however clear that Adv Brink believes otherwise. Therefore, whilst we would not prefer litigation in the normal course of dispute resolution, it seems in this matter that Adv Brink would be well advised to approach the courts to ventilate his issues. We are however comfortable that we would be able to show to a court of law that the decisions we took on this matter made good business sense and were in the best interests of our organisation at the time. As a result of Mr Brink's invasive conduct, the Chairperson of the Board wrote to him specifically requesting him to cease contacting Board members as the attached email attests. Despite the Board Chairperson's request Mr Brink has continued with his tirade.

This report is sent to the Ministry to provide the necessary background to this matter as well as to contextualise and clarify the allegations by Mr Brink re contravention of the PFMA and provides the necessary reassurance that no contravention occurred in this regard.



Chairperson

Legal Aid SA

9 March 2011

Updated with sections in blue font

22 June 2011

25 Baker Road  
Prestbury  
Pietermaritzburg 3201  
1 July 2011

Your ref: GP/2011/0166

Adv M L Mushwana  
Chairperson: South African Human Rights Commission  
33 Hoofd Street  
2<sup>nd</sup> Floor, Forum 3  
Braampark  
Braamfontein

Dear Adv Mushwana

BRINK/LASA: PAIA: NOTICE OF APPEAL

I annex hereto my appeal notice herein for your consideration and I hope favourable determination. This is an extraordinarily important matter, and when my main case is launched in the Labour Court and thus into the public domain – and it's certain to attract considerable public interest for a variety of reasons – it would be excellent if the SAHRC came out shining, and not lumped in the court's judgment with those who've contemptuously trampled on my fundamental rights, lied about it, and been spectacularly caught out lying about it.

I'd be most grateful to if you'd rule on this appeal as soon as you can. As I keep repeating, I'm under heavy time pressure now to file my statement of claim in the Labour Court.

My appeal to you will be referenced in my statement of claim and will form part of my document bundle for the information of the judge.

Yours sincerely



ANTHONY BRINK

Cc: Adv Thuli Madonsela: Public Protector  
Luwellyn Landers MP: Chairperson, Portfolio Committee on Justice and Constitutional Development; and senior Committee member John Jeffrey MP  
Alison Tilley: Director, Open Democracy Advice Centre  
Paul Hoffman SC: Director, Institute for Accountability in Southern Africa

ADV ANTHONY BRINK AND LEGAL AID SOUTH AFRICA: VIOLATION OF  
FUNDAMENTAL RIGHT COMPLAINT: LASA'S FAILURE TO COMPLY WITH  
PAIA: SAHRC'S REFUSAL TO INVESTIGATE AND DETERMINE COMPLAINT  
(Ref GP/2011/0166)

**NOTICE OF APPEAL**

All documents referred to herein are archived online for easy access at:  
[www.tig.org.za/LASA/SAHRC](http://www.tig.org.za/LASA/SAHRC) username: lasa password: LASA2010

1. On 29 June 2011 Acting Gauteng Provincial Manager Mrs Zena Nair notified me that my formal complaint to the SAHRC of 11 April, as amended and amplified on the 28th, arising from Legal Aid South Africa's refusal to comply with my fundamental right to information in the democratic era guaranteed me by section 32 of the Constitution, 1996, and circumscribed by PAIA, had been dismissed without any investigation or determination by the Commission. She concluded by inviting me to 'note an appeal in writing to the office of the Chairperson', if I wished, stating 'full reasons why [my] file should be re-opened'. These are my reasons.
2. Mrs Nair's letter is littered with wrong, inaccurate, misleading, and fallacious statements, all of which misdirections fatally corrupt her claimed reasons for throwing out my complaint.
3. It's common cause that I have made out a prima facie case that in denying me access to the records enumerated in my Second Memorandum, LASA has violated my fundamental right to information. Indeed, more than a prima facie case, Mrs Nair describes my complaint in this regard as 'cogent' – which the SOED tells us means 'Constraining, impelling, forcible ... persuasive, expounded clearly and logically, convincing'. She doesn't take issue with any of my contentions that LASA is

unlawfully withholding duly requested records from me in breach of PAIA and in violation of my fundamental rights. Not one.

4. Having satisfied herself on advice received from the PAIA Unit experts that I've made out a 'cogent' case that my fundamental rights have been violated, it's incumbent on her to investigate and determine my complaint. That's what the SAHRC is there for: "The SAHRC promotes, protects and monitors human rights in South Africa. It also has a specific responsibility to promote and monitor the implementation of PAIA. ... Part of the Commission's mandate is to provide assistance to requesters wishing to exercise their rights.'
5. And in my case I've made it so easy. All the SAHRC has to do is note its agreement (or disagreement) in the spaces I've provided for this purpose in my Second Memorandum, below each of my critical analyses of the legal vacancy of the various fatuous pretexts advanced by LASA deputy information officer Brian Nair for withholding the records I've duly requested. Then call on him to respond. Then determine my complaint in the light of his responses considered against the provisions of PAIA. The whole thing would take no more than a couple of hours work maximum. (Your PAIA Unit head Ms Kisoon did assure me last year that she'd taken a 'special interest' in the matter.)
6. Mrs Nair's mollifying claim – apparently to impress other readers – that 'the withholding of records or parts thereof, on the part of the information officers of LASA was engaged in extensively by the PAIA Unit on your behalf' appears to be untrue. As far as I can see, other than filing all my correspondence, the PAIA Unit hasn't done much more than (a) ask LASA to look at my first PAIA request which it had initially ignored in September last year; and (b) recently read my Second

Memorandum and tell Mrs Nair how 'cogent' it is. When LASA finally responded to my first records request in October, thanks to Ms Kisoon's intervention, it contemptuously refused my entire request for 51 specified records on grounds that can only be described as fraudulent: falsely misstating the law, and grotesquely misquoting a judgement in a reported case, putting words in the judge's mouth that he never spoke, saying precisely the opposite of what he actually said (supporting my claim to records). The PAIA Unit did nothing about this. My first request was then refused a second time in January 2011, again on wholly spurious grounds. My second request was not dealt with at all. The PAIA Unit did nothing. Numerous pleas for mediation on the telephone and in correspondence came to naught. I wrote the PAIA Unit a long letter debunking both the legally idle reasons for refusing my records requests and the other demonstrably false allegations made concerning the core unfair discrimination dispute. The PAIA Unit did nothing. I then prepared my First Memorandum analysing and exposing the legal vacancy of LASA's reasons for refusing to comply with the Act, copying LASA in. LASA responded of its own accord, still unlawfully withholding critically important records needed for the pleading and proof of my case. The PAIA Unit did nothing. In desperation I filed a formal fundamental rights violation complaint in April 2011, and with it my Second Memorandum, again addressing and debunking LASA's bogus pretexts for withholding the records I need. The PAIA Unit did nothing. Promised progress updates from the SAHRC never came. I was finally forced to file a PAIA request on the SAHRC itself to spur the PAIA Unit to at last carry out its statutory function to assist records requesters like me. The day after I did so, Mrs Nair responded by telling me she was going to 'close our file' – having done nothing. Other than talk about

doing nothing. I find no indication that ‘the withholding of records or parts thereof, on the part of the information officers of LASA was engaged in extensively by the PAIA Unit on your behalf’. On the contrary, the PAIA Unit didn’t ‘engage’ in any substantial sense, and that’s why I’m still waiting for critically relevant records I need for my main case. So Mrs Nair’s allegation is at odds with the reality on the ground.

7. It’s correct that I’ve been given a couple of records, but the overwhelming majority have been unlawfully denied me. And at last – six months late – I’ve finally been given the all-important section 23 affidavit I’ve long been pressing for, concerning records that don’t exist (not which ‘could not be furnished to you’) and which I’d long suspected don’t exist.
8. Mrs Nair claims that ‘a close consideration of the facts and adherence to the principles of due process, which would inter alia involve obtaining evidence from both parties in this matter, would be necessary for the Commission to be in a position to provide a decision herein which it considers fair, objective and justifiable.’ This high-sounding legal waffle is sheer nonsense. There are no factual disputes involved requiring the gathering of evidence to determine my complaint. To illustrate: When deputy information officer Nair claims my records requests are ‘irrelevant’, it’s elementary that he has fallen foul of section 11(3) and that he has not justified his refusal on any ground allowed by PAIA. The record is therefore compellable. When, like an apartheid bureaucrat, he robotically invokes a section of PAIA to refuse my requests without providing any factual basis for doing so, it’s elementary that he has not justified his refusal. And so on – per my analysis of Nair’s vacant reasons in my Second Memorandum. All I originally asked of the PAIA Unit was to express a view: did it agree or disagree with my analysis? And to put its opinion to LASA. That’s all it

needs to do. Not determine a factual dispute, like who said what in a race hate complaint. All my complaints in my second memorandum go to the *legal irrelevance* of LASA's purported reasons for refusing my records requests. The issues are not factual but purely legal, and all are resolvable on legal contentions alone (on the papers, like in an opposed application in the High Court). In every case of refusal of records the SAHRC merely has to decide: Is LASA's justification supported by PAIA? No additional 'evidence ... from both parties' is required to be gathered before this question can be answered. Mrs Nair's excuse put forward for the SAHRC's inaction is false.

9. It is more mindless nonsense for Mrs Nair to claim that 'this proposed action [of gathering evidence from me and LASA] would be prejudicial and not necessarily in the interest of justice as our office has not had an opportunity to test your assertions by putting your allegations to LASA for a response'. This statement is not only wrong, it's untrue. She had plenty of 'opportunity' to do so in the two full months since I filed my complaint in April, and she's done nothing about it. She can do so now, and better late than never. The SAHRC's silent inaction has already cost me two wasted months.
10. It is transparently unconvincing for Mrs Nair to allege as her next excuse for summarily closing my file that the SAHRC doesn't have the 'the resources' to 'conduct a full investigation ... in order to satisfy itself to the extent required to provide the opinions as requested'. Her dissimulation is disgraceful. The PAIA Unit is staffed by PAIA expert attorneys capable of evaluating my legal analysis without even opening a book. Indeed, they've already concluded that my demonstration of the legal irrelevance of LASA's reasons for refusing to comply with PAIA is 'cogent'. I do

not accept as the truth that the SAHRC does not have ‘the resources’ to take the little time necessary to annotate its agreement (or disagreement) with my contentions in my Second Memorandum, ask LASA for its responses, and then determine the validity of my complaint in the light of them. What could be simpler? This excuse is patently untrue and it amounts to a shameful dereliction by Mrs Nair of her professional function.

11. My impending case in the Labour Court mentioned by Mrs Nair arises from a wholly different cause of action and is perfectly irrelevant to my complaint to the SAHRC that LASA has violated my fundamental right to information. It’s consequently ridiculous for Mrs Nair to imply that the court will be ‘better placed to assess and test all evidence before pronouncing on the lawfulness of the conduct of the deputy information or information officers’. The Labour Court in which I’ll shortly be launching my unfair discrimination claim has no jurisdiction to try PAIA disputes. This is elementary, and Mrs Nair or those advising her ought to know this. So this further excuse is fallacious.

12. Mrs Nair’s opinion of what she thinks ‘appropriate’, right after a slew of transparently false statements on which she bases her view, is entirely irrelevant. On her own showing, I’ve filed a ‘cogent’ complaint that one of my most important fundamental rights has been violated – a right so important, so highly valued in our new democracy, that a dedicated statute has been enacted to promote and guard it. My complaint to the SAHRC is accordingly extremely serious. Mrs Nair is paid to deal with it, and not to make a string of hollow excuses for not doing her work – so that instead of ‘Transforming society. Securing rights. Restoring dignity’, the SAHRC’s

motto, she is practically washing her hands of LASA's violation of my fundamental rights because it's all too much trouble for her to assist me in 'Securing [my] rights'.

13. Mrs Nair's casual dismissal of my extremely serious complaint, under cover of one feeble excuse after another, would seem to be well explained by SAHRC Commissioner and Deputy Chairperson Dr Pregs Govender, who in February raised the fact that 'the culture of secrecy' is still all the rage in our country: 'It has been difficult to get government departments to understand the culture of openness and transparency. ... We came out of a culture of secrecy as a country in 1994 and that culture is a very hard one to break.' Mrs Nair appears not to fully appreciate the importance of our new culture of accountability in the post-apartheid era.
14. I accept that the SAHRC doesn't have the funds to litigate on my behalf. Early on, Ms Kisoona told me the SAHRC was accordingly stuck with 'naming and shaming' PAIA delinquents. This is why I've repeatedly asked whether the SAHRC has registered LASA as such. I've never got an answer.
15. Mrs Nair makes the further absurd allegation that my claim to unlawfully withheld records 'will more effectively and expeditiously be dealt with through adjudication by a court of law'. I live in Pietermaritzburg, and for me to bring a very expensive, drawn-out PAIA application in the Johannesburg High Court would hardly be 'more effective and expeditious' than for the SAHRC to simply call on LASA to respond to my Second Memorandum (and to the points made in my rights violation complaint as amended), and then make a determination – all within a couple of days, at no cost to anyone. This is another transparently bogus excuse for shying away from performing her professional function.

16. Mrs Nair says I ‘believe’ records have unlawfully been concealed – hinting that I’m a paranoid person. In truth, I present incontestable real evidence that records have indeed been concealed from me in contravention of section 90 of PAIA: (a) an email with ‘FW’ (Forward) in the Subject bar unequivocally signifying a prior exchange on the same subject; (b) an email exchange between LASA’s CEO and chairperson, evident from the properties file of a PDF letter he sent me a couple of days after his return from the US, prepared two weeks earlier on the CEO’s computer. Obviously there was email traffic between them. No genuine disputes of fact are involved. Concealing records in contravention of PAIA’s criminal ‘Offences’ provisions is an exceedingly grave matter, and it must be investigated and determined. And I’ve just discovered another instance of records concealed from me in flagrant contempt of PAIA: LASA’s chairperson sent a revealing statement to the Minister of Justice and Constitutional Development in March 2011 about my complaints of unfair discrimination by LASA and its defiance of PAIA, badmouthing me as he did so. Perhaps he reckoned that by secretly marking it ‘Confidential’ he could put it beyond the reach of our information law and exempt it from my catch-all PAIA request for all and any records featuring me and the Pietermaritzburg Senior Litigator post. He knew that I was seeking outstanding records requested, because he mentioned it in his statement. Yet, like the other records mentioned above, this highly material record was deliberately withheld and concealed from me. Unbelievable!
17. Mrs Nair refers to my intention to launch an action in the Labour Court (she wishes me good luck with it), and claims this is an additional good reason to close her file on my fundamental rights complaint and not to investigate and determine it. My future intentions in the Labour Court are completely irrelevant. The Constitution and PAIA

entitle me to information as a fundamental right. Mrs Nair is satisfied that I've made a 'cogent' case that this right has been violated. Section 11(3) of PAIA is explicit that my purpose in seeking LASA's records as a public body is immaterial, as is the information officer's opinion of what it might be. My intention to sue out of the Labour Court has nothing to do with my right to information – unless the litigation has already commenced. It hasn't. I'm relying on my constitutional right to information, given effect by PAIA, to collect the documentary evidence I need to properly plead and present my case. This is perfectly legitimate, and it is no good reason, no good excuse for Mrs Nair not to investigate and not to determine my complaint that this exceptionally important fundamental right has been violated.

18. In conclusion, further illustrating the deplorably careless, slack handling of my complaint, I will now correct Mrs Nair's several misstatements in her introductory opening paragraphs 1–3.
19. Ad paragraph 1: I have not 'waived [my] complaint in respect of my third request for records.' Her claim that I have is completely wrong. What I withdrew was my complaint that LASA had not responded to it. It had arrived by post after the prescribed 30 days for compliance, and after I filed my fundamental rights violation complaint. Other than request item 1 complied with (and items 3 – 5 fell away), all other 11 of the total 15 records that I duly requested were unlawfully refused for clearly insupportable reasons, as I show in my analysis in my Second Memorandum. So I've certainly not 'waived [my] complaint in respect of my third request for records.'
20. Ad paragraph 2: I never 'withdrew [my] complaint against the information officer' for the reason that in March 2011 I finally got the section 23 affidavit I'd been waiting for

since September 2010. In fact I ‘withdrew [my] complaint against the information officer’ that she had not made a section 23 affidavit. I persist with my ‘complaint against the [deputy] information officer’ for unlawfully withholding records from me in breach of his obligations under PAIA.

21. Ad paragraph 3: Mrs Nair fundamentally misstates the position. My amended and further complaint is not ‘premised’ on my complaint that the information officer failed for many months to provide a section 23 affidavit, nor on my ‘belief’ that certain records are being concealed. My principal complaint is ‘premised’ on the information officer’s and deputy information officer’s unlawful denial of access to specified records to which I am constitutionally entitled under PAIA. Their recalcitrance in complying with PAIA and in surrendering a couple of records eventually produced is a secondary complaint – one nonetheless requiring explanation and adjudication. My ‘belief’ that in contravention of section 90 they have concealed discoverable records is founded on the clear supporting evidence that I present for this.

22. What LASA did in March 2011 was make – to the inattentive reader – an impressive show of compliance with PAIA while persisting in unlawfully refusing me access to most of the records I need. When Ms Kisoona saw deputy information officer Nair’s response to my third records request and to my first and second requests, and his section 23 affidavit, she told me she was ‘closing [her] file’ without more ado. She didn’t even bother reading Nair’s responses to satisfy herself that he’d at last complied with PAIA on LASA’s behalf, after three disgraceful showings by Vedalankar (summarised in my PAIA request for SAHRC records) before she passed the buck to Nair when things started getting too hot for her. Had Ms Kisoona read

Nair's responses, she would have appreciated the manifest vacancy of his pretexts for denying my constitutional right of access the records I requested and need, all of which specious reasons are interrogated and debunked in my Second Memorandum. Because instead of 'engaging' with Nair about his failure to comply with PAIA, she just 'closed [her] file' and went off for lunch. Months later, and only under the embarrassing pressure of a PAIA request on the SAHRC itself, did Ms Kisoona read my Second Memorandum, and then agree that it's 'cogent'. (I'm gratified she agrees that as an admitted advocate for nearly thirty years, who's made an intensive study of PAIA and all the reported cases treating it, I know what records I'm entitled to.)

23. In the situation, I respectfully appeal to you as Chairperson of the SAHRC to direct Mrs Nair to 'reopen [her] file' and to investigate my fundamental rights violation complaint (a) by annotating her/the PAIA unit's agreement (or disagreement) with my 'cogent' legal critiques and debunks of the reasons advanced by LASA's deputy information officer for refusing to comply with my records requests enumerated in my Second Memorandum; and (b) by putting my Second Memorandum, annotated with the SAHRC's agreement (or disagreement) as aforesaid, to deputy information officer Nair for his response. Then after he has responded, determine whether LASA has indeed violated my fundamental right to information. And if so, advise me of this finding and register it for the purposes of the SAHRC's next annual report to Parliament. Is this really too much to expect of the SAHRC's well-paid specialist legal professionals?

24. There's a fair prospect that if the SAHRC annotates its agreement with me that LASA's given reasons for refusing me access to the records I seek are legally irrelevant, and conveys this to LASA, it may well finally surrender to me the records it

is bound under PAIA to do. (LASA wouldn't want to be seen to be offside with the SAHRC.) After it does so, LASA can even be rewarded with the SAHRC's annual 'Golden Key Award' 'to acknowledge' its 'model openness, responsiveness and information sharing' – with its deputy information officer Nair proudly declared 'Deputy Information Officer of the Year' at the '(GKA) ceremony'.

Dated at Pietermaritzburg this 1st day of July 2011

A handwritten signature in black ink, appearing to be 'Anthony Brink', written in a cursive style.

ANTHONY BRINK

25 Baker Road  
Prestbury  
Pietermaritzburg 3201  
8 July 2011

Adv Thulisile Madonsela  
Public Protector  
Hillcrest Office Park  
75 Lunnon Street  
Brooklyn  
Pretoria

Dear Adv Madonsela

BRINK/LASA/SAHRC

I write to report an extraordinarily serious case of persistent contempt by a major public body, Legal Aid South Africa ('LASA'), for the constitutional and legal obligations imposed on it by the Promotion of Access to Information Act 2 of 2000 ('PAIA'), and the equally grave failure of the PAIA Unit of the South African Human Rights Commission (the 'SAHRC') to take any substantial steps to mediate in response to my repeated pleas since September last year for its intervention and assistance under its powers and duties contemplated in section 83 of the Act, and then the Commission's notice of refusal last week, after keeping me waiting in the dark for two wasted months, to investigate and act upon my 'cogent' formal complaint to it in April that my fundamental right to information has been violated.

I filed an appeal against this refusal last Friday with SAHRC chairperson Adv Laurence Mushwana; and in my covering letter craved an early decision in view of the time pressure I'm now under to file my statement of claim in the Labour Court. The enclosed appeal notice recounts the shocking history. All material documents referred to therein are archived online for easy access at [www.tig.org/LASA/SAHRC](http://www.tig.org/LASA/SAHRC) username: lasa password: LASA2010.

In the event that Adv Mushwana upholds my appeal – as I’m expecting him to do on the clear case you’ll see I’ve made to him – and he directs the Commission and its PAIA Unit to do its work, it may be possible to put this matter to rest, failing which I’ll be formally reporting it to the Portfolio Committee on Justice and Constitutional Development as a case study bearing out the Committee’s repeated observations that as far as the enforcement of PAIA is concerned the SAHRC isn’t working, and I will be filing a formal complaint with you in the prescribed form against both LASA and the SAHRC, having regard to your declared ‘Mandate’ to

strengthen constitutional democracy by investigating and redressing improper and prejudicial conduct, maladministration and abuse of power in state affairs; resolving administrative disputes or rectifying any act or omission in administrative conduct through mediation, conciliation or negotiation; ... [and] resolving disputes relating to the operation of the Promotion of Access to Information Act of 2000, ... as mandated by the following legislation: Constitution of the Republic of South Africa Act 108 of 1996; Public Protector Act 23 of 1994; ...[and] Promotion of Access to Information Act 2 of 2000 ...

I recently directed a PAIA request at the SAHRC itself to expose the disgraceful failure of its PAIA Unit to support me in any substantial sense for nearly a year now in my endeavours to obtain duly requested LASA records. In flagrant breach of PAIA, LASA is unlawfully withholding these – and has unlawfully failed to discover and concealed others I’ve since learned about – with a view to suppressing critically relevant documentary evidence fatal to its false defence in my unfair discrimination claim shortly to be launched in the Labour Court, its basic intention being to pervert the true and just determination of my claim. All this, with supporting evidence, is canvassed in the supporting documents archived at the website mentioned above.

I was gratified to receive immediate friendly acknowledgments of my PAIA request served on the SAHRC from chairperson Adv Mushwana and CEO Kayum Ahmed, and assurances from both that my request will be complied with.

If needs be, the SAHRC’s records in my matter – or lack of them confirmed on oath under section 23 of the Act – will form part of my report to Parliament and my

complaint to your office that the SAHRC is not doing as it claims and is not doing as Parliament expects, and that in not assisting me to exercise my fundamental right to information under section 32 of the Constitution and section 11 of PAIA it's proved to be practically useless. As members of the Portfolio Committee have repeatedly remarked.

I'd be grateful if you would direct that a file be opened in this matter and let me have your reference number for future filings.

I apologise for the week's delay in copying you the appeal notice sent Adv Mushwana (you're a cc addressee), but I've been hands-full preparing for and conducting a trial out of town.

Thank you for your attention.

Yours sincerely

A handwritten signature in black ink, appearing to be 'A. Brink', with a stylized, cursive script.

ADV ANTHONY BRINK

Encl: Appeal notice to SAHRC chairperson Adv Laurence Mushwana

Cc: Mr Luwellyn Landers MP: Chairperson, Portfolio Committee on Justice and Constitutional Development

Adv Laurence Mushwana: Chairperson, SAHRC

Attorney Alison Tilley: Director, Open Democracy Advice Centre

Adv Paul Hoffman SC: Director, Institute for Accountability in Southern Africa

## Anthony Brink

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**From:** Mail Delivery System [MAILER-DAEMON@wblv-ip-mesg-1-4.saix.net]  
**Sent:** 08 July 2011 04:21 PM  
**To:** arbrink@iafrica.com  
**Subject:** Successful Mail Delivery Report  
**Attachments:** details.txt; Message Headers.txt

This is the mail system at host wblv-ip-mesg-1-4.saix.net.

Your message was successfully delivered to the destination(s) listed below. If the message was delivered to mailbox you will receive no further notifications. Otherwise you may still receive notifications of mail delivery errors from other systems.

The mail system

<julietn@pprotect.org>: delivery via mailgate02.sita.co.za[196.34.195.9]:25:  
250 ok: Message 167841968 accepted

<lmushwana@sahrc.org.za>: delivery via asmmmin.bcxisp.co.za[165.233.54.14]:25:  
250 B4e17122e0001 Message accepted for delivery

<phoffman@ifaisa.org>: delivery via ifaisa.org[64.202.116.87]:25: 250 OK  
id=1QfBux-0008PT-HT

<llanders@parliament.gov.za>: delivery via  
mail.parliament.gov.za[196.25.196.5]:25: 250 Ok: queued as BBFB4F4204

Accountability



Respect for human dignity



Service Excellence



Integrity



Passion for Justice



Efficiency and effectiveness



# LEGAL AID BOARD



# Annual Report 2002/3

Accountability



Respect for human dignity



Service Excellence



Integrity



Passion for Justice



Efficiency and effectiveness



## 1. Report of the Chairperson, Judge Dunstan Mlambo



4

2002/3  


### *The 2002/2003 Financial Year Context*

**T**he focus for my report for the year ending March 2003, is the context in which legal assistance and the public defender system operate in South Africa, nine years into its democracy. In many ways, South Africa remains in a state of transition and it is not possible, in less than one decade, to undo the burden of colonialism and apartheid that spans more than two centuries. We have progressed successfully but as a nation, we still have a great deal to do and the same applies to the Legal Aid Board.

The Legal Aid Board exists to provide legal assistance to those who cannot afford to provide their own. We are constantly challenged in our ability to give a legal framework to the Bill of Rights and our Constitution, given the levels of poverty and inequality in our country. In addition, these are new challenges like HIV/AIDS and the return of long forgotten issues as we face the prospect of a treason trial in a country with the most progressive constitution in the world.

The Legal Aid Board has shown that in spite of huge challenges, it will adapt to changing circumstances and will be a relevant role-player in a country founded on civil liberties and human rights.

One of the factors that affected the corporate and development arenas in 2003 was the World Summit on Sustainable Development, which re-emphasised the need to ensure the long-term viability of solutions to development problems. Another was the King II report on Corporate Governance, which sought to ensure that South African organisations could live up to the expectations and challenges

of creating an ethical business culture in the country.

The Legal Aid Board sought to respond to this environment through strategic emphasis on the sustainability, effectiveness and accountability of its operations, and by entrenching the legitimacy of the organisation as a vehicle that gives legal substance to the basic rights of all citizens. This emphasis was met with widespread government and stakeholder approval. In addition, it continued its strategic shift from Judicare to Justice Centres during 2002. This enabled the organisation to double the provision of legal services to the poor from 114 524 finalised cases in 2001/02 to 204 424 cases in 2002/03, and simultaneously use less resources. (Judicare is the provision of legal aid by the instruction of legal practitioners in private practice. Justice Centres are offices of the Legal Aid Board where it employs legal practitioners and candidate attorneys supported by paralegals and administrative staff.)

### *Specific issues affecting the Legal Aid Board and impacting on Clients and Stakeholders*

Of particular importance to the Legal Aid Board during this time was critical legislation under review, including the Legal Practice Bill and the Child Justice Bill. For the Legal Aid Board's client base – namely the poor and vulnerable – the impact of events and emerging issues in 2002/3 was felt in particular through:

- The devaluation of the Rand against other currencies
- Increasing crime in many (mainly poor) hot-spot areas
- Unemployment remaining at 37%, with 18% dependent on pensions
- 13 million South Africans without access to social security

**Figure 15: Skills Development**

**Interventions**

The 2002/2003 Workplace Skills Plan has been submitted and approved.

*Skills Development by salary band 1 April 2002 to 31 March 2003*

Salary Band	Training	
<b>LAB SALARY LEVELS</b>	Training day equivalents	Average days per employee
14 - 16	10	0.83
12 - 13	85	1.81
10 - 11	283	3.29
8 - 9	89	0.36
1 - 7	502	0.62

**Figure 16: Skills development by race, gender and disability**

Grade	Training days	Training: average days per employee
African male	293	0.70
African female	292	0.96
Indian male	46	0.28
Indian female	80	1.14
Coloured male	24	0.55
Coloured female	28	0.31
White male	78	0.86
White female	128	0.89
Disabled male	00	00
Disabled female	00	00

**Labour Relations**

**Misconduct and discipline.**

The outcome of disciplinary hearings include seven dismissals (18%), one case of corrective counselling (3%) and 18 final written warnings (48%). Seven written warnings (18%), two verbal warnings (5%) and one fine (3%) were issued. Two not guilty (5%) decisions were made.

**Injury on duty**

There were two injuries sustained during the year, one sprained ankle and one sprained neck and spinal cord (in a motor vehicle accident).

**HIV/AIDS**

A project team was established with a view to take forward the challenge of implementing a programme in the

Legal Aid Board. The primary approach was to empower employees with competencies that will assist them in giving advice to affected people i.e. helping children orphaned by the pandemic to access government grants. All centres, including central office, launched HIV / AIDS programmes.

**Implement, Review and Monitor Policies and Procedures**

Policy and procedure workshops were conducted in 70% of offices.

**Risk Management**

This involved identifying employment related risks and developing and implementing a strategy to deal with pre-employment risks.

**Stakeholder Relationship Management**

A Recognition Agreement (RA) with SAPTU (South African Parastatal and Tertiary Institutions Union) was reviewed but not finalised. Relationships were established with external partners i.e.: Medical Aid administrators are available on Legal Aid Board premises to deal with queries. AIPF (pension fund) was invited to attend the HR Policies workshop for the National Office. The Legal Aid Board is a member of the Poslec Seta and was actively involved in the Justice Chamber. Meetings with SAPTU were held on a monthly basis.

**Communications**

**Aims and functions**

Communications aims to create a positive image of the Legal Aid Board through the establishment, co-ordination and maintenance of an optimal communication matrix. This is intended to educate all key stakeholders, clients and Legal Aid Board staff about the provision of legal aid assistance

## Legal Aid Board Annual Report 2003/4

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2003/4

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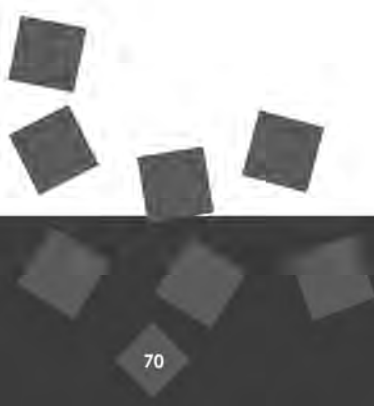
DESCRIPTION OF OUTPUT	SUCCESS
Participation in at least 4 Community projects per region.	26 community projects undertaken during reporting period.
Developed relationships with social welfare departments.	Legal Aid Board Social Welfare call diaries have been implemented across the country. This has ensured the development of relationships with social welfare departments on a structured basis.
The production and development of relevant public education material.	<p>National posters campaign relating to the following areas completed :</p> <ul style="list-style-type: none"> <li>• Legal Aid Board contact details</li> <li>• Women's Day celebrations</li> <li>• Aids Day celebrations</li> <li>• Women's rights</li> <li>• Children's rights</li> </ul> <p>A Legal Aid Board desk calender was distributed to all staff and stakeholders.</p> <p>The Legal Aid Board report to South Africans was delivered to 6 million households on a national basis.</p> <p>Negotiations with Inspecting Judge of Prisons to brand 15 largest prisons in SA were completed. Branding of awaiting trial holding cells with key messages has commenced.</p>

***"The Legal Aid Board report to South Africans was delivered to 6 million households on a national basis."***

Annual Report  
**2003/4**

DESCRIPTION OF OUTPUT	SUCCESS
Extension of the 'total cost to company' structured salary package option to salary levels 11 and 12.	A salary package structuring option was extended to salary levels 11 and 12.
<p><b>Programme 7.10: HIV/AIDS Management</b></p> <p>Terms of reference for the HIV/Aids Committee adopted.</p> <p>HIV/AIDS strategy and project plan developed and implemented.</p>	<p>The HIV/AIDS Committee formerly adopted its terms of reference.</p> <p>The HIV/AIDS strategy, policy and roll out plan was approved and implemented.</p>
<p><b>Program 7.11: Employee Assistance Program</b></p> <p>The implementation of a holistic Employee Assistance Programme in line with business strategy.</p>	An employee assistance needs assessment was conducted in order to inform an appropriate Employee Assistance Programme.
<p><b>Program 7.12: Accessibility of Workplace</b></p> <p>A workplace that is accessible to physically disabled people.</p>	An accessibility audit was partially completed. Accessibility to Justice Centres was addressed as part of the refurbishment process.

KEY STRATEGY	TOTAL SCORE	COMMENT
		<ul style="list-style-type: none"> <li>Implementation of the AIDS/HIV programmes must be reviewed with the objective of prioritising these programme.</li> </ul> <p>The organisation has performed very well in delivering on its HR strategy. There have also been significant achievements in addressing the human resources concerns and challenges highlighted in the 2002/2003 performance review.</p>
8 Information Technology strategy	89.8	<p>The future focus of the Legal Aid Board should be:</p> <ul style="list-style-type: none"> <li>The Information Technology Department appears to be understaffed, especially bearing in mind the level and degree of support which the department provides.</li> <li>To ensure that the newly implemented Ad Inifinitum system is consolidated and that it is tested to ensure that it is able to withstand the pressures placed on the system by the organisation.</li> </ul> <p>The Legal Aid Board has performed excellently in establishing and operationalising its Information Technology Department strategy and ensuring that delivery of the strategy has taken place on schedule and is of a very high standard. It is commendable that implementation of the Ad Inifinitum system has been achieved on schedule and within budget, given the size and scale of the project.</p>



## HIV/AIDS & HEALTH PROMOTION PROGRAMMES

**TABLE 22: STEPS TAKEN TO REDUCE THE RISK OF OCCUPATIONAL EXPOSURE  
THE ENVIRONMENT DOES NOT HAVE HIGH OCCUPATIONAL RISKS**

Question	Yes	No	Details, if yes
1. Has the Legal Aid Board(LAB) designated a member of the SMS to implement the provisions of the HIV/AIDS Strategy of the LAB? If so, provide her/his name and position?	X		Dayalan Naidoo (Organisation & Employee Development Manager)
2. Does the LAB have a dedicated unit or has it designated specific staff members to promote the health and well being of your employees? If so, indicate the number of employees who are involved in this task and the annual budget that is available for this purpose?	X		<ul style="list-style-type: none"> <li>HIV / AIDS Budget: R500 000</li> <li>HIV / AIDS Committee (10 members)</li> </ul>
3. Has the LAB introduced Employees Assistance or Health Promotion Programmes for our employees? If so, indicate the key elements/services of the Programme.	X		<ul style="list-style-type: none"> <li>Counselling</li> <li>Emotional and spiritual intelligence</li> <li>HIV/AIDS awareness programmes</li> </ul>

HIV / AIDS & HEALTH PROMOTIONS PROGRAMMES (Continued)

Question	Yes	No	Details, if yes
4. Has the LAB established a committee as contemplated in 1f 3a, please provide the names of the members of the committee and the stakeholders that they represent.	X		<ul style="list-style-type: none"> <li>HIV/AIDS Committee: Tshidi Tale-Maloo, DD Naidoo, R. Thato, L. Steephenson, M. Radu, N. Africa, B. Brijlal, M. Ndaba, M. Wilna</li> <li>Occupational Health and Safety Committee: 53 members Nationally</li> </ul>
5. Has the LAB reviewed its employment policies and practices to ensure that these do not unfairly discriminate against employees on the basis of their HIV status? If so, list the employment policies/practices so reviewed.	X		<ul style="list-style-type: none"> <li>HIV/AIDS in the work place</li> <li>Recruitment &amp; selection policy</li> <li>Terms and conditions of employment</li> <li>Code of conduct and ethics</li> <li>Induction policy</li> <li>Employment equity policy</li> <li>Study assistance and education policy</li> <li>Training, development and education policy</li> <li>Dismissal for operational requirements</li> <li>Sexual harassment, intimidation and victimization in the workplace</li> <li>Employee wellness policy</li> <li>Handling incapacity</li> <li>Health and safety guidelines</li> </ul>

### HIV/AIDS & HEALTH PROMOTIONS PROGRAMMES (Continued)

Question	Yes	No	Details, if yes
6. Has the LAB introduced measures to protect HIV positive employees of those so perceived to be HIV from discrimination? If so, list the key element of these measures.	X		<ul style="list-style-type: none"> <li>World AIDS Day Anti Discrimination Activities, Education and Training interventions to be rolled out, according to the HIV/AIDS Strategy and Roll Out Plan</li> </ul>
7. Does the LAB encourage its employees to undergo Voluntary Counselling and Testing? If so, list the results that you have achieved.	X		<ul style="list-style-type: none"> <li>Voluntary Counseling and Testing to be rolled out after Education and Training interventions have taken place</li> </ul>
8. Has the LAB developed measures/indicators to monitor and evaluate the impact of its health promotion programme? If so, list these measure/indicators.	X		<ul style="list-style-type: none"> <li>A survey to evaluate the effectiveness of current health promotion programmes and outstanding health promotion needs was implemented.</li> </ul>

# LEGAL AID BOARD

ENSURING INDEPENDENT AND QUALITY ACCESS TO JUSTICE  
FOR THE POOR AND VULNERABLE

## 4.10 HIV/AIDS & HEALTH PROMOTION PROGRAMMES

### 4.10.1 STEPS TAKEN TO REDUCE THE RISK OF OCCUPATIONAL EXPOSURE

The environment does not have high occupational risks.

### 4.10.2 DETAILS OF HEALTH PROMOTION AND HIV/AIDS PROGRAMME:

The Legal Aid Board has designated a member of the Senior Management Service to implement the provisions of the HIV/AIDS Strategy of the organisation. In addition, dedicated capacity has been allocated to the health and wellbeing of employees. A budget of R637 000 was allocated in respect of the Legal Aid Board HIV/AIDS programme. A total of R70 000 was allocated in respect of the Legal Aid Board Employee Wellness programme. An Employee Wellness and HIV/AIDS Committee had been established to oversee the programme.

All employment policies and practices were reviewed to ensure that they do not unfairly discriminate against employees on the basis of their HIV status.

As at 31 March 2008, 338 staff members had undergone Voluntary Counselling and Testing. In addition, a Knowledge, Attitude, Perception (KAP) Survey was undertaken to ascertain attitudes and perceptions on HIV/AIDS issues.



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Employment Opportunity

Position: Senior Litigator

Salary: R502 725 per annum (Level 13)

Location: Various in SA

Description:

The Legal Aid Board is an autonomous statutory body with the primary objective of rendering or making legal aid available to poor persons. The National Footprint of the Legal Aid Board covers more than 58 Justice Centres, spread throughout the country.

The above position exists in the National Operations Department at the following Justice Centres:

- \* Johannesburg (SNR L01)
- \* Pretoria (SNR L02)
- \* Pietermaritzburg (SNR L03)
- \* Durban (SNR L04)
- \* Port Elizabeth (SNR L05)
- \* Bloemfontein (SNR L06)
- \* Cape Town (SNR L07)
- \* Kimberley (SNR L08)
- \* Mafikeng (SNR L09)

Reporting to the relevant JCE, the incumbent will render legal services, primarily litigation services, in complex criminal and civil matters linking to the higher courts (High Courts, Appeal Courts and Constitutional Court) in the country and provide specialist support to Justice Centres on these matters.

Responsibilities:

- \* Take responsibility for and expertly/proficiently attend to legal matters in various legal forums/courts requiring expert litigation skills, such as impact litigation and/or warranting the services of a Senior Litigator
- \* Attend to referrals from National Office, Regional Office and Justice Centres regarding cases as in above and provide support to Justice Centres in specialised, complex or impact litigation matters
- \* Provide written legal opinion for the LAB as requested
- \* Build and manage a caseload as agreed by the ROE that makes optimum usage of the expertise and skills of the senior litigator position
- \* Assist with in-house legal training sessions as identified/agreed by the ROE or LDE
- \* Develop the litigation expertise within the LAB by providing individual mentoring and coaching to legal staff as identified by ROE, involving other LAB Practitioner to assist in legal matters and others means.

Requirements:

- \* Admitted Attorney/ Advocate
- \* B Proc or LLB degree, with right of appearance in the High Court
- \* An LLM will be an advantage
- \* Minimum of ten (10) years' post-admission litigation experience, inclusive of at least five (5) years' high court experience as well as litigation experience as an Attorney and/or Advocate.

To Apply:

- \* NB: In your application, please indicate the Justice Centre where you need your application to be considered.
- \* Preference will be given to affirmative action candidates who meet the minimum competency requirements.
- \* Should you not have heard from us within one month of the closing date, please consider your application unsuccessful.
- \* A detailed Curriculum Vitae reflecting practical application of the position outputs and the required competencies as advertised, quoting the

reference number, to:

Human Resources  
Private Bag X76  
Braamfontein  
2170

Attention: Mr Richard Baloyi  
Fax: 011 – 877 2222  
Email: recruit@legal-aid.co.za

Reference No: 2007/NO/JC01

Closing Date: 9 November 2007

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A  
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C

## Anthony Brink

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**From:** Oupa Dithejane [odithejane@sahrc.org.za]  
**Sent:** 11 July 2011 02:15 PM  
**To:** Anthony Brink  
**Cc:** Pandelis Gregoriou  
**Subject:** RE: Appeal notice

Dear Adv Brink,

Your request has been noted.

Regards,  
Oupa Dithejane

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**From:** Anthony Brink [mailto:arbrink@iafrica.com]  
**Sent:** 11 July 2011 02:17 PM  
**To:** Oupa Dithejane  
**Cc:** Pandelis Gregoriou  
**Subject:** RE: Appeal notice  
**Importance:** High

Dear Mr Dithejane

Thanks for your note below.

Since I'm under extreme time pressure now to file in the Labour Court – and every passing day counts – could I ask that you let me have Adv Mushwana's ruling on my appeal by email attachment as soon as it is available, followed by hardcopy through the post?

I'd be grateful.

Yours sincerely

Adv Anthony Brink

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**From:** Oupa Dithejane [mailto:odithejane@sahrc.org.za]  
**Sent:** 11 July 2011 01:59 PM  
**To:** arbrink@iafrica.com  
**Cc:** Pandelis Gregoriou  
**Subject:** Appeal notice

Dear Mr. Anthony Brink,

The contents of your e-mail forwarded to the Chairperson on the 1<sup>st</sup> day of July 2011 refers.

The office of the Chairperson acknowledges receipt of your appeal letter on the 11<sup>th</sup> day of July 2011 as the Chairperson was on leave for the entire week beginning the 4<sup>th</sup> day of July and ending on the 8<sup>th</sup> day of July 2011.

Correspondence to will be forwarded to you via the provided postal address.

Regards,

*Oupa Dithejane*

**Registrar of Appeals**  
**South African Human Rights Commission**

This e-mail and any files transmitted with it are confidential and intended solely for the use of the individual or entity to which they are addressed. If you have received this e-mail in error please notify the Mail Administrator - <mailto:administrator@sahrc.org.za>. Any views or opinions expressed in this e-mail are those of the sender and do not necessarily coincide with those of the South African Human Rights Commission.

This e-mail and any files transmitted with it are confidential and intended solely for the use of the individual or entity to which they are addressed. If you have received this e-mail in error please notify the Mail Administrator - <mailto:administrator@sahrc.org.za>. Any views or opinions expressed in this e-mail are those of the sender and do not necessarily coincide with those of the South African Human Rights Commission.

**SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

33 Hoofd Street  
Braampark Forum 3  
Braamfontein  
2198

Private Bag X 2700  
Houghton  
2041

Tel: (011) 877 3600  
Fax: (011) 403 0567



MR. ANTHONY BRINK  
25 BAKER ROAD  
PRESTBURY  
PIETERMARITZBURG  
3201

**Our Ref.:** A1/07/2011  
**Provincial Ref.:** GP/2011/0166

Date: 11<sup>th</sup> July 2011

Dear Sir,

**RE: APPEAL TO THE CHAIRPERSON**

The above matter and your letter of appeal dated the 1<sup>st</sup> day of July but only received by our offices on the 11<sup>th</sup> day of July 2011 refers.

I can kindly confirm that the Office of the Chairperson of the South African Human Rights Commission (Commission) has received a copy of the abovementioned letter of appeal.

The Chairperson's Office shall now proceed to request a copy of your complaint file from the Provincial Office from which your complaint originates.

Kindly be advised that after receiving a copy of your file from the said Provincial Office, your matter shall be placed in the bundle of matters on appeal that the Chairperson has to adjudicate on. There are numerous matters before the Chairperson on appeal from almost all the nine provinces throughout our country, all of which have to be dealt with on a 'first come, first serve' basis.

When the Chairperson has had an opportunity to properly deal with all the other matters on appeal currently before him, his Office shall then proceed to consider the issues you have raised on appeal and peruse your particular complaint file from the Provincial Office concerned. Thereafter his Office shall conduct research on the issues you have specifically raised and prepare draft findings for his consideration. Once this has all been done the Chairperson shall duly apply his mind to your matter on appeal and adjudicate on it accordingly.

The matters before the Chairperson on appeal currently are plenty in number and a diligent attempt shall be made to expedite these matters by his Office.

Yours faithfully,

**THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION**  
PER: MR. P. GREGORIOU  
LEGAL OFFICER TO THE COMMISSIONERS

Transforming society. Securing rights. Restoring dignity.

**Chairperson:** ML Mushwana; **Deputy Chairperson:** P Govender; **Commissioners (Full time):** S Baai, B Malatji, L Mokate;  
**Commissioners (Part time):** J Love, D Titus  
**Chief Executive Officer:** K Ahmed

**SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

33 Hoofd Street  
Braampark, Forum 3  
**Braamfontein**  
2198

Private Bag X 2700  
**Houghton**  
2041

Tel.: 011 877 3600  
Fax: 011 403 0567



MR. ANTHONY BRINK  
**PER EMAIL: arbrink@iafrica.com**

**Our Ref.: A1/07/2011**  
**Provincial Ref.: GP/2011/0166**

Date: 18<sup>th</sup> July 2011

Dear Sir,

**RE: APPEAL TO THE CHAIRPERSON**

The above matter and your letter of appeal received by our offices on or about the 11<sup>th</sup> day of July 2011 refers.

I kindly confirm receipt of the aforesaid letter and the contents thereof has been noted.

The South African Human Rights Commission (hereinafter referred to as the "Commission") was established to investigate *prima facie* violations of human rights as contained within the Bill of Rights, which is Chapter Two of the Constitution of the Republic of South Africa Act, 108 of 1996 (hereinafter referred to as the "Constitution").

In terms of Article 4.1 of the Commission's Complaints Handling Procedures:

*"4.1 The Commission may reject any complaint, which is –*

Transforming society. Securing rights. Restoring dignity.

**Chairperson:** M L. Mushwana; **Deputy Chairperson:** P. Govender; **Commissioners (Full-Time):** S. Baai, B. Malatji, L. Mokate;  
**Commissioners (Part-Time):** J. Love, D. Titus;  
**Chief Executive Officer:** A. K. Ahmed

4.1.3 *the subject of a dispute before a court of law, tribunal, any statutory body, any body with internal dispute resolution mechanisms or settled between the parties, or in which there is a judgement on the issues in the complaint or finding of such court of law, tribunal or statutory body ..."*

Moreover in terms of Article 4.2 of the Commission's Complaints Handling Procedures:

"4.2 *If in the opinion of the Head of the Legal Services Programme ... the complaint does not fall within the jurisdiction of the Commission, or could be dealt with more effectively or expeditiously by another organisation, statutory body or institution created by the Constitution or any other piece of legislation it shall ... refer the complainant to such an appropriate body ..."*

On perusing your file in this matter I note that your complaint relates to the alleged protracted delay by the information officer and Chief Executive Officer of Legal Aid South Africa (hereinafter referred to as "LASA"), Ms Vedalankar, to provide you with an affidavit in accordance with section 23 of the Promotion of Access to Information Act, 2 of 2000 (hereinafter referred to as "PAIA") and your averment that LASA continues to conceal further documents which you require for the purposes of proceeding with your matter in the Labour Court.

I note that the Legal Services Programme of the Gauteng Provincial Office of the Commission advised you on or about the 29<sup>th</sup> day of June 2011 that *inter alia* after assessing your complaint they were of the opinion that your complaint falls outside the jurisdiction of the Commission and in the circumstances your matter would be more effectively and expeditiously be dealt with through the adjudication by a court of law.

The Provincial Office was of the view that there was nothing further it could do in this matter and proceeded to close your file.

The Constitution and the Human Rights Commission Act, 54 of 1994 provides that the Commission is *inter alia* charged with the duty to investigate complaints of *prima facie* violations of human rights. The manner within which this is dealt with is determined in its Complaints Handling Procedures.

After a thorough analysis and due consideration of your complaint I confirm that the decision of the Provincial Office, to advise you accordingly, was in compliance of the Commission's Complaints Handling Procedures, in that the Commission does not have the mandate to assist you with your request for assistance in pursuing your matter which is currently before or is shortly to be adjudicated upon by the Labour Court.

This is in line with Article 4.1.3 of the Commission's Complaints Handling Procedures, stated above, namely, the "... Commission may reject any complaint, which is ... the subject of a dispute before a court of law".

Accordingly, your appeal is dismissed and this decision is final.

Yours faithfully,



**THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION**  
PER: M L MUSHWANA  
CHAIRPERSON

CC HEAD OF PROGRAMME; LEGAL SERVICES  
**THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

CC PROVINCIAL MANAGER, GAUTENG PROVINCE  
**THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

**IN THE COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION**

**HELD PIETERMARITZBURG ON 20 APRIL 2011**

**Case No KNPM926-11**

**In the matter between:**

**ADV. ANTHONY ROBIN BRINK**

**APPLICANT**

And

**LEGAL AID SOUTH AFRICA (LASA)**

**RESPONDENT**

**NOTICE OF OBJECTION IN TERMS OF SECTION 191(5A) OF THE LABOUR RELATIONS ACT NO.  
66 OF 1995.**

**TAKE NOTICE THAT** the above named Respondent hereby objects to the arbitration commencing immediately after the conciliation in terms of Section 191(5A)(c).

**TAKE NOTICE FURTHER THAT** the Respondent will accept service of all documents and pleadings herein at the under mentioned address.

**DATED AT RUIMSIG ON THIS 31 DAY OF MARCH 2011.**



**LEGAL AID SOUTH AFRICA (LASA)**

**c/o GUARDIAN EMPLOYERS ORGANISATION**

**P. O. BOX 1190**

**RUIMSIG**

**1732**

**TEL: 0861 436 436**

**FAX: 086 606 2194 / 086 143 6392**

**TO:**

**COMMISSION FOR CONCILIATION MEDIATION AND**

**ARBITRATION**

**PRIVATE BAG 72**

**PIETERMARITZBURG**

**3200**

**TEL: (033) 345-9249 / (033) 345-9271**

**FAX: (033) 345-9790**

**TO:**

**ADV, ANTHONY ROBIN BRINK**

**25 BAKER ROAD**

**PRESTBUTY**

**PIETERMARTIZBURG**

**3201**

**TEL: (033) 344 - 2420**

**FAX 086 672 0776**

**PER FAX**

**PART C**

**OBJECTION TO CON-ARB  
PROCESS  
ONLY**

**ONLY COMPLETE PART C IF YOU OBJECT TO THE MATTER  
IMMEDIATELY PROCEEDING TO ARBITRATION.**

I/we object to the arbitration commencing immediately after the conciliation in  
terms of section 191(5A) (c).

REFERENCE NUMBER OF CASE (IF THIS HAS BEEN SUPPLIED)

KNPM926-11

Name of Contact Person

**LEONI VALENTINE**

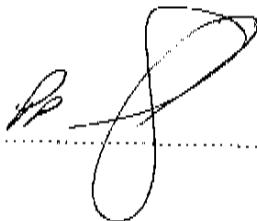
Name of Organisation or Company (if any)

**GUARDIAN EMPLOYERS ORGANISATION**

Telephone Number 0861 436 436

Fax Number 086 606 2194/0861 436 392

Signed:



Date:

*31st March 2011*

**If the employer** objects to the arbitration commencing immediately after the  
conciliation the employer must complete and send this section (Part C) at least 7  
days before the date of the conciliation. Please note that the **employer must  
attend the conciliation** regardless of whether it makes this objection.