

PART ONE: SECOND ADDENDUM

**COMPLAINT TO THE AUDITOR-GENERAL
AGAINST LASA CHIEF LEGAL EXECUTIVE PATRICK HUNDERMARK
REGARDING HIS CRIMINAL COMPLICITY IN COVERING UP LASA'S
ONGOING CONTRAVENTION OF THE PFMA THROUGH DELIBERATE
UNLAWFUL UNDEREXPENDITURE OF ITS SENIOR LITIGATOR
SALARY BUDGET OVER THE PAST DECADE IN THE SUM OF TENS
OF MILLIONS OF RANDS, RESULTING IN THE DEPRIVATION OF
EXPERT LITIGATION SERVICES TO THE INDIGENT, FOLLOWING
THE ILLEGAL, UNRECORDED, UNAUTHORISED, CORRUPT
CANCELLATION OF LASA'S SUBSTANTIALLY COMPLETE SENIOR
LITIGATOR RECRUITMENTS FOR ITS PIETERMARITZBURG,
DURBAN AND MTHATHA POSTS IN 2009 AND 2010, DETAILED IN
PART ONE OF THIS COMPLAINT – A 'MATERIAL IRREGULARITY'
WITHIN THE PURVIEW OF SECTION 1 OF THE PUBLIC AUDIT ACT**

I, Anthony Robin Brink, affirm:

1. I am an advocate residing at 36 Pearson Road, Eshowe, KwaZulu-Natal, and the complainant in Part One of a complaint to the Auditor-General in February 2020 ('Part One') regarding major ongoing contraventions of the Public Finance Management Act 1 of 1999 ('PFMA') by certain past and current national management executives of Legal Aid South Africa ('LASA'), and multiple acts of serious 'material irregularity' committed by them within the contemplation of section 1 of the Public Audit Act 25 of 2004 ('PAA').
2. An Addendum to Part One ('First Addendum') delivered earlier this month proves the complicity in these contraventions of Chief Financial Officer Rebecca Hlabatau; of two other named national executives; and of the Board secretary. Part One and its First Addendum are accessible online at illegal-aid.co.za/AG.

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3. Delivered a week ago, my criminal complaint on twelve counts against former CEO Vidhu Vedalankar in relation to these illegalities and their criminal cover-up is accessible at illegal-aid.co.za/NPA.

4. This is a Second Addendum to Part One, in which I show the direct criminal complicity of LASA Chief Legal Executive Patrick Hundermark in the said illegalities, as evinced by his mendacious repetition under oath of the original budgetary insufficiency lie told me by Vedalankar in her letters to me in October 2010 and January 2011 and by National Operations Executive Brian Nair in his affidavit under section 23 of the Promotion of Access to Information Act 2 of 2000 ('PAIA') in April 2011, and told to the Justice Minister in March 2011 and to the Justice Portfolio Committee in June 2011 by then Board chairperson Mlambo JP, as a false alibi covering the true undeclared corrupt reason my recruitment to LASA's Senior Litigator post at Pietermaritzburg was illegally cancelled, off the record, and without lawful authority, after I was unanimously recommended for it in November 2009 by the selection panel that interviewed the shortlisted applicants for it. (As discussed in Part One, and in my criminal complaint against Vedalankar, Nair and Vedalankar later dropped the budgetary insufficiency lie and substituted it with a completely different, radically contradictory one.) For easy copying and electronic transmission, a copy of this Second Addendum will also be posted at illegal-aid.co.za/AG.

5. On 21 June 2018, Hundermark deposed to an answering affidavit opposing my third PAIA application to the High Court at Pietermaritzburg under case number 5239/18P for an order compelling LASA's information officer to allow me access to certain records I'd duly requested, which Hundermark had illegally and unconstitutionally refused in contempt of my right to public body information. Material excerpts of his affidavit are annexed marked 'X'. (I've redacted irrelevant matter concerning the merits of my constitutional claim to sight of the documents I sued for; but if required, Hundermark's complete affidavit, as well as my reply to it, may be accessed online at illegal-aid.co.za/PAIA/PAIA_3. The case is pending.)

6. In paragraph 18 of his affidavit, Hundermark swore before a commissioner of oaths, under penalty of perjury, the following 'Factual Background' to be true:

On 12 November 2009, the applicant was interviewed and shortlisted as a candidate for the senior litigator post at the Pietermaritzburg offices of Legal Aid SA. But, Legal Aid SA subsequently abandoned the filling of the remaining vacant senior litigator posts due to budgetary constraints.

7. In truth and in fact, I was selected out from among the other shortlisted and interviewed candidates for the Pietermaritzburg post for which I'd applied, not shortlisted again. Hundermark's perjured claim about this in his first sentence will be addressed in Part Two of my complaint to the Auditor-General to follow about the wholesale procedural and ethical corruption of Senior Litigator recruitment at LASA, and in a separate criminal complaint against Hundermark for his prosecution.

8. Material to this Second Addendum to Part One is Hundermark's layer-cake perjury that 'Legal Aid SA subsequently abandoned the filling of the remaining vacant senior litigator posts due to budgetary constraints.'

9. As mentioned in Part One and in my criminal complaint against Vedalankar, Nair repeatedly confirmed on oath under section 23 of PAIA in April 2011, supported by Vedalankar's and Clark's confirmatory affidavits, that no record whatsoever exists of any such decision taken by any authorised person(s) or committee that LASA 'abandoned the filling of the remaining vacant senior litigator posts', as falsely alleged here again by Hundermark, i.e. that LASA resolved not to fill one third of LASA's nine budgeted and funded Senior Litigator posts. As also mentioned in Part One, the Constitutional Court pointed out in the *Zungu* case that deliberately leaving a budgeted and funded post vacant is an unlawful contravention of the PFMA.

10. As further mentioned in Part One and in my criminal complaint against Vedalankar, no 'budgetary constraints' prevented the filling of the three 'remaining vacant senior litigator posts'. Quite the contrary, LASA's records

show that all nine of LASA's Senior Litigator posts were budgeted and funded at the material time, and remain so; and that during the transient uncertainty in 2010 as to when LASA's OSD phase 1 funding for 2010/11 would be transferred to it, the Board explicitly resolved, at executive management's instance, that 'critical positions' be 'prioritise[d]' for recruitment, even as the Board approved executive management's proposal that recruitment to some vacant entry-level public defender posts serving the lower criminal courts be suspended *temporarily* until the OSD funding was secured (it was, a couple of months later). And it's common cause on LASA's legal pleadings that Senior Litigator posts at the top of its legal professional ranks are 'critical positions'.

11. In sum, and this is the nut of it, by brazenly telling his lies under oath in my PAIA litigation to misdirect and defraud the High Court into believing that LASA – as opposed to some rogue officers in the organisation – duly resolved to 'abandon... the filling of the remaining vacant senior litigator posts' and that LASA decided this 'due to budgetary constraints', Hundermark directly and actively located himself among the delinquent officers responsible for and complicit in (i) their criminally illegal, unrecorded, unauthorised, corruptly motivated cancellation of the substantially complete Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments, (ii) their criminal cover-up of this illegality with lies told *inter alia* on affidavit and to the Justice Portfolio Committee (i.e. criminally), and (iii) their illegal decision to deliberately leave the budgeted and funded posts vacant for the past decade, in contravention of sections 53(3) and (4) of the PFMA – at tremendous prejudice to the indigent for the past ten years, completely deprived of expert constitutional and other complex litigation services in KwaZulu-Natal (both posts illegally kept unfilled) and substantially deprived of them in the Eastern Cape, with all four of its distant High Courts still serviced by just one Senior Litigator at Port Elizabeth.

12. Aggravating Hundermark's active, direct criminal complicity in the illegal cancellations of the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments and in the criminally mendacious cover-up that followed, is that at that time these top professional level recruitments were illegally cancelled off

the books, Hundermark was well aware from his attendances of meetings with the Justice Portfolio Committee and its predecessor, the Select Committee on Safety and Security, that the National Assembly was particularly concerned that LASA should employ Senior Litigators to remedy reported public perceptions of inadequate legal expertise available in the organisation, which deficiency Hundermark himself conceded (see Part One, paragraphs 33–40).

13. Having regard to his job description at the time, ‘Legal Development Executive’, Hundermark had a particular responsibility to see to LASA’s *legal development* by hiring experienced trial lawyers to fill LASA’s Senior Litigator posts specially created by the Board for the conduct of complex litigation for the indigent and to mentor LASA’s junior lawyers.

14. Instead, by flagrantly perjuring himself in repeating under oath in the High Court the barefaced lies that I, the Justice Minister, the Justice Portfolio Committee, and various courts had been told, namely that ‘Legal Aid SA subsequently abandoned the filling of the remaining vacant senior litigator posts due to budgetary constraints’, Hundermark actively aided and abetted his colleagues in their illegal under-expenditure of many millions of rands of budget received from the Treasury via the Justice Department; in his colleagues’ obstruction of critical service delivery to the poor; and in the criminal cover-up carried out to conceal this.

15. Now that he’s also an executive member of the Board, Hundermark’s perjury committed to perpetuate the said cover-up additionally breached his fiduciary duty owed to LASA.

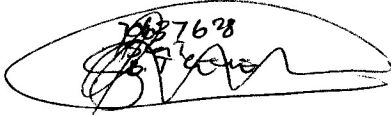
16. In the premises, Hundermark’s perjuries fall within the definition of ‘material irregularity’ in section 1 of the PAA, and are a matter of direct formal concern to the Auditor-General accordingly.

Signed at Fisho on 29 June 2020



ANTHONY BRINK

Signed before me at Eshowe on 29 June 2020 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and who affirms its contents to be true to the best of his knowledge and belief.

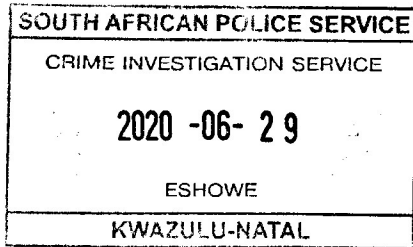
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COMMISSIONER OF OATHS

Name: CELE BHEKORWAKHE

Address: 73 / 79 MAIN STREET ESHOWE

Capacity: SERGEANT





IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO: 5239/2018P

In the matter between:

ANTHONY BRINK

Applicant

and

**VIDHU VEDALANKAR N.O. INFORMATION OFFICER
LEGAL AID SOUTH AFRICA**

First Respondent

**PATRICK HUNDERMARK CHIEF LEGAL EXECUTIVE
LEGAL AID SOUTH AFRICA**

Second Respondent

LEGAL AID SOUTH AFRICA

Third Respondent

RESPONDENTS' ANSWERING AFFIDAVIT

I, the undersigned,

PATRICK ROBERT HUNDERMARK

do hereby state under oath that:

1.

- 1.1. I am a major male and the Chief Legal Executive of Legal Aid South Africa,
a national public entity established in terms of section 2 of the Legal Aid

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[Handwritten signature]

South Africa Act, 39 of 2014 ("**Legal Aid Act**") with its national head office located at Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg ("**Legal Aid SA**"). I am duly authorised to depose this affidavit.

1.2. The contents of this affidavit fall within my personal knowledge except where otherwise indicated by the context, and are to the best of my knowledge and belief both true and correct.

1.3. Where I make averments not directly within my knowledge, I do so on the basis of information made available to me or which has been ascertained from the persons whose names I disclose. I verily believe such information to be true and correct. Where I make legal submissions, I do so on the advice of the respondent's legal representatives, which advice I believe to be true and correct.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]


[REDACTED]

[REDACTED]

FACTUAL BACKGROUND

18. On 12 November 2009, the applicant was interviewed and shortlisted as a candidate for the senior litigator post at the Pietermaritzburg offices of Legal Aid

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SA. But, Legal Aid SA subsequently abandoned the filling of the remaining vacant senior litigator posts due to budgetary constraints.

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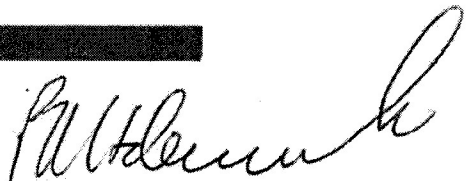
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PATRICK ROBERT HUNDERMARK

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Parkview on this the 21st day of **JUNE 2018**, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended



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by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.

7135226
Maulana CST

COMMISSIONER OF OATHS

Full Names: Leonard Maulana

Designation: CST

Address: 71 Dundalk Ave
Parkview

71 Dundalk Ave
 Parkview
 2018-06-21 13:15
 (PRINT NAME) KOMMISSARIS VAN OORDE
 (SIGNATURE) COMMISSIONER OF OATHS
 Leonard Maulana
 VULLENDE WITTE EN VAM IN DRUPSKINE
 FULL FIRST NAMES AND SURNAME IN BLOCK LETTERS
 71 Dundalk Ave
 BUSINESS ADDRESS (STREET ADDRESS)
 Parkview SPPS
 CST



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