EIGHTH COMPLAINT AGAINST MLAMBO JP
UNDER SECTION 14 OF THE JUDICIAL SERVICE COMMISSION ACT

I, Anthony Brink, affirm:

1. I am an advocate of the High Court of South Africa, residing at 25 Balcomb Avenue, Zini River Estate, Mtunzini, KwaZulu-Natal. My email address is anthonybrink.sa@gmail.com and my cellphone number is 0837794174. I am the complainant.

2. This is a complaint made under section 14 of the Judicial Service Commission Act 9 of 1994 against Dunstan Mlambo JP, head of the Gauteng Division of the High Court, and chairperson of the Board of Directors of Legal Aid South Africa ('LASA'), hereinafter 'the respondent'.

3. Paragraphs 4–13 of my Second Complaint establish the jurisdiction of the Judicial Service Commission ('JSC') to deal with this complaint.

4. Since this complaint is referenced to masses of documents vouching documented objective facts that I'm not expecting the respondent to contest, most of which are in LASA's possession and certainly all material ones, I'll put them up in a separate, indexed and paginated document bundle to follow, rather than annexing them. All numbers in superscript ('[1]') signify supporting documents in the bundle, and occasionally hyperlinks to voluminous, incidental documents privately accessible in my Dropbox online.

5. For concision, I'll refer to parts of my previous complaints against the respondent, and their annexures, and I request that they be read as incorporated in this Eighth Complaint.

6. Some preliminary notes:

6.1. This complaint, concerning the respondent's impeachable, grossly dishonest misconduct several years ago, has been a long time coming. I notified the JSC of my intention to make it on 7 November 2012[1] (acknowledged on the 14th[2]), only to be held up by LASA's protracted refusal to hand over a copy of the respondent's report to the Minister of Justice and Constitutional Development (as he was then called, now: 'and Correctional Services'; hereinafter 'the Minister'), on which part of this complaint is based. I eventually found it in June 2013 in the purely fortuitous circumstances described in Part Four of the Endnote to my Sixth Complaint. My November 2012 letter to the JSC describes the considerable difficulty I'd encountered obtaining it, which continued for several months after my letter, through two further pre-trial conferences under judicial supervision that I had to request in my interminable trouble getting documents out of LASA that I needed for trial in my labour case mentioned below.

6.2. This complaint formed part of a very long draft single complaint I began two years ago, comprising many counts, subsequently divided. After the conclusion of the extraordinarily time and energy intensive labour litigation, my time and energy were again diverted by no less than six separate court applications I had to bring to compel LASA's compliance with requests for access to its records I'd duly made under the Promotion of Access to Information Act 2 of 2000 ('PAIA') – the first five opposed all the way to court with several lever arch files full of meritless, filibustering answering papers, ultimately abandoned – as well as an application, in a return to court under the default clause, to compel LASA's compliance with its settlement agreement at court to hand over all the records it had been withholding or duly certify those

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that don't exist. Which it had failed to do, spurning my repeated pleas for full and proper compliance with it. The sixth application was an application to the High Court to compel LASA's surrender of a further set of documents it refused, after explicitly agreeing in the settlement agreement to respond to a final PAIA request in the matter specified. It's opposed but unanswered.

6.3. Instead of delivering the documents it had agreed to hand over, LASA responded to my applications to compel with an application, authorised by CEO and information officer Vidhu Vedalankar, to strip me of my constitutional rights to information and to access to the courts entrenched by sections 32 and 34 of the Bill of Rights by having me declared a vexatious litigant. My time and energy were then further hugely consumed by drawing an answering affidavit comprising 270 pages, 961 paragraphs, and 80 supporting annexures, detailing, inter alia, the pervasive, systemic top-level corruption I've uncovered at LASA to date. My sixth application to compel LASA's compliance with PAIA and LASA's application to shut me up and shut me down have been set down for argument together in October 2017.

6.4. LASA's absolute contempt for its constitutional information transparency obligations since 2010 to date, in covering up the capital transgressions described herein – like US President Richard Nixon clinging to his Oval Office tapes recording his cover-up of the Watergate burglary – are detailed in a comprehensive draft report I prepared for the South African Human Rights Commission ('SAHRC')[3], a further substantial drain on my time. Its chairperson informs me that the some of these problems will be raised with the National Assembly in the SAHRC's next annual report under section 84 of PAIA on public body compliance with the Act[4].

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6.5. I've also been slowed by a shattering bereavement: she died believing the corruption I'm up against is invincible, that my pursuit of justice is futile and hopeless; and despaired that all was lost for me and for us. Understandably, having regard to the central involvement of the respondent, a senior judge, in it, and to the perversion of my petition for leave to appeal the dismissal of my labour case, mentioned below, in the staggering manner described and vouched in my First Complaint against Waglay JP, filed evenly herewith.

6.6. I'm alive to section 15(2)(c) of the Act, which requires that 'A complaint must be dismissed if it ... is solely related to the merits of a judgment or order'. This complaint isn't. My claim in the Labour Court to my appointment to LASA's top professional post in KwaZulu-Natal, its Senior Litigator post at Pietermaritzburg ('the post'; there's a twin at Durban), for which I was unanimously recommended by a selection panel of LASA's top lawyers in the region in November 2009, was dismissed in September 2014. Correctly in the result (if not in the ratio decidendi – many fundamental reversible errors), because I'd founded it on covert unfair political discrimination as the most likely reason I wasn't appointed, not knowing the true reason for it at the time, the facts in this regard having been sedulously concealed from me. In April 2016, I forced these to the fore through application to court, and discovered that the real reason was cronyism. I discuss this below.

6.7. This complaint then isn't about the judgment, its rights and its wrongs. It concerns the respondent's gravely dishonest misconduct as chairperson of LASA, riding on the authority of his judicial office to commit it, years before the trial, especially vis-à-vis the Minister and the Portfolio Committee for his Department in the National Assembly ('the Portfolio Committee') with constitutional oversight over LASA.

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6.8. It's trite that a legal judgment (in America, an 'opinion') is finally dispositive of a dispute taken to law. But judgments don't establish objective facts for general purposes, and a judgment (the finding and ruling of a judge, based on his view of the evidence before him, e.g. that a man is a murderer, thus settling the lis between the state and the accused) cannot refute an objectively established fact (e.g. DNA evidence proving he isn't) presented in another forum. This is to say, a lie on which a claim or a defence is based, proved to the judge's satisfaction by perjury, doesn't become a concrete fact in the world because the trial judge was fooled. Nonetheless, the judgment given in my labour case certainly ended the dispute over my claim to my appointment as between LASA and me. Unless and until it's set aside one day.

6.9. The respondent wasn't party to my dispute with LASA, however, and indeed, for the reasons based on the just emerged new facts stated in paragraph 11 of my Sixth Complaint and its endnotes, I mistakenly held him clear at the trial of my labour claim (having indicted him in my papers), with the result that his gross misconduct complained of here wasn't on trial.

6.10. Finally, I recently discovered that five months after I commenced drawing my complaint against the respondent on 3 July 2015[5], LASA hit to knock me down first, by moving to have me struck off with a complaint to the Society of Advocates of KwaZulu-Natal ('the Society') on 23 November 2015[6], primarily that I'd slandered the respondent in my papers before the trial – not during it – and then again after it in my petition for leave to appeal.

6.11. After jumping the gun[7], the Society agreed to hear my response to LASA's complaint about this[8] (the only part of the complaint that

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interested it)[9]. The matter's pending. My complete answer to LASA's complaint comprises my affirmed complaints against the respondent made to the JSC. I've copied the Society my first seven, and will copy this one and the rest to follow.

6.12. LASA also moved to get me sacked as an acting magistrate by copying its complaint to the Society on to the Magistrates Commission, and in this it succeeded. A week later my contract wasn't renewed. (For some reason I was told: 'DM [the Deputy Minister] wants to give new people exposure[10].' But only in my particular case, I later found out.)

6.13. I only learned about the complaint to the Society seventeen months after it was made, in early May 2017, on seeing it mentioned in LASA's replying affidavit[11] in its above-mentioned application to prevent me accessing its records and prevent me suing to compel the production of those illegally refused. The Society hadn't told me about it.

6.14. I only learned a month later that LASA had copied its complaint to the Magistrates Commission (explaining why I was fired at the end of 2015), when on 1 June 2017 I was told the Deputy Minister had declined on account of it to appoint me to relieve for another magistrate for a couple of months[12]. The Magistrate's Commission hadn't told me either.

6.15. I mention this barrage of strikes against me for two reasons: first, to anticipate any suggestion by the respondent, in his characteristic ad hominem modus operandi described in my First Complaint, that I'm a discreditable person whose complaints should therefore be disregarded; and secondly, to show the extreme lengths to which the leadership of this extraordinarily corrupt public entity has gone in its aggressive-defensive campaign to annihilate me, so as to halt my further investigation of its corruption and to report it all to the relevant

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authorities – as I've repeatedly announced in my PAIA application papers I intend doing, armed with all the documents I've duly requested, many of which remain illegally withheld.

This concludes the introduction.

7. I charge the respondent with multiple counts of 'gross misconduct, as envisaged in section 177(1)(a) of the Constitution', per section 14(4)(a) of the Act, in conducting a major criminal cover-up of his illegal abuse of power, escalated to Parliament:

   7.1. first, in repeatedly lying to me, in response to my repeated petitions for his intervention, that he found nothing remiss in the unauthorised, unapproved, off-the-record, illegal abortion of my recruitment to the post:

      7.1.1. under cover of a false and untruthful budgetary insufficiency excuse that LASA CEO Vedalankar had given me in October 2010, which she repeated in January 2011 and copied to him, and which he knew was untrue and was unsupported and contradicted by LASA's own records, also copied to him;

      7.1.2. in multiple major illegal contraventions of the Public Finance Management Act 1 of 1999 ('PFMA'), of which he was full well aware, to be enumerated herein; and,

      7.1.3. against the expressly stated wishes both of the Deputy Minister and of the Portfolio Committee;

and then,

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7.2. in repeatedly lying in 'confidential' reports which he signed and submitted to the Minister, and then a few months later to the Portfolio Committee, by:

7.2.1. giving them a newly invented false delay excuse contrived to explain away LASA's failure to proceed with my appointment following my successful interview for the post (which delay excuse, known by the respondent to be a lie, he recanted and retracted in an affidavit made on his instructions and on his behalf a few months later, as a mere mistake, after I'd exposed and refuted it as a lie);

7.2.2. repeating to them the old false financial insufficiency excuse that Vedalankar had given me for cancelling my appointment (which cancellation excuse, known by the respondent to be a lie, was tacitly abandoned a few months later, after I'd exposed and refuted it as a lie, and replaced with totally different lying excuses given the Board, at which the respondent connived);

7.2.3. telling them the lie that records given me supported the cancellation excuse (whereas in truth and fact, as is apparent on their face, the said records didn't support it, and contradicted and refuted it; and the respondent knew this full well because Vedalankar had copied him these records, and he'd been centrally privy to the matters they covered); and,

7.2.4. telling the Portfolio Committee two additional lies to deceive and mislead it about the legal relief I was seeking and LASA's financial exposure in the matter, following his (the respondent's) and the Board's failure to see to my due appointment.

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8. Before this, (a) at a meeting with the Deputy Minister on 29 May 2010 (the minute of the Board meeting records the latter's presence[13], and the respondent mentioned it in his 2010/11 chairperson's report[14]); (b) at a meeting with the Portfolio Committee on 14 July 2010[15]; and afterwards (c) in his chairperson's report for 2012/13[16], the respondent was silent about and thereby concealed from these high authorities the illegal, unauthorised, unapproved, off-the-record, corruptly motivated abortion of the KwaZulu-Natal and then Mthatha Senior Litigator recruitments.

9. The reason the respondent lied to me, to the Minister, and to the Portfolio Committee was to cover the true reason he'd silently aborted my recruitment, namely that he wished to see his long-time former brother in the Labour Court, Mzochitwayo Ngcamu, appointed to the post for which I'd been selected and recommended, instead of me. The selection panel's full uncensored recommendation report – annexure 'B' to my Third Complaint, which I finally disgorged from LASA in April 2016 after it capitulated at court two months earlier to my application it had opposed to compel the surrender of the record to me – revealed that Ngcamu had been an acting judge of the Labour Court for about six years. The respondent had been Judge President of that court at the time[17].

10. Obviously I don't have a record to put up of the respondent's communication(s) with Vedalankar, National Operations Executive Brian Nair, and/or the KwaZulu-Natal Regional Operations Executive Vela Mdaka that he wanted his former judicial colleague in and not me, but on a preponderance of probabilities the surrounding factual countryside in the matter detailed below, and the respondent's extraordinary misconduct in the cover-up described in this and in my preceding complaints, makes the inference irresistible on any reasonable conspectus.

11. The JSC's finding about the respondent's motive (to give his erstwhile brother on the bench a leg-up) – a matter of inference – is not decisive of this complaint, however, because it chiefly concerns the objectively demonstrable, dishonestly false contents of his 'confidential' reports to the Minister and to the Portfolio Committee in March and June 2010 about why my recruitment was aborted, and not his ulterior motive for this. That is, my complaint to the JSC is that the respondent lied, not why he did.

12. Separate, future complaints will detail the respondent's history of illegal, unauthorised intrusion into and interference in LASA's Senior Litigator recruitment operations, as a *non-executive* Board member, in flagrant, lawless contravention of LASA's internal regulations precisely governing these processes – including, inter alia, his re-interviewing, rejecting, and preventing the appointment of duly recommended candidates; and, in at least one case to my knowledge, fixing the appointment of a rejected Senior Litigator candidate in place of the recommended one. (More such cases may be disclosed by the Senior Litigator reports I've duly requested under PAIA, but which LASA is illegally withholding.) In these separate, future complaints, I'll be detailing the respondent's involvement in other procedural and ethical recruitment and promotion corruption at LASA, and even at the JSC itself.

13. My first petition to the respondent and the Board on 30 November 2010[18] records that I'd annexed to it my preceding letter in July 2010 to Vedalankar[19], in which I'd entreated her to see to the finalisation of my appointment.

14. I hadn't yet seen LASA's Policies and Procedures on Recruitment and its Approval Framework; and as my letter reflects, I still incorrectly understood that my appointment was subject to the respondent's approval. In fact, under the Approval Framework it was subject to Vedalankar's and Nair's

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co-approval and no one else's. This will be dealt with in a separate, future complaint.

15. My first petition shows that after making my opening complaint about Vedalankar's illegal and unconstitutional refusal to comply with my first request for access to LASA's records under PAIA, I presented the evidence then known to me (and I later found a whole lot more) refuting the budgetary insufficiency excuse she'd given me in her October 2010 letter[20] for the cancellation of my appointment, also – at different times, I later discovered – the cancellation of the promotion of an internal candidate Bongani Mngadi to the Durban post, and the cancellation of the transfer of Mahikeng Senior Litigator Nzame Skibi to the newly created Mthatha post, nearer to his home.

16. The audacious, seemingly strong and convincing cover-story that three Senior Litigator posts had been frozen for lack of funding provided to fill them would later chop and change radically.

17. How the respondent colluded with Vedalankar in dismissing my plea for his and the Board's intervention in seeing to my appointment to the Pietermaritzburg post, after I'd shown in my first petition that the budgetary insufficiency story she'd told me was an obvious lie, is described in my Second Complaint. To reiterate, the respondent's lying response was:

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

18. My second and third petitions to the respondent in December 2010 and February 2011 show that I repeated my complaint to him about the abortion of my appointment under a plainly false financial justification and repeated my plea that my appointment be finalised.

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19. How the respondent again colluded with Vedalankar in dismissing my second petition for his and the Board's intervention in seeing to my appointment is the subject of my Third Complaint. To reiterate, the nut of his lying response was:

> 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.

20. How the respondent ignored my third petition, including my appeal for his and the Board's intervention in and resolution of what he well appreciated to be the illegal, falsely justified abortion of my appointment, is the subject of my Fourth Complaint.

21. As said in paragraph 6 of my Fifth Complaint, after the respondent outrageously rebuked my extraordinarily serious fundamental rights violation complaints repeated in my second petition to him in December 2010 – in so doing, disgracefully abusing his judicial office to try intimidating and chilling me into silence and the abandonment of my rights – I petitioned the Minister and the Portfolio Committee by copying them in on my third petition to the respondent and the Board in February 2011, in which I again pleaded for their intervention to mediate a conciliatory resolution of my complaint about the very obviously irregular, falsely justified, illegal abortion of my appointment.

22. As said in paragraphs 7 and 8 of my Seventh Complaint, the Constitution provides that any interested person may petition a committee of the National Assembly, and that such committee may require any person to report to it.

23. Appositely to this matter, the Constitutional Court unanimously affirmed last month (22 June 2017) in United Democratic Movement v Speaker of the

National Assembly and Others (CCT89/17) [2017] ZACC 21 ('the secret ballot judgment') that such accountability mechanisms in the Constitution are:

> designed to ensure that the trappings or prestige of high office do not defocus or derail the repositories of the people's power from their core mandate or errand. For this reason, public office-bearers, in all arms of the State, must regularly explain how they have lived up to the promises that inhere in the offices they occupy. And the objective is to arrest or address under-performance and abuse of public power and resources.

24. As said in paragraphs 7–9 of my Sixth Complaint, the Minister apparently required the respondent to answer my complaints in my third petition and to report to him about them, because in March 2011 the respondent did so. The respondent's report to the Minister is annexure 'A' to my Sixth Complaint.

25. As said in paragraph 8 of my Seventh Complaint, the chairperson of the Portfolio Committee certainly required the respondent to answer my complaints in my third petition and to report to him about them, and the respondent did so in June 2011 by furnishing him with an 'updated' version of his report to the Minister. The respondent's report to the Portfolio Committee is annexure 'A' to my Seventh Complaint.

26. Since the respondent's central lying cover-story ('the explanation') for my non-appointment given to the Minister and to the Portfolio Committee in his successive reports is identical, I'll refer to both reports to them as 'the report'. The 'updated' report to the Portfolio Committee contains two extra lies, which I'll expose and refute separately at the end.

27. In both cases, in reporting to the Minister and to the Portfolio Committee, the respondent quoted his abusive, lying January 2011 email sent to me from his judge's email account (annexure 'C' to my First Complaint). In so doing,

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the respondent repeated to them the lies he'd told me that he'd seen and still saw nothing remiss in the silent off-the-record abortion of my appointment eventually justified with a plainly untruthful financial insufficiency excuse, cooked up eleven months after my successful interview as I was pressing for my appointment, now with a PAIA request. The respondent was well aware that the financial cover-story I'd been told was a lie; and showing him I knew, I presented the then available evidence that it was a lie in my first petition.

28. The respondent lied to the Minister and the Portfolio Committee in this way (quoting his email to me) with the dishonest object of discrediting my entirely proper, duly made true complaint repeated yet again in my third petition about the illegal abortion of my appointment.

29. And by quoting to the Minister and to the Portfolio Committee his false charges against me of personal and professional misconduct, sent from his judge's email account, the respondent abused his judicial power to defame me before the Minister and the Portfolio Committee with the corrupt object of falsely discrediting me personally and professionally, to prejudice them against me, the better to rubbish my true complaint that my appointment had been illegally aborted under cover of a lying financial excuse, and to pervert their independent enquiries into this – in the case of the Portfolio Committee's enquiry, instituted under section 56(b) of the Constitution in the performance of its oversight obligation imposed by section 55(2) 'to arrest or address under-performance and abuse of public power and resources' (per the secret ballot judgment).

30. As said in paragraph 9 of my Seventh Complaint, the respondent didn't consult the Board about my complaints, and convey the Board's response to them, as the chairperson of the Portfolio Committee had required of him. Instead, he bypassed the Board and engaged with Vedalankar alone, who

asked Nair to ghost-write a report for the respondent to sign and submit to the Minister, purporting to answer my complaints. Which he did: paragraph 11 of my Sixth Complaint and its endnote deals with the computer evidence of this and with Nair's eventual, reluctant, forced admission in court that he was its author.

31. Quoted below is the oily mélange of perfect truth, outright lies, half-truths, and claims true on their face but false in the context, which cunningly baked together comprise the smooth and convincing explanation Nair forged and the respondent uttered to the Minister and to the Portfolio Committee, in full knowledge that it was false, to dishonestly explain away and cover up the silent, off-the-record, unauthorised, illegal abortion of my appointment. I've italicised an extra phrase that the respondent or Vedalankar or someone else added to the explanation in the 'updated' report – if Nair is to be believed: paragraph 24 of my Seventh Complaint deals with his denial that he added it and the other new content of the 'updated' report, to be dealt with at the end.

32. The respondent's lying explanation to the Minister and to the Portfolio Committee to pervert their separate, independent enquiries into my complaint that my recruitment had been irregularly and unlawfully aborted under cover of an eventually manufactured false financial justification, went like this:

> **On 24 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.**

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This nationally constituted selection 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 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. ...

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 believes there is a conspiracy against him. Legal Aid SA, under the current leadership, never refused legal aid nor refused appointment of any individual/s because of their race or political views. ...

Notwithstanding the insulting and malicious tone of most of Adv Brink correspondence with us on this matter, we have tried

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> **to convince him, by the provision of relevant documentary evidence, that the basis of his conspiracy theory is unfounded. It is clear that Adv Brink believes otherwise. Therefore, whilst we would not prefer litigation in the normal course of dispute resolution, it seems 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.** (minor grammatical errors in the original)

33. In the following paragraphs, I'll show that not only was the explanation false, but the respondent knew it to be false. That is, in knowingly giving the Minister and the Portfolio Committee this false explanation for LASA not appointing me to the post, the respondent deliberately lied to them to pervert and put down their enquiries about it.

34. For clarity I'll quote the lying explanation in italics before dismantling it.

35. '*On 24 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.*' This was eight very strangely silent months after my interview, with no word about its upshot, aside from Human Resources Executive Amanda Clark's shockingly rude, manifestly dishonest repulsion of my entirely reasonable enquiries on 30 April 2010, after the first five silent months had passed – even as she inadvertently divulged that I'd been recommended:

> 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. ... 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

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position. ... I think you should allow us to complete the process at the pace we have decided. ... 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. ... If we require further information or follow-up from yourself, our organisation will contact you.

36. This is quoted in my letter to Vedalankar in July 2010[21], in which I deconstructed it.

37. '*He was recommended by the regional selection panel to the second stage of the interview process, before a nationally constituted selection panel.*' This is formally correct: I was indeed selected for the Pietermaritzburg Senior Litigator post for which I'd applied.

38. Before this honest concession to the Minister and to the Portfolio Committee, both Clark and Vedalankar had lied to me to obfuscate and conceal the hard, unwelcome fact that I was selected, and not Ngcamu, the respondent's former fellow judge of the Labour Court:

    38.1. Clark's lie to me in her email to me of 30 April 2010, among others – 'At this stage it is not even clear which applicants will be considered in the second round' – were my first clear indication that LASA was dealing with me in bad faith; that the recruitment was corrupt; and that LASA wanted me to quit pursuing the post and push off.

    38.2. Vedalankar told me a similar lie in of her letter to me in October 2010, now expressly refusing, after tacitly refusing by ignoring, my request under PAIA in August 2010 to see the selection panel's recommendation report. I'd been 'recommended together with other candidates'[22], she told me, while refusing me sight of the recommendation report flatly refuting this lie of hers. The recommendation report that she later gave me in January 2011, albeit

heavily censored with a Koki pen, confirmed that I was indeed recommended for the post I'd applied for and no one else; and obviously so, because the whole point of the selection process in November 2009 was to choose the best candidates from among those shortlisted and interviewed for possible appointment to each of the simultaneously advertised Pietermaritzburg and Durban posts.

38.3. An internal candidate, Bongani Mngadi, was selected and recommended for the Durban post. (The recommendation report isn't specific about this, but LASA admitted in my labour case that I was selected and recommended for Pietermaritzburg, and by implication Mngadi for Durban. And the interviews were on 12 November 2009, and not the earlier wrong date on the record. The recommendation report also understated my High Court experience.)

38.4. The full uncensored recommendation report which I finally forced out of LASA in April 2016 by suing for it – after my repeated request for it had been illegally refused again, and my claim to it was determinedly opposed all the way to court, only to be conceded at the point of argument – showed that the other two candidates Ngcamu and Van Wyk were eliminated from the running for the posts, because they didn't meet the qualifying criteria. In Ngcamu's case this was because he lacked right of appearance in the High Court, even though he'd acted as a judge for many years, which means he'd never litigated a case on his feet there. So I was certainly not 'recommended together with other candidates', as Vedalankar had lied to me. Nor was it 'not even clear which applicants will be considered in the second round' interview, as Clark had lied to me before that. Nor – her other lie – was it unclear 'if indeed we will proceed with a second interview'. In truth and in fact it was perfectly clear: they weren't going to proceed,

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and in the following months didn't, because I'd been rejected as soon as my name came up as the recommended candidate, rather than the candidate favoured by the respondent, his former long-time judicial colleague, Ngcamu. Indeed, the respondent or his attorney writing for him let the truth slip out in his answering affidavit opposing my application for leave to subpoena him: my 'recruitment ... was aborted immediately after the first round of interviews'[23]. Exactly.

39. It's not material to this complaint to talk to the so-called 'regional selection panel', 'nationally constituted interview panel', and 'second stage of the interview process' mentioned in the report. The respondent's corruption of Senior Litigator recruitment procedure and illegal interference in the selection and approval process, in cavalier disregard for LASA's internal regulations precisely governing it, i.e. in violation of the rule of law, will be addressed in a separate, future complaint. Point is, I was selected and recommended for the post I'd applied for, and my rivals were eliminated from the race, even as Clark and Vedalankar both lied about it, crudely trying to conceal this from me to put me off pursuing my appointment.

40. '*This nationally constituted selection 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 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.*' This is the rotten core of the false explanation that the respondent gave the Minister and the Portfolio Committee for not proceeding with my appointment. It comprises two parts, a delay excuse and a cancellation excuse, which I'll refute separately and show to be lies in turn.

41. Concerning the first lie in the explanation, the delay excuse: '*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 is one':

    41.1. When in my original, unusually extensive Statement of Claim in the Labour Court I exposed and refuted this delay excuse as a lie, by showing no attempts had been made to coordinate a meeting time; no one on the panel had been contacted to ascertain their availability[24], LASA quietly avoided pleading to this in its Response[25] (i.e. its plea, in the special argot of Labour Court practice).

    41.2. When in my application for leave to subpoena the respondent for cross-examination at the trial of my labour claim I again raised, exposed and refuted this lie[26] that he'd told the Minister and the Portfolio Committee, LASA's lead in-house attorney, Corporate Services Executive Thembile Mtati – 'authorised' by the respondent and after 'consultations' with him – recanted and retracted the lying delay excuse as 'an error'[27], 'palpably an error'[28]. Nair, who ghost-wrote the report, and originated the lie, only to be caught in it, made a confirmatory affidavit[29]. (I wasn't given the latter until after the trial, or obviously I'd have cross-examined Nair on it.)

    41.3. After the respondent's discredited lying delay excuse was retracted by him via his attorney on affidavit, it didn't feature in any of LASA's pleadings or interlocutory affidavits. In its Response to my amended, this time brief, Statement of Claim, LASA didn't plead any such excuse for not proceeding to hold my so-called second round interview. And the reason it didn't is that I'd twice already exposed and refuted the delay excuse as a lie to the Minister and Portfolio Committee, and it had been withdrawn under oath with yet another lying excuse, that

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it was just a mistake. (Like blaming a flat tyre for coming to court late, when actually you were double-booked; and when caught by the judge in the lie, trying to slither out of it by calling the blatant lie told the judge a mistake, clearly a mistake.)

41.4. In his evidence at the trial of my labour claim, Nair tried retracting the sworn retraction he'd himself confirmed on oath as yet another mistake – only to contradict the retracted, now revived delay excuse by claiming that everyone on the so-called second interview panel was too busy to interview me[30].

41.5. His new story in court contradicted the respondent's delay excuse because it precisely confirmed that no steps had been taken to convene the so-called second interview panel, so no 'delays' had arisen from any falsely alleged difficulty 'coordinating a meeting time suitable for all members of the panel of which the Chairperson is one'; no moves were made to convene the panel at all, and no one on it was asked for available dates, including the respondent. This is even though both Nair and the respondent were present at the 28 November 2009 Board meeting, according to its minute[31], two days after Nair received the KwaZulu-Natal Senior Litigator recommendations on the 26th[32], for which he'd specially telephoned[33], as well as all CVs of the interviewed candidates, including those of the rejected candidates[34], including Ngcamu's.

41.6. It bears mentioning that the post was originally advertised in October 2007[35] and an internal candidate was duly selected for it, but (acting ultra vires and illegally) the respondent rejected him[36]. The post was then twice re-advertised in 2009, in June[37] and September[38]. Filling LASA's three remaining Senior Litigator posts, duly categorised by LASA in its pleadings in my labour case as 'critical'[39], was a priority in

the implementation of LASA's Strategic Plan 2009–12, as is evident from (a) Vedalankar's repeated mention of the employment of Senior Litigators in her CEO report for 2012/13 on the completion of that Strategic Plan[40], and (b) the fact that when the Mthatha post was created in March 2010[41], and reflected as a vacant new second Senior Litigator post in the Eastern Cape in LASA's recruitment statistics[42], the LSTC gave recruitment to it 'Immediate' priority, and instructed the Regional Operations Executive to 'immediately commence recruitment'[43], and it was advertised the following month[44], with interviews held and a selection made the month after that[45].

41.7. The finalisation of my appointment to the Pietermaritzburg and Durban posts was indeed silently stopped, but not for the lying reason the respondent gave the Minister and the Portfolio Committee: it was in the expectation that I would conclude from the silence that I'd been unsuccessful and walk away. Indeed, at the trial of my claim for my instatement in mid-2013, I was asked the spectacularly backfiring question in cross-examination: Why hadn't I concluded from the long silence that I'd been unsuccessful and walked away?[46] That was the initial strategy to get me out the way: silence. And when that failed, the next strategy was to stonewall me, as demonstrated by Clark's second email in April 2010, quoted in paragraph 35 above, reeking with malice and bad faith.

41.8. As for Mngadi, selected and recommended for the Durban post, he was emailed 'in April/May' 2010 to tell him that the Senior Litigator recruitment had been cancelled, no reason given, leading him to conclude the reason to be 'internal restructuring' – so he told me on the telephone, and I shortly afterwards conveyed to the respondent in my first petition to him in November 2010[47].

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41.9. The story that Mngadi was told by email 'in April/May' 2010 – that the Senior Litigator recruitment had been (duly) cancelled – is contradicted by the fact that the Mthatha Senior Litigator recruitment was in full swing in the period 24 March 2010, when the post was created[48], through April, when it was advertised[49], to 24 May 2010, when Skibi was recommended for the post[50].

41.10. Unlike Mngadi, I was told nothing. I was kept in the dark. In his answering affidavit opposing my application for leave to subpoena the respondent (Nair confirming), Mtati lamely explained this different treatment[51] – why Mngadi was told the recruitment had been cancelled, whereas I was left twisting in the wind by Clark's lying unclear-this, unclear-that, don't-call-us-we'll-call-you final email:

> For Mr Mngadi, his appointment as a Senior Litigator was going to result as an internal promotion instead of a new employment hence it was not much of a problem to inform him well in time of Legal Aid South Africa's decision to freeze the recruitment process.

Only, as said, 'Legal Aid South Africa' never took a 'decision to freeze the recruitment process' – as is plain from the glaring fact, discussed immediately below, that no record of such 'decision' exists.

42. As to the respondent's second lie in his explanation, the cancellation excuse – '*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*' – LASA's records show that in truth and in fact no such 'decision' was ever 'made' by 'Legal Aid SA' for this or for any other reason.

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43. Nair repeatedly confirmed on oath in April 2011 under section 23 of PAIA[52], that no record whatsoever exists of any 'decision being made [by 'Legal Aid SA'] not to proceed with the filling of vacant senior litigator posts':

> 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 ... no written record of this decision exists ... no other written record of this decision exists [sic: the 'other' records mentioned were irrelevant] ... I confirm that no such written records exist ... I confirm that no written records of this decision exist ... I confirm that the consultation with the HRE on this matter was done verbally ... I confirm that no written record of this decision exists.

44. And he confirmed it again in his evidence at the trial of my labour claim in mid-2013[53].

45. Not only is there no record to vouch this false claim, that LASA decided not to fill its vacant Senior Litigator posts, the extant records contradict it. I'll show this below.

46. Indeed such a decision was taken, but by the respondent, for a different grossly improper reason, illegally, off the record.

47. Unlike Louis XIV, absolute monarch in seventeenth century France ('I am the state'), Board chairperson Mlambo JP is not 'Legal Aid SA'. Consistent with his documented history of illegal interference in Senior Litigator recruitment at LASA, to be described and vouched in separate, future complaints, the 'decision' was the respondent's, not LASA's. And he took it for a different, grossly improper, illegal reason, as said, having nothing to do with any so-called 'pressing financial constraints' – itself a deceptively misleading misdescription of no more than some brief uncertainty.

48. As I'll show in a separate, future complaint, the respondent had previously illegally aborted several other Senior Litigator recruitments because he didn't like the candidates duly selected and recommended by duly constituted selection panels. (Under LASA's internal regulations governing selection and appointment procedure, the respondent had no lawful business vetting recommended candidates.)

49. And as I'll show in separate, future complaints, the respondent has a history of job fixing, including for unqualified, even disqualified persons whom he likes personally. I'll show in light of this that the most probable reason the respondent cancelled my recruitment – seeing as the delay and cancellation excuses he gave the Minister and the Portfolio Committee were both lies – is that he wanted Ngcamu, his former brother in the Labour Court, appointed to the post for which I was selected and recommended, instead of me; and that when my repeated appeals for my appointment made plain that I wasn't just going away as planned, the respondent called off all further Senior Litigator appointments to create an impressive, seemingly nice strong cover-story for not seeing to my appointment as I'd repeatedly implored him.

50. I pause to mention here the potently cogent fact that, unlike the rest of us, Ngcamu wasn't told the recruitment was off.

51. Notwithstanding that both Mngadi and I had been told earlier – Mngadi 'in April/May' 2010 (his words to me) and I by letter from Nair on 19 August 2010[54] – Nair thought he'd fake a patina of propriety by telling us again with a formal Dear John.

52. On 23 August 2010 the Regional Operations Executive sent me[55], Mngadi[56] and Van Wyk[57] identical letters (ghost-written by Nair: his same language re-appears in the report) claiming:

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> Legal Aid South Africa will not be proceeding with the filling of this post [sic: there were two, but he had the problematic Pietermaritzburg one in mind].We apologise for the delay in informing candidates of the outcome of the interview process [sic: I was never informed; to the contrary, Clark had lied to me to fudge 'the outcome of the interview process', which had gone my way]. 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 [as he lied in his natural habit].

53. The respondent's former judicial colleague Ngcamu wasn't similarly told this. Nor was he invited to have a nice life somewhere else: he was shortly afterwards employed by LASA in other posts, first at Empangeni[58], then at Durban[59].

54. That is, the respondent's favoured candidate earmarked for the post, for which it unfortunately happened that I was selected, wasn't told the Senior Litigator recruitment had been cancelled. Like the rest of us were.

55. I succeeded in finally forcing this hot fact to the surface through round after round of determinedly resisted but even more determined pursued document discovery procedure in the Labour Court.

56. Nor was Skibi, recommended for transfer to Mthatha, sent any such letter claiming the Mthatha recruitment had been cancelled, even though LASA falsely pleaded he was[60]. I demanded it during pre-trial discovery, but LASA couldn't produce it[61].

57. Which means Skibi was told off the record that his transfer had been cancelled. Nor is there any record of the cancellation of the Mthatha Senior Litigator recruitment in any of the Eastern Cape Regional Management committee meetings in 2010. Had it been duly motivated, decided, and effected, there'd be a record of it. There isn't, so it wasn't.

58. Another potently cogent fact: The original qualifying criterion set for all Senior Litigator posts in 2007 was inter alia 'at least five (5) years' high court experience'[62]. When the Pietermaritzburg and Durban posts were re-advertised in 2009, the qualifying criterion was doubled to '10 years ... high court experience'[63]. This increased qualifying criterion wasn't applied to the Kimberley post also re-advertised in 2009, in May[64], nor to the Mthatha post subsequently advertised in April 2010[65].

59. I demanded it during discovery in my labour case[66], but LASA couldn't produce any record showing that this uniquely high qualifying criterion imposed only on the re-advertised Pietermaritzburg and Durban posts was ever duly authorised by any competent authority[67].

60. This unauthorised, gerrymandered qualification for the KwaZulu-Natal Senior Litigator posts appears to have been tailored to suit Ngcamu as an attorney with many years of practice, topped with about six years on the Labour Court bench. Except that he'd never physically litigated a case in the High Court, and didn't have right of appearance there, and for this reason was disqualified.

61. There was no delay in the Mthatha recruitment. After the Pietermaritzburg and Durban Senior Litigator recruitments had been cancelled, with Mngadi told so 'in April/May' 2010, but not me, the Mthatha recruitment rapidly proceeded. Created in March 2010, the post was advertised in April, and Skibi was interviewed and selected for it in May. So this part of the explanation to the Minister and Portfolio Committee was absolutely false.

62. Just as the respondent isn't 'Legal Aid SA', nor is Vedalankar and/or Nair; and just as an unauthorised, unlawful decision the respondent has taken off the record isn't taken by 'Legal Aid SA', an unauthorised, unlawful decision they've (allegedly) taken off the record isn't taken by 'Legal Aid SA' either: In her October 2010 letter[68], Vedalankar told me the lie, as I was ratcheting up

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the pressure on her to finalise my appointment, first with my letter to her in July and then with my searching PAIA request to her in August (repeatedly illegally refused): 'In July 2010 the NOE and CEO took the decision that all senior litigator posts that were vacant would immediately be frozen.'

63. As the respondent knew perfectly well, LASA's Approval Framework doesn't give Vedalankar and Nair the power as a duo, on their own, on their own initiative, without first consulting the Board, to change LASA's Business Plan, based on its Strategic Plan.

64. He knew it because in July 2010 he and his Board were asked to approve the temporary freezing of recruitment to some non-critical lower criminal court public defender posts until the OSD funding issue was sorted out[69] in the minds of executive management, thereby temporarily deviating from the Business Plan; and he and the Board agreed[70].

65. That is, the respondent knew Vedalankar's story given me in October 2010, that she and Nair had cancelled the Senior Litigator recruitments and indefinitely and in the event permanently frozen the posts was a lie:

    65.1. Under the Approval Framework, which delegates decision making power[71], and under the Legal Aid Guide, which inter alia defines the functions of the Legal Services Technical Committee[72] (the 'LSTC', LASA's operational engine-room), all duly motivated decisions to create, abolish, and freeze recruitment to Senior Litigator posts are taken by the LSTC, chaired by Nair. A practical example is the LSTC's decision in March 2010 to abolish the vacant Kimberley post, where it was reportedly 'redundant'[73]; to create a new one at Mthatha, where it was reportedly needed for several compelling reasons[74]; to transfer the budget from the old post to the new; and to recruit for and fill the new post immediately – all this recorded[75].

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65.2. In the matter of Senior Litigator posts, Vedalankar's and Nair's power under the Approval Framework (per section 8.2.2(b)) is to jointly approve or reject a candidate for such a post recommended by a selection panel[76]. The Approval Framework doesn't give them the power to freeze such posts on their own and thereby deviate from the Business Plan based on the Strategic Plan. But they never approved or rejected me. Instead they contrived or participated in presenting an elaborate lying cover-story for the abortion of my appointment, affecting two other LASA lawyers and massively negatively impacting on specialist legal professional service delivery in KwaZulu-Natal and the Eastern Cape. Which lying cover-story fed to me in October 2010 and again in January 2011, the respondent knowingly repeated to the Minister in March 2011 and to the Portfolio Committee in June 2011.

66. Both Vedalankar's October 2010 and January 2011 letters to me specifically claimed that the 'Durban, Pietermaritzburg and Mthatha' posts were 'frozen', so these were the 'vacant senior litigator posts' to which the respondent was referring in his March/June 2011 report, about which he claimed 'a decision [had been] made not to proceed with the filling of' the posts.

67. The respondent was certainly referring to these three vacant Senior Litigator posts because, as said, Vedalankar named them both in her October 2010[77] and January 2011[78] letters to me, the last of which she copied to him[79].

68. But contradicting Vedalankar in her letters to me, and contradicting the respondent in his reports to the Minister and to the Portfolio Committee, Nair changed their story about the Mthatha post in court in mid-2013; said the cancellation of that recruitment had nothing to do with any financial consideration (true); and said that it was because Vedalankar had refused to approve the LSTC's resolution to transfer the Kimberley Senior Litigator salary budget to Mthatha, despite his repeated pleas to her to do so (false)[80].

69. The lie to Nair's new story under oath in court, contradicting the respondent's and Vedalankar's earlier lies, is given by the facts that (a) Nair had himself confirmed Vedalankar's different version to me in his PAIA section 23 affidavit in April 2011[81], as she did in a confirmatory affidavit[82]; (b) there's no record of such refusal[83]; (c) the post must have been and obviously was created before it was advertised, which is why it was duly entered as vacant in LASA's monthly recruitment statistics[84]; (d) there'd never been any need for the post at Kimberley[85], whereas the Eastern Cape reportedly badly needed another[86], and Vedalankar wouldn't have stymied necessary service delivery so irrationally; and (e) as late as 29 July 2010 when she passed my July letter to Nair to deal with, she stated[87]:

> I don't know what is happening with these senior litigator appointment [sic] 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 [Clark] and then discuss with me.

70. This proves conclusively that as far as CEO Vedalankar was concerned, cancelling Senior Litigator appointments for whatever reason was never on the table. And that her story to me in October 2010 was a later fabrication backdated to July.

71. Among the endless, radically contradictory lies, gushing like burst sewer in all different directions, told about why the remaining three critical Senior Litigator posts hadn't been filled with the candidates selected and recommended for them, the respondent claimed through his attorney in his answering affidavit opposing my subpoena application that LASA had 'later decided ['after the interview of the Applicant [Brink] in KZN had taken place'] not to also proceed with this transfer [of Skibi to Mthatha] as it had become important to divert the funds budgeted to a different purpose[88].'

72. Tested during discovery in my labour case, I found, as expected, that no record exists[89] of any such discussion and decision by the LSTC or any other management authority 'to divert the funds budgeted to a different purpose.' No record exists to vouch the respondent's lying allegation through his attorney made under oath that the Mthatha Senior Litigator budget (which had just been transferred from the Kimberley Justice Centre after the LSTC meeting on 24 March 2010) was 'divert[ed] ... to a different purpose', and a more 'important' one. To the contrary, LASA had already confirmed at the first pre-trial conference in October 2011 in my labour case that there's been 'no re-allocation of budget' for the allegedly frozen Senior Litigator posts to any 'other cost centres'[90].

73. Duly requested under PAIA, both records are being illegally withheld from me; but I'm certain there's no mention of cancelling the Senior Litigator recruitments in the minutes of the Board Executive meeting on or about 23 July 2010 and the LSTC meeting on or about 29 July 2010, because the minute of the 31 July 2010 Board meeting says nothing about it. It records the Board's approval of executive management's proposal to freeze some lower criminal court posts, and its approval of the increase in civil practitioner posts from 36 to 60 – quite at odds with the lie the respondent told the Minister and the Portfolio Committee that 'pressing financial constraints facing Legal Aid SA resulted in a decision being made not to proceed with the filling of [three] vacant senior litigator posts'.

74. As a senior judge and as the chairperson of a major public entity for about a decade by that time, the respondent well appreciated that it was inconceivable that Vedalankar and Nair could have duly (a) aborted three substantially complete recruitments to three critical vacant posts at the apex of its legal professional staff establishment and have (b) permanently frozen the posts without any record of this whatsoever. The respondent well

appreciated this because on its own terms it was grossly irregular and illegal on several scores.

75. The respondent knew that executive management had proposed 'Increasing Senior Litigation capacity' in its November 2006 Report to Board to remedy LASA's lack of 'professional staff that are senior enough to take on ... cases of a highly complex nature ... It is proposed that we build up such capacity at each province linked to a high court unit. Such senior litigators would be able to undertake more complex work as well as support and mentor our other High Court staff'[91]. The respondent knew it because he and the Board approved the creation of nine of these new specialist posts at their meeting on 24 November 2006[92], and the posts were advertised the following year[93].

76. The respondent was full well aware that the National Assembly specifically wanted Senior Litigators employed to allay reported public perceptions of inadequate legal professional expertise at LASA, because it raised this with him directly and repeatedly:

    76.1. On 30 May 2007, at its meeting with the respondent and Vedalankar, the then Select Committee on Safety and Security enquired 'if the LAB [Legal Aid Board, now Legal Aid South Africa] employed senior litigators', in view of a 'complaint' about 'service delivery to the effect that LAB lawyers were inexperienced,' and 'the issue of lawyers being seen as apprentice lawyers'. The respondent acknowledged: 'The LAB was aware of constant criticism that they employed inexperienced lawyers to do the work[94].'

    76.2. Again at LASA's presentation to the Portfolio Committee on 5 August 2009, 'Mr Sibanyoni asked if the [Legal Aid] Board was working on improving public perceptions about itself.' The respondent conceded that the respondent bore 'a legacy' of 'bad public perceptions'[95].

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77. The respondent was full well aware that ramping up specialist legal professional delivery capacity was a key component of LASA's Strategic Plan 2009–12 to meet the Portfolio Committee's concerns.

78. In her CEO report for 2012/13, Vedalankar twice reported the employment of Senior Litigators as an especially noteworthy part of the implementation of the Strategic Plan[96]; and the main body of the annual report mentioned this a third time[97].

79. She didn't in her report claim that a lack of funds caused her and Nair to 'immediately' (her word to me in October 2010) cancel three appointments to such posts for which suitable candidates had been selected and recommended, 'after the Board meeting'[98] on 31 July 2010[99] (as LASA pleaded incredibly in my labour case); that recruitment to one third (3/9) of these critical top ranking legal specialist posts had been permanently frozen, off the record; and that millions of rands are being applied for in LASA's annual budgets to pay three Senior Litigator salaries[100] – funds voted by the National Assembly, and transferred by the Department year after year (even up to now) for salaries to equip KwaZulu-Natal and the Eastern Cape with two Senior Litigators each. Which millions of rands are deliberately and unlawfully not being spent on their budgeted purpose, year after year. To date.

80. Nor in his covering chairperson's report for the year (2012/13) did the respondent reveal any of this, of which he had full knowledge, to the Minister and to the Portfolio Committee. And the reason he didn't do so is because no such decision was duly taken: it was irregular, it was illegal, there was no record of it accordingly; and the respondent and Vedalankar both knew it and were concealing it.

81. With the scandalous practical result that (a) the country's second largest province by population, KwaZulu-Natal, has been irregularly and unlawfully

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denied the services of a Senior Litigator, where the need for such was appreciated by LASA to be so great that two posts at Pietermaritzburg and Durban were created from the outset[101]; and (b) the geographically vast Eastern Cape remains under-serviced, with the single Senior Litigator at Port Elizabeth hugely overstretched, servicing four High Courts across the province[102] – thus massively negatively impacting on LASA's service delivery in the two provinces. Since to the respondent, jobs for pals is more important than critical service delivery.

82. By their deliberate silence about this in their 2012/13 chairperson's and CEO's reports, the respondent and Vedalankar deceived and misled both LASA's executive authority and its oversight authority into believing that these budgeted and funded critical specialist legal professional posts had been filled.

83. That the posts have deliberately not been filled – improperly, illegally, no record of any such decision – has never been stated in any other annual report. To the contrary, LASA's Business Plan 2011/12 told the blatant lie: 'No longstanding vacancies'[103].

84. Two further reasons why in their chairperson's and CEO's reports for 2012/13 the respondent and Vedalankar concealed the off-the-record, unauthorised, and illegal cancellation of the three Senior Litigator appointments, and the off-the-record, unauthorised, and illegal permanent freezing of the posts, was that they knew the Deputy Minister and the Portfolio Committee had expressly opposed the freezing of posts, especially critical posts:

    84.1. In its report on Budget Vote 23, dated 4 May 2010[104], the Portfolio Committee raised the fact that it:

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> 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. ... 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.

84.2. Later in the same month, on 29 May 2010, at the LASA Board meeting he attended (per the minute[105]) the Deputy Minister pertinently told the respondent he didn't want any posts frozen, and assured him that LASA's OSD phase 1 funding for legal professional staff salary increases was going to be included in the mid-term national budget later in the year (as indeed it was). This is recorded in the July 2010 Report to Board[106] to be discussed below. Vedalankar also reported the Deputy Minister's explicitly stated aversion to the freezing of any posts to the Portfolio Committee on 11 October 2010[107]:

> The [Deputy] Minister has been involved in that which relates to the OSD phase 1 and 2 funding. And our chairperson met with the Minister and he undertook to assist to resolve this issue through the ... mid-term adjustment budget ... [W]e indicated that if that didn't come through it meant we would have to freeze posts ... but the Minister didn't want that and said that we needed to continue with the business.

85. Again in its 'Budgetary Review and Recommendation Report of the Portfolio Committee on Justice and Constitutional Development on the performance of

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the Department of Justice and Constitutional Development for the 2009/10 financial year, dated 26 October 2010'[108], 'The Committee recommends that – OSD funding is included in baseline to prevent LASA from having to freeze posts.'

86. The respondent also knew full well that section 1 of the Approval Framework required Board approval for any deviation from the Strategic Plan; and that the Board had to be consulted before any deviation from the Business Plan based on it[109]. (An instance of such approval, duly sought and duly granted, will be mentioned below.) But the Board's approval wasn't sought, much less was it granted, for the respondent's ill-motivated, off-the-record, unauthorised and illegal decision to cancel my appointment, and, to create a cover for it, the cancellation of Mngadi's promotion and Skibi's transfer; and then the off-the-record, unauthorised and illegal permanent freezing of recruitment to the Pietermaritzburg, Durban and Mthatha posts in illegal deviation from the Strategic Plan.

87. Addressing the Portfolio Committee on 13 April 2010 on LASA's Strategic Plan and budget, the respondent stated[110]:

> We've flagged inconsistent application of OSD, the occupational specific dispensation, which continues to perpetuate non alignment of salaries within the justice sector. We've looked at unequal resourcing of legal aid relative to other agencies, which impacts on our performance. In this regard I think in my previous appearances in this committee I've said that if one looks at our contribution to the South African criminal justice sector our funding is not reflected in terms thereof, so that's why we've flagged it as an issue, and an issue that I've also flagged is the attraction and retention of err err err lawyers with the necessary experience and specialist skills. So Chair, in a nutshell those are all the risks that we looked at.

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88. Having just blocked my appointment and with it Mngadi's promotion, it's not surprising that the respondent should have balked at mentioning 'as an issue ... the attraction and retention of err err err lawyers with the necessary experience and specialist skills.'

89. The respondent naturally didn't tell the Portfolio Committee that a successful Senior Litigator recruitment process in KwaZulu-Natal had attracted two 'lawyers with the necessary experience and specialist skills' and that they'd been recommended for the province's two long-vacant posts by a selection panel accordingly, but that he'd aborted their appointments off the record just because he wanted his former Labour Court colleague appointed instead of me.

90. Nor did he tell the Portfolio Committee that 'inconsistent application of OSD' (LASA wasn't yet receiving funding for the implementation of OSD phase 2) or the Department's failure to include OSD phase 1 funding in LASA's baseline budget (discussed below, it was paid separately, later during the year, like the year before) meant LASA couldn't fill its remaining three critical vacant Senior Litigator posts – because this wasn't true. Besides this story being unsupported and contradicted by the records, it was also contradicted by the facts on the ground:

91. Whereas the KwaZulu-Natal Senior Litigator appointments had been aborted, the Mthatha recruitment proceeded apace, and interviews for the post were held and a selection made on 24 May 2010, several weeks after the respondent's presentation to the Portfolio Committee in April 2010 quoted above. There was never any question of not implementing the Strategic Plan by not employing Senior Litigators for lack of funding; and all nine posts have always been, and continue to be, budgeted by LASA[111], approved by the National Assembly, and funded by the Department, year after year.

92. As a senior judge and long-time chairperson of LASA, the respondent well knew that besides being a lie, the explanation he gave the Minister and the Portfolio Committee for the abortion of my appointment was illegal on its own terms, because the alleged 'decision ... made' off the record 'not to proceed with the filling of vacant senior litigator posts' at Pietermaritzburg, Durban and Mthatha illegally contravened the PFMA in multiple respects:

    92.1. Section 52 requires LASA to present the Department with 'a corporate plan ... covering the financial affairs of the public entity ... for the following three years'. The Strategic Plan 2009–12 duly complied with this requirement, and LASA was required to implement it. In the case of Senior Litigator recruitment, it illegally didn't.

    92.2. Section 53(4) requires 'that expenditure of that public entity is in accordance with the approved budget'. Applying to the Department for funds to pay the salaries of three Senior Litigators at Pietermaritzburg, Durban and Mthatha (year after year; it's been many now) and not using such funds 'in accordance with the approved budget' is illegal.

    92.3. Section 55 requires LASA to 'keep full and proper records of the financial affairs of the public entity'; and any alleged 'decision ... made not to proceed with the filling of vacant senior litigator posts', with financial implications running into many millions of rands, had to be in writing. There's no record whatsoever of any such decision, falsely alleged by the respondent to the Minister and to the Portfolio Committee in his report.

93. As mentioned above, a few months after my original closely detailed Statement of Claim in July 2011 exposed and categorically refuted the respondent's lying delay and cancellation excuses given to the Minister and the Portfolio Committee, Nair dropped the two lying, discredited excuses like

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a hot plate, and fabricated two completely different stories for his Report to Board in November 2011[112]. (It was leaked to me by a sympathetic high-level insider from a private email account to avoid detection and reprisal.)

94. Since the respondent was complicit in Nair's deception of the Board with this lying Report to Board in the manner I'll show below, I'll deal with and expose and refute Nair's brand new lies to the Board, at which the respondent connived, in some detail. His new substitute lies, to replace those I'd refuted, were these:

> Six Senior Litigators were filled [sic] during our recruitment processes. The other three posts have remained vacant due to recruitment challenges. We have since decided not to fill the remaining positions until we are reassured that our objectives determined for this position is being achieved by the current incumbents.

95. In truth and in fact, there were no 'recruitment challenges': Skibi, recommended for Mthatha, was already an experienced Senior Litigator at Mahikeng; Mngadi, recommended for Durban, was a highly academically and practically qualified High Court Unit Manager at that office, as the recommendation report noted (and the respondent later appointed him as an acting judge of his Gauteng Division accordingly); and there was no serious question about my qualifications, even as, at the trial of my labour claim, Nair feebly pretended, under oath, that I was under-qualified; then, when that flopped, that I was over-qualified. The implicit lie in Nair's new story was that the recruitments had failed. In truth and in fact they'd been successful, with three suitable candidates selected.

96. Tested with PAIA, I established that no record exists to vouch that LASA had ever doubted 'that our objectives determined for this position is being achieved by the current incumbents'. Or that LASA's top lawyers were underperforming. This was smooth-talking invention by the habitual liar

practically running the continent's biggest law firm. Since graduated with a law degree and admitted to practise as an advocate.

97. To lard his second lie to the Board that the value and performance of LASA's incumbent Senior Litigators was in doubt, Nair added the following extremely impressive and convincing information. It had 'been agreed' he said:

> that a national quality review panel will be established that will include a few senior legal executives, as well as someone external to the organization, possibly a retired Judge, who would conduct ... [q]uality reviews of senior litigators ... The review panel will be established during the third quarter of this financial year [i.e. by the end of December 2011]. All senior litigators will be reviewed by this panel before the end of this financial year [i.e. before 31 March 2012].

98. A year later, after the second pre-trial conference in my labour case held in January 2013, I forced LASA's admission that no such 'national quality review panel' had been 'established', contrary to Nair's completely false undertaking to the Board – the whole thing being a new lying cover-story, unsupported by any records at all, for the irregular, unlawful abortion of my recruitment, Mngadi's promotion, and Skibi's transfer, originally attributed to insufficient operating budget to fill the posts. When I sought supporting records to vouch Nair's 'national quality review panel' story during discovery in my labour case, Mtati swore in LASA's first discovery affidavit on 11 March 2013[113], contemptuous of his oath to tell the truth: 'The panel has not been constituted and terms of reference are still under consideration.'

99. In truth and in fact, as appears from Nair's November 2011 Report to Board, the 'terms of reference' of the alleged 'panel', falsely and dishonestly alleged by Mtati under oath to be 'still under consideration', had already been invented and comprehensively stated there.

100. Cross-examining Nair at trial, I tested Mtati's slippery 'terms of reference are still under consideration' story told me, reckless of his oath, in LASA's crooked lawyer's cant, for not having 'established' the 'review panel ... during the third quarter of this financial year', i.e. by the end of December 2011, as ostensibly genuinely undertaken to the Board; and why 'All senior litigators' hadn't been 'reviewed by this panel before the end of this financial year' i.e. before 31 March 2012, as promised.

101. Lying freely under oath to slip out the noose, Nair improvised the claim that he'd 'allocated the responsibility' to 'the Chief Legal Executive, the then Legal Development Executive' Patrick Hundermark, to draft 'the terms of reference' of a 'review panel' to conduct 'performance reviews or quality reviews' for 'Senior Litigators'; and that Hundermark had 'hosted' a 'number of meetings' in this 'on-going process still being attended to', 'to properly develop terms of reference, to identify possible people to contribute to the panel, and to consult'[114].

102. After judgment, I tested this evidence – these easy lies Nair told the judge under oath, knowing I couldn't catch him in court – with a PAIA request for Nair's alleged instruction to Hundermark; the minutes of the meetings Hundermark had allegedly held for this alleged purpose; and all and any records vouching that Hundermark had acted to develop the terms of reference, identify people for the panel, and consult about it. And I found, quite predictably, that there are no records for any of this; which confirms that Nair contemptuously lied to the judge under oath in making all this up, to try escaping the trap he and Mtati had talked themselves into.

103. The real reason nothing was ever done to convene any such 'national quality review panel [to] conduct ... [q]uality reviews of senior litigators' and why LASA's incumbent Senior Litigators have not been specially and exceptionally evaluated in this manner, is that in truth and in fact (a) no

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need for this existed, and no performance audit had found their professional acumen wanting; (b) Nair never had any genuine intention of establishing any such panel; and (c) he was scrambling to concoct new cover-stories for his failure to approve and finalise my appointment, after I'd refuted the lying delay and lying budgetary explanations in my original Statement of Claim in July 2011.

104. And that's why no record whatsoever exists to show that the LSTC or any other competent authority at LASA ever thought any of LASA's Senior Litigators to be useless and to need weeding out with an urgent professional performance audit by 'a few senior legal executives, as well as someone external to the organization, possibly a retired Judge'.

105. Nair lied to the Board in pretending this, and then, unable to retreat, lied to court about it, under oath, embellishing his lies when cornered by them. Only to be caught out with PAIA.

106. The respondent chaired the November 2011 Board meeting at which Nair lied to it by presenting the brand-new, substitute false reasons he'd made up for not proceeding with the Senior Litigator appointments, after I'd totally demolished the respondent's delay and cancellation excuses a few months earlier in my original Statement of Claim in July 2011. By not challenging Nair's new lies, the respondent was complicit in the deception of the Board with this new elaboate cover-story for why LASA's remaining three vacant Senior Litigator posts weren't being filled in accordance with the Strategic Plan and budget. Instead the Board minute records that Nair's Report to Board was quietly 'Noted'[115].

107. The respondent was well aware that there was no question about the professional competence of the three recommended Senior Litigator candidates, Mngadi, Skibi and me, and that Nair had lied about this in now pretending that 'recruitment challenges' prevented our appointments.

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108. And the respondent knew equally well that Nair's new story about LASA's six Senior Litigators urgently needing to be professionally audited by inter alia 'a retired Judge, who would conduct ... [q]uality reviews of senior litigators' was a lie, because he'd personally interviewed them and vetted them before their appointments.

109. Nair's new lies in his November 2011 Report to Board about why the Senior Litigator posts hadn't been filled weren't alleged in any communication with me, with the Minister, with the Portfolio Committee, or in any pleading or interlocutory affidavit in my labour case.

110. Two further objective facts show the respondent lied to the Minister and the Portfolio Committee in telling them in March and June 2011 that a 'decision' by LASA had 'been made not to proceed with the filling of vacant senior litigator posts' due to 'pressing financial constraints', and 'financial uncertainty'. And they show equally that Nair lied to the Board in November 2011 in telling it completely differently, with the respondent's tacit approval, that it had been decided not to fill the posts because LASA had been unable to find suitable candidates and had since decided that it needed to be sure that its incumbent six Senior Litigators were professionally up to scratch and that LASA was getting its money's worth from them:

    110.1. In January 2012, LASA advertised a 'Vacancy' for an 'Administration Officer – Civil' for the 'Pietermaritzburg Justice Centre', inter alia to 'Maintain a register of documents sent to the Senior Litigator and Impact Litigation department'. Which only goes to show that no decision had been taken by LASA as an organisation to indefinitely/ permanently freeze the post I'd been selected and recommended for, for any reason: Vedalankar's, the respondent's or Nair's.

    110.2. In February 2012, LASA advertised to recruit an advocate to fill its Impact Litigator post at its national office in Braamfontein, to

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provide substantially similar professional services to those provided by a Senior Litigator, and on the same LP10 'Senior Professional staff' salary scale. This further shows that no decision was duly taken to halt the 'filling of vacant' top-level equivalent specialist legal professional staff posts due to 'financial uncertainty', 'pressing financial constraints' – or any other reason, like Nair's new ones given the Board in November 2011, winked at by the respondent.

111. Even as lower criminal court public defender recruitment was reduced after the July 2010 Board meeting for a couple of months, other recruitment proceeded normally, and in the second quarter July–September 2010, it increased by 1.7% from 1173 to 1193. But the Senior Litigator appointments remained on permanent ice.

112. Locked into its budgetary insufficiency version repeatedly given me, LASA stuck to its 'fiscal pressures ... due to the recession' lie in its original Response in October 2011 to my claim in the Labour Court to my appointment, and continued sticking to it in its Response in April 2013 to my amended Statement of Claim. Neither of LASA's pleas alleged to the judge, as Nair had alleged to the Board, that 'recruitment challenges' and uncertainty over its six Senior Litigators' professional ability were the two reasons the Pietermaritzburg, Durban and Mthatha Senior Litigator recruitments had been aborted.

113. But diametrically contradicting the respondent's lies to the Minister and to the Portfolio Committee about why my appointment hadn't been proceeded with (the financial excuse) and diametrically contradicting LASA's pleaded case (the same financial excuse), Nair claimed in his evidence that the Pietermaritzburg post remains frozen for the totally different new reasons that he'd alleged to the Board: Q: 'And the reason for that is to be found in the report to the Board that you wrote?' --- 'Correct[116].'

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114. At the same time, Nair also alleged the financial insufficiency excuse, but radically changed it concerning Mthatha – contradicting Vedalankar's repeated claims to me in her October 2010 and January 2011 letters that the three posts, at 'Durban, Pietermaritzburg and Mthatha', had been frozen for want of budget to fill them. About which she insisted in her January letter[117]:

> the explanation furnished by me to you on 18 October 2010 remains valid ... I, and the Legal Aid SA under my watch, have never sought to make any decisions regarding the Senior Litigator positions on any other ground than the budget constraints which you have rejected.

115. As said, contradicting Vedalankar, Nair testified that 'budget constraints' had nothing to do with the abortion of the Mthatha recruitment; it was because, he said, Vedalankar had disapproved the LSTC's resolution to transfer the budget from Kimberley to Mthatha, despite his repeated pleas to her to approve it. His new perjury is exposed by the several facts enumerated above.

116. '*Adv Brink was subsequently informed of this decision*' ('not to proceed with the filling of vacant senior litigator posts'). As said, LASA took no such duly made 'decision', and there's accordingly no record of it. The 'decision' was only alleged to me on 3 August 2010, by Nair[118], to whom Vedalankar had passed my July letter to her, to deal with[119].

117. That is, I was sold this story eight silent months after my interview (backhandedly confirmed to have been successful by Clark in April 2010), and only when I pressed Vedalankar to finalise my appointment. The 'decision' was only alleged to me after my July letter showed (a) I hadn't disappeared as hoped; (b) the silence and then stonewalling strategies had failed; (c) I was pressing for my appointment; and (d) I now needed putting off with some lies.

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118. *'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.'* First, the 'senior litigator posts' were not frozen for this 'reason' and there's no record that they were, either for this 'reason' or for any other. And second, the only 'uncertain' thing was *when* in the year 'funding ... to finance our OSD phase 1 implementation' would be provided, not *if*.

119. LASA's OSD phase 1 allocation for the previous year, 2009/10, had been paid during the year[120], separately from the main baseline budget transfer; and although such OSD funding for 2010/11 hadn't been included by the Department in LASA's baseline budget as expected[121], the Deputy Minister assured the respondent at the Board meeting on 29 May 2010 that it would be included in the national mid-term budget later in the year[122]. So there was no real prospect of an 'unbalanced budget for 2010/11', and the respondent knew this perfectly well, because he had the Deputy Minister's assurance.

120. *'As a result various options to make up for the shortfall in our funding, including the freezing of posts, were considered.'* This is absolutely true on its face, but quite false in the context, because the records detailing the 'various options' show that the freezing of Senior Litigator posts was never an 'option'.

121. When on 14 July 2010 the Deputy Director General of the Department said, very correctly (I'm quoting the Report to Board of 16 July 2010), 'DoJ has indicated that they do not have funds to cover the R53.8 million OSD shortfall'[123], LASA's management executives – dismally lacking the basic financial understanding that the Treasury provides funds for the national mid-term budget and not the Department – decided to twist the Deputy Minister's arm.

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122. Disregarding the Deputy Minister's assurance that funds for OSD would be provided 'through the mid-year budget adjustments in September/October 2010', i.e. included in the national mid-term budget, and disobeying his express wish that service delivery be maintained, Nair and his executive management colleagues proposed *temporarily* freezing some posts *at the bottom of LASA's legal professional establishment*[124]. Which the respondent and the Board approved[125]. At the trial of my labour case, Nair admitted this was just to spur payment[126].

123. In his email to his management colleagues the next day, 15 July 2010, Nair suggested[127] a:

> first cut of 56 practitioner [public defender] posts at JCs [Justice Centres]. ... In terms of this cut, I have ensured that DC [District Court] will not be lower than 80% coverage whilst RCs [Regional Courts] will not be lower than 90% coverage. If we need to find more savings from practitioner posts, then we will need to agree lower coverage for District and Regional courts.

124. By cut Nair meant freeze; it was common cause in my labour case that no posts were cut[128].

125. Now it's true that Nair considered freezing other posts, not only lower criminal court public defender posts. But the other kinds of posts he considered freezing were even lower ranking 'paralegal and admin positions'[129]. Certainly not critical specialist Senior Litigator posts at the apogee of LASA's legal professional staff establishment.

126. The following day, 16 July 2010, executive management conveyed Nair's proposal in their Report to Board, and what it shows is that the only two 'options ... considered ... to make up for the shortfall in our funding' arising from the outstanding OSD phase 1 allocation was (a) 'the freezing' of

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recruitment to some public defender posts serving the District and Regional Court – *temporarily*, until the matter had been resolved; and (b) 'Savings from the 2010/11 financial year be used to fund the shortfall'[130].

127. LASA's records (discussed below) show that the abortion of three substantially complete critical Senior Litigator recruitments and the permanent off-the-record freezing of the three posts was never an 'option'. Exactly the opposite: the Report to Board highlighted 'the need to prioritise critical positions[131].'

128. And the respondent knew this full well, because he chaired the Board meeting on 31 July 2010 at which the 'options to make up for the shortfall in our funding' were proposed and approved[132], and the 'options' had nothing to do with aborting substantially complete Senior Litigator recruitments and permanently freezing Senior Litigator posts.

129. '*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.*' In truth and in fact, my PAIA requests of August and December 2010 for access to specified documents were refused – my August request for the third time, the first refusal in September having been mute, the second in October express. Illegally refusing my request yet again, Vedalankar even rejected and returned my request fee. I did not get a 'response ... in terms of PAIA ... to [my] request for information', which was for specified documents, and not for her stories. I'd heard enough stories already from Clark and Nair.

130. More to the point of this complaint, the 'various documents' Vedalankar gave me in January 2011 (to make her fake case, while concealing a pivotal record mentioned below, and not to respond to my PAIA request for the

specified records I'd requested) show that the only 'contingency measures that we were contemplating to cater for' the outstanding OSD funding were (a) the *temporary* 'freezing of many positions' serving the lower criminal courts and (b) the use of unspent budget savings. And not the *permanent* freezing of three top-deck critical Senior Litigator posts.

131. Vedalankar's sleazy claims in her letter, copied to the respondent[133], about 'the cost-cutting measures including but not limited to the Senior Litigator posts'[134], and Nair's email (about freezing some lower criminal court public defender posts[135]) given me 'to show that not only the Senior Litigators' posts were identified for possible freezing'[136], were repeated instances of the same nauseating chicanery that former Public Protector Thuli Madonsela later encountered in her investigation of another corrupt public entity, PRASA. Presenting her report 'Derailed' on national radio, she mentioned that documents it had put up and claimed to show one thing showed another. Just as in my case – the respondent knowing the truth of it and going along with it, because Vedalankar had copied him in.

132. These 'various documents' included Vedalankar's letters to the Director General in March[137] and April 2010[138] about the fact that LASA's OSD phase 1 allocation hadn't been included in its baseline budget as expected. Her second letter mentioned maybe having to freeze some lower criminal court posts on account of this[139].

133. But on the same day she wrote, 13 April 2010, the respondent presented LASA's Strategic Plan 2009–12 and budget to the Portfolio Committee; and there was no talk by him of freezing any posts, let alone LASA's top legal professional Senior Litigator posts.

134. Indeed, back on the ground, the Mthatha Senior Litigator recruitment was close to completion with the interviews and selection weeks away on 24 May 2010. Other recruitment and new post creation boomed at a magnificent rate

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(all these figures drawn from LASA's various reports were common cause at the trial of my labour case[140]):

135. LASA's First Quarter Report for April to June 2010 shows that 82 new budgeted posts were created during this period. To fill these and previously established posts, 82 more staff were employed, including 17 principal attorneys and professional assistants, 11 supervisory staff/managers, and 49 candidate attorneys. In this first quarter April to June 2010, LASA increased its total number of budgeted establishment posts by a massive 3.3% (2513 to 2595) – almost the same as the 3.9% increase (2419 to 2513) for the whole of 2009/10.

136. Appreciating the destructive implications of this tremendous activity for LASA's pleaded defence that it had been too financially pinched to hire me, in that its own statistics showed that the OSD issue never impeded its implementation of its Strategic Plan – not until August 2010, and then for only two months with a temporary brake applied to lower criminal court public defender recruitment – Nair dully lied under oath to try talking it away: the 'position never changed in 2010/11; it remained constant. There were no new positions during the year that we created[141].' In the teeth of LASA's own reports to the very contrary.

137. Following a nil nett increase (more resignations than recruitments) in the third quarter September to December 2009 (1136 to 1129) and a 1.6% increase in the fourth quarter January to March 2010 (1129 to 1147), legal staff recruitment spiked in the first quarter April to June 2010 at 2.3% (1147 to 1173). Total staff recruitment increased by 3.5% (2352 to 2434). This sharp rise of 3.5% in total staff recruitment in the first quarter April to June 2010 alone was greater than the increase of 3.1% (2281 to 2352) for the whole of 2009/10.

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138. In sum, in the first quarter April to June 2010, despite LASA's 'financial uncertainty' that arose on 10 March 2010 (per Vedalankar's March letter to the Director General[142]) about when its OSD phase 1 allocation would be paid, new post creation and new staff recruitment accelerated at a massively increased rate. But the KwaZulu-Natal Senior Litigator appointments were blocked. Even as the Mthatha recruitment proceeded.

139. Other 'various documents' Vedalankar gave me in January 2011, copied to the respondent, were, all generated in July 2010: Nair's email to his management colleagues, proposing the freezing of recruitment to some lower criminal court public defender posts[143]; executive management's Report to Board conveying this[144]; and the Board's approval[145].

140. Vedalankar also gave me a memorandum internally circulated in September 2010, inviting belt-tightening proposals, as the government wished across all departments[146], that had nothing to do with the case (even as she pretended otherwise[147]), and, as shown below, had zero effect on recruitment, which contrariwise rocketed in the next quarter.

141. What Vedalankar deceitfully withheld from me – with the respondent's tacit approval, since her dishonest letter was copied to him – was the Department's OSD payment voucher on 15 December 2010[148]. (I had to force this out of LASA during pre-trial discovery in my labour case.)

142. Vedalankar not only silently concealed this crucially relevant document from me, showing that LASA had received all its OSD funding six weeks earlier, she positively lied in pretending that LASA was still too skint to employ me: 'Obviously by November 2010 ... it was evident that there would be no funding coming from the DoJ. In fact a shortfall was expected up to 2012.'

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143. As said, copied in on Vedalankar's January 2011 letter to me, the respondent went along with this low attempt to defraud me into abandoning my claim to the post for which I'd been recommended, by trying to induce me think LASA lacked the funds to hire me.

144. Quite the contrary, after the December 2010 OSD payment, LASA was so flush that it reported a surplus of R31.7 million for the year[149]. And contrary to Vedalankar's false claim to me, copied to the respondent, that 'a shortfall was expected up to 2012', LASA enjoyed a surplus in 2012/13 of R29.9 million[150].

145. LASA's records show that with the inclusion of its OSD funding in the national mid-term budget in October 2010[151], mentioned by Vedalankar to the Portfolio Committee on 11 October 2010,[152] recruitment at LASA then soared, and peaked for the year at an increase of 2.5% (up from 1193 to 1223)[153].

146. The brake on public defender recruitment was lifted and the posts all filled; and on 9 July 2011, Vedalankar informed the Access to Justice Conference accordingly[154]: 'We have increased access to clients through 100% coverage of all criminal courts in the country.'

147. But LASA's three remaining vacant critical Senior Litigator posts remained permanently frozen, off the record. To this day.

148. '*Adv Brink however remains unconvinced that our reasons for freezing this post is honest, as he believes there is a conspiracy against him.*' The real reason I was 'unconvinced that our reasons for freezing this post is honest' is that LASA's records didn't support and actually contradicted 'our reasons for freezing this post', as Vedalankar had alleged to me in her October 2010 letter[155] and repeated in her January 2011[156] one. (And then perjuriously confirmed on affidavit in April 2011[157].)

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149. That is, the financial insufficiency 'reasons' alleged to me for not appointing me were clearly not 'honest', as even a child could see. Likewise the totally different contradictory fairy stories Nair told the Board about 'recruitment challenges' and needing to be assured that the six appointed Senior Litigators were doing their jobs and knew how to do them. Also unsupported by any records.

150. This impelled me to conclude there was an occult reason for not appointing me, and I was right about that; only, I was wrong about what it was: it wasn't my personal political unpopularity, but rather Ngcamu's favour with the respondent. Nothing else explained it.

151. '*Legal Aid SA, under the current leadership, never refused legal aid nor refused appointment of any individual/s because of their race or political views.*' I accept this without reservation today, and I've done so since April 2016 on discovering the real reason my recruitment had been aborted – apparent from my rival applicant's long-time relationship with the respondent as a fellow judge of the Labour Court, a recorded fact assiduously concealed from me since September 2010, when my request for the recommendation report was first silently refused, and then expressly refused repeatedly thereafter, and I finally had to sue for it, only to be opposed all the way to court, before LASA's total surrender at the point of argument.

152. In dismissing my claim, which I'd wrongly based on unfair discrimination, the trial judge had no difficulty in finding that I'm acutely politically unpopular among the fervent believers[158] (LASA is among them[159]) for writing several deeply researched books about, and campaigning energetically here and internationally against, the current propaganda consensus about the so-called HIV-AIDS epidemic among Africans (almost exclusively, we're told) and its alleged wonder cures from overseas, sold in all the newspapers. In all its immensely harmful and wasteful folly.

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153. *'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 clear that Adv Brink believes otherwise.'* The respondent's representation of LASA as the aggrieved party, not me, was disingenuous. I'd been dishonestly cheated out of my appointment to LASA's top legal professional post in the province; and after quickly seeing through the lies eventually told me about it, I said so forthrightly in my petitions to the respondent and the Board, complaining also about Vedalankar's strange determination to hide LASA's records from me and her violation of my constitutional right to information in doing so. I wasn't 'insulting and malicious'. The record shows it was the other way round. The respondent's charge was a lie, told on me to falsely discredit my extraordinarily serious true complaints.

154. The 'provision of relevant documentary evidence' in January 2011 with which Vedalankar had tried 'to convince' me, convinced me completely that her cover-story for the abortion of my appointment was a lie. I presented the evidence I already had of this in my first petition to the respondent in November 2010[160]; and the further 'documentary evidence' Vedalankar provided me in January 2011 clinched it. I found much more later on – like the December 2010 OSD payment voucher, which even on LASA's phoney defence version that the OSD payment delay prevented my appointment, totally blew away its financial excuse for not concluding it.

155. The respondent's long professional relationship with my rival for the post had deliberately been concealed from me, and the respondent knew it because Vedalankar copied him in on her January 2011 letter to me and its annexures, including the heavily redacted recommendation report. Deliberately kept ignorant of this potently relevant information, I concluded

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covert unfair political discrimination as the most likely reason my appointment had been aborted. On the available evidence, I couldn't think of anything else.

156. '*Therefore, whilst we would not prefer litigation in the normal course of dispute resolution, it seems 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.*' The 'decisions we took on this matter' are a matter of record; and what the records show is that contrary to Vedalankar's lying cover-story to me in October 2010[161] –

> 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.

– essentially repeated by the respondent to the Minister and to the Portfolio Committee, no such decision was duly taken at LASA: there's no record of it, and the 'relevant documentary evidence' contradicts the false allegation that it was.

157. By means of these greasy claims in the report, the respondent dissembled to the Minister and to the Portfolio Committee that all was above board, the better to cover up a major, lawless abuse of power by him, involving, inter alia, multiple contraventions of the PFMA, including an unauthorised and unlawful deviation from LASA's Strategic Plan 2009–12, disrupting

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specialist legal professional delivery planned and approved for KwaZulu-Natal and the Eastern Cape.

158. It never 'made good business sense' to abort, off the record, three substantially complete Senior Litigator recruitments and to permanently freeze recruitment, also off the record, to the three critical vacant fully funded posts, LASA's most senior specialist legal professional posts. Nor was this 'in the best interests of our organisation at the time.' These slimy lies told to help the others go down vividly illustrate Oscar Wilde's observation over a century ago:

> As one knows the poet by his fine music, so one can recognize the liar by his rich rhythmic utterance, and in neither case will the casual inspiration of the moment suffice. Here, as elsewhere, practice must precede perfection.

159. Besides the respondent's lies told to both the Minister and to the Portfolio Committee, which I've quoted, exposed and refuted above in light of LASA's own records and confirmed lack of them, the 'updated' report given the chairperson of the Portfolio Committee contained the following additional lies about my dispute with LASA, which I'd referred to the CCMA in April 2011 as my first stop before the Labour Court:

> **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.**

160. The respondent was well aware from my letter to Vedalankar and from my three petitions to him and the Board that my principal claim had always been to my appointment to the plumb post for which I'd been duly selected

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and recommended, and had won fair and square by beating out my rivals for it at the interviews. By lying to the Portfolio Committee about the nature of my claim – 'The relief he sought was monetary' – the respondent misled it about my basic dispute with LASA and disparaged me as a money-grubber.

161. The respondent also lied to the Portfolio Committee about LASA's exposure in damages for lost income, which, as in all such cases, was reckoned from the time I'd have been appointed but for the illegal abortion of my recruitment – namely 1 January 2010, the date I said I could start when the selection panel asked me how soon I'd be available. The respondent falsely claimed my damages ran from January 2011, thereby cutting a whole year's salary from the sum of my damages at that stage, and massively understating LASA's exposure in damages at a mere 'R220 000'.

162. The 'date of the conciliation' in April 2011 was irrelevant to the calculation: what mattered was the date of the future Labour Court judgment: and mentioning the date of the failed conciliation deceptively distracted from the fact that my damages were mounting by the month. Which made the respondent's statement of them to the Portfolio Committee in June, even by his own bad calculation, already two months stale, already too low by two months' worth.

163. Ultimately I eventually lost the case – having been misled about my correct cause of action, and going barking up the wrong tree in protesting unfair discrimination in my claim to my appointment, when actually it was cronyism, thanks to Vedalankar's illegal concealment, unjustified by PAIA, of the compelling evidence of this with a Koki pen in January 2011, after first telling me in October 2010 that I wasn't allowed to see the recommendation report at all, for the legally spurious but factually spot-on reason that my request for it 'extends to information on other third parties'[162], namely

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Ngcamu's long professional relationship with the respondent as a fellow judge of the Labour Court.

164. As said, this critically relevant information was only divulged at legal gunpoint in April 2016, five years later, when it was too late, and the trick in hiding it, with the respondent's complicity, had achieved its purpose in causing me to wrongly aim my case and lose it accordingly.

165. On 8 April 2011, after the respondent's report to the Minister in March and before his report to the Portfolio Committee in June, one of LASA's liars felt the guilty need to explain to the SAHRC the cancellation of my appointment in its PAIA section 32 annual report (quite superfluously to the information reporting requirements of the section). And in doing so changed the respondent's story completely, now alleging: a 'decision to freeze the [Pietermaritzburg Senior Litigator] post [was taken] due to change in business-needs budget[163].'

166. In truth and in fact, contrary to this new lie contradicting the respondent's explanation to the Minister and later to the Portfolio Committee, the 'business-needs budget' has never been changed in relation to the Pietermaritzburg Senior Litigator post, and it remains a budgeted and funded vacant post[164].

167. On another occasion, an undated telephone note taken by an officer in the SAHRC's PAIA Unit records that some liar at LASA told yet another different lie, contradicting the respondent's explanation again, in claiming the selection panel had 'rejected' me and that my 'impression' that I'd 'somehow ... gotten' that I'd been recommended was incorrect[165]. In truth and in fact, as the recommendation report unequivocally shows, I was selected for the post.

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168. These blatant lies to the SAHRC contradicting the respondent's different lies in his report to the Minister and to the Portfolio Committee, all of which many different contradictory lies Nair contradicted in his Report to Board in November 2011 with more different lies, and again with yet more different new lies in court at the trial of my labour claim in mid-2013, brightly illustrated Sir Walter Scott's observation: 'Oh! what a tangled web we weave When first we practice to deceive!' And continually contradict ourselves by telling endless totally different lies, confident of perfect impunity in the culture of routine mendacity and perjury in LASA's top governing echelons.

169. In his corrupt project to mislead the Minister and Portfolio Committee the respondent succeeded, because both the Minister and the chairperson of Portfolio Committee were impressed, persuaded and defrauded by the respondent's lies. The Minister didn't come back to me, and the chairperson of the Portfolio Committee wrote to tell me: 'In light of the facts set out in Justice Mlambo's response, I now regard this matter as closed. Thank you.'

170. Jonathan Swift explained the principle three centuries ago:

> Besides, as the vilest Writer has his Readers, so the greatest Liar has his Believers; and it often happens, that if a Lie be believ'd only for an Hour, it has done its Work, and there is no farther occasion for it. Falsehood flies, and the Truth comes limping after it; so that when Men come to be undeceiv'd, it is too late; the Jest is over, and the Tale has had its Effect.

171. Since it would have been hopeless trying to undeceive the Minister and the chairperson of the Portfolio Committee by disabusing them of Justice Mlambo's Falsehood passed off as the Truth, I accepted that it was too late: the Lie had done its Work on these Men, the Jest was over, and the Tale had had its effect; more especially since the chairperson of the Portfolio

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Committee had with quite understandable emphasis told me very finally: 'I now regard this matter as closed. Thank you.' The Truth coming limping after the Lie wouldn't have been of any interest to them.

172. Supremely confident that as a senior judge he'd be taken at his word and that his lies would be believed without question, the respondent abused 'the trappings [and] prestige of [his] high office' (per the secret ballot judgment) to sell a false cover-story to the Minister and to the Portfolio Committee about why my appointment hadn't been proceeded with.

173. In intentionally perverting with his lies the Minister's and the Portfolio Committee's separate, independent enquiries into my complaint, which I'd copied to them, that my appointment to LASA's Senior Litigator post at Pietermaritzburg had been illegally aborted under a bogus financial justification, the respondent:

    173.1. breached multiple relevant provisions of LASA's Code of Ethics and Conduct, as enumerated in paragraphs 38 and 41 of my Second Complaint; and,

    173.2. 'act[ed] in a manner unbecoming a judge', as the Preamble to the Code of Judicial Conduct puts it, by failing to comply with his obligation imposed by Article 5 of the said Code 'To act honourably': '(1) A judge must always, and not only in the discharge of official duties, act honourably and in a manner befitting judicial office.' And not, in the language of section 14(4)(e) of the Judicial Service Commission Act, act in a manner 'that is incompatible with or unbecoming the holding of judicial office'.

174. And in intentionally perverting with his lies the Portfolio Committee's enquiry into the true reason I wasn't appointed, the respondent further:

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174.1. obstructed and successfully defeated the National Assembly's obligation imposed by section 55(2)(b)(ii) of the Constitution 'to maintain oversight of ... organ[s] of state', and thereby prevented the Portfolio Committee:

174.1.1. learning the truth about why my appointment had been aborted, and holding to account those at LASA responsible for it, made common cause with it, and lied about it in the cover-up – the respondent, Vedalankar, Nair, Clark and Mtati (in the last four cases under oath) – and those who, when informed and petitioned about it, scandalously and reprehensibly looked the other way, being more loyal to the power structure and to their own perceived interests than the organisation's, perhaps being afraid to cross the respondent and taking him to task as Board chairperson and as a senior judge – COO Jerry Makokoane[166], CFO Rebecca Hlabatau[167], CLE Patrick Hundermark[168], and the Department's representative on the Board Adv Pieter du Rand[169], and other Board members serving at the time, including law professor Yousuf Vawda[170];

174.1.2. remedying the illegal obstruction of specialist legal professional service delivery in KwaZulu-Natal and the Eastern Cape, on account of the illegal cancellation of my appointment, Mngadi's promotion and Skibi's transfer, for grossly improper reasons;

174.1.3. ending LASA's ongoing illegal contravention of the PFMA, which, after the respondent's perversion of the Portfolio Committee's enquiry in 2011, continued for many years, and continues to date, with LASA applying annually to the

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Department to fund three big-ticket Senior Litigator salaries and receiving funding for them, while keeping the posts permanently frozen off the record, without authority and without approval; and not spending the salary funding on the posts as budgeted and approved;

174.1.4. 'ensur[ing]' that the recruitment corruption of which I'd complained did not continue to 'defocus or derail' LASA's 'core mandate or errand' to deliver legal services to the poor, including legal specialist services to them (per the secret ballot judgment);

174.1.5. achieving its constitutional 'objective ... to arrest or address under-performance and abuse of public power and resources' (ibid); and,

174.1.6. finding out that LASA's top 'public office-bearers', including and especially the respondent, have shamefully failed to 'live up to the promises that inhere in the offices they occupy' by illegally disrupting specialist legal professional service delivery for corrupt reasons and dishonestly falsely 'explain[ing]' (ibid) the circumstances in which my appointment, Mngadi's promotion and Skibi's transfer were aborted, after we were selected and recommended for the Pietermaritzburg, Durban and Mthatha Senior Litigator posts respectively; and,

174.2. thus 'failed to uphold, defend and respect the Constitution' (per the Nkandla judgment), and violated his judicial oath to 'uphold and protect the Constitution and the human rights entrenched in it'; and,

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174.3. criminally contravened section 17(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, which provides:

> A person who –
>
> ...
>
> (d) with intent to deceive a House or committee, produces to the House or committee any false, untrue, fabricated or falsified document; or
>
> (e) ... wilfully furnishes a House or committee with information ... which is false or misleading,
>
> commits an offence and is liable to a fine or to imprisonment for a period not exceeding two years or to both the fine and imprisonment.

Signed at Mtunzini on 14 July 2017.

ANTHONY BRINK

Signed before me at Mtunzini on 14 July 2017 by the deponent who has acknowledged that he knows and understands the contents of this affidavit and affirms its contents to be true to the best of his knowledge and belief.

COMMISSIONER OF OATHS CST 7133125-5 S.W. MSIPA

Name: S.W. MSIPA

Address: No. 01 Clarke Avenue, Mtunzini

Capacity: CST

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